

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 376
Committee Substitute Favorable 4/21/15
Senate Judiciary II Committee Substitute Adopted 6/30/15

Short Title: Civ Pro/Modernize Expert Discovery.

(Public)

Sponsors:

Referred to:

March 30, 2015

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING THE RULES OF CIVIL PROCEDURE TO MODERNIZE
3 DISCOVERY OF EXPERT WITNESSES AND CLARIFYING EXPERT WITNESS
4 COSTS IN CIVIL ACTIONS.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 1A-1, Rule 26(b)(4) reads as rewritten:

7 "(4) ~~Trial Preparation; Experts.—Discovery of facts known and opinions held by~~
8 ~~experts, otherwise discoverable under the provisions of subsection (b)(1) of~~
9 ~~this rule and acquired or developed in anticipation of litigation or for trial,~~
10 ~~may be obtained only as follows:~~Trial Preparation; Discovery of Experts. —
11 Discovery of facts known and opinions held by experts, that are otherwise
12 discoverable under the provisions of subdivision (1) of this subsection and
13 acquired or developed in anticipation of litigation or for trial, may be
14 obtained only as provided by this subdivision:

15 a. 1. ~~A party may through interrogatories require any other party to~~
16 ~~identify each person whom the other party expects to call as~~
17 ~~an expert witness at trial, to state the subject matter on which~~
18 ~~the expert is expected to testify, and to state the substance of~~
19 ~~the facts and opinions to which the expert is expected to~~
20 ~~testify and a summary of the grounds for each opinion.~~

21 2. ~~Upon motion, the court may order further discovery by other~~
22 ~~means, subject to such restrictions as to scope and such~~
23 ~~provisions, pursuant to sub-subdivision (b)(4)b. of this rule,~~
24 ~~concerning fees and expenses as the court may deem~~
25 ~~appropriate.~~

26 b. ~~Unless manifest injustice would result, (i) the court shall require that~~
27 ~~the party seeking discovery pay the expert a reasonable fee for time~~
28 ~~spent in responding to discovery under subdivision (b)(4)a.2. of this~~
29 ~~rule; and (ii) with respect to discovery obtained under subdivision~~
30 ~~(b)(4)a.2. of this rule the court may require the party seeking~~
31 ~~discovery to pay the other party a fair portion of the fees and~~
32 ~~expenses reasonably incurred by the latter party in obtaining facts~~
33 ~~and opinions from the expert.~~

34 a. 1. In general. — In order to provide openness and avoid unfair
35 tactical advantage in the presentation of a case at trial, a party



1 provided in Rule 35(b) or upon showing exceptional
2 circumstances under which it is impracticable for the party to
3 obtain facts or opinions on the same subject by other means.

4 c. Payment. – Unless manifest injustice would result and absent court
5 order, the party seeking discovery under sub-subdivision b. of this
6 subdivision shall pay the expert a reasonable fee for the time spent at
7 that expert's deposition.

8 d. Trial preparation protection for draft reports or disclosures. – Drafts
9 of reports provided under sub-sub-subdivision 2. of sub-subdivision
10 a. of this subdivision are protected from disclosure and are not
11 discoverable regardless of the form in which the draft is recorded.

12 e. Trial preparation protection for communications between a party's
13 attorney and expert witness. – Except as otherwise provided in this
14 sub-subdivision, communications between a party's attorney and any
15 witness providing a report pursuant to sub-sub-subdivision 2. of
16 sub-subdivision a. of this subdivision or identified under
17 sub-sub-subdivision 3. of sub-subdivision a. of this subdivision,
18 regardless of the form of the communication, are protected from
19 disclosure and are not discoverable. Such communications are
20 discoverable only to the extent that the communications do any of the
21 following:

- 22 1. Relate to compensation for the expert's study or testimony.
- 23 2. Identify facts or data that the party's attorney provided and
24 that the expert considered in forming the opinions to be
25 expressed.
- 26 3. Identify assumptions that the party's attorney provided and
27 that the expert relied on in forming the opinions to be
28 expressed.

29 f. Time to disclose expert witness testimony. – Parties agreeing to the
30 submission of written reports pursuant to sub-sub-subdivision 2. of
31 sub-subdivision a. of this subdivision or parties otherwise seeking to
32 obtain disclosure as set forth herein by interrogatory shall, unless
33 otherwise stipulated, set by scheduling order or otherwise ordered by
34 the court, serve such written report or in the case of no agreement on
35 the submission of written reports, interrogatory:

- 36 1. At least 90 days before the date set for trial or the case to be
37 ready for trial; or
- 38 2. If the evidence is intended solely to contradict or rebut
39 evidence on the same subject matter identified by another
40 party under sub-subdivision a. of this subdivision, within 30
41 days after the other party's disclosure. If a party fails to
42 provide timely disclosure under this rule, the court may, upon
43 motion, take such action as it deems just, including ordering
44 that the party may not present at trial the expert witness for
45 whom disclosure was not timely made.

46 The time requirements of this sub-subdivision shall not apply if all
47 parties had less than 120-days' notice of the trial date.

48 g. Supplementation. – The parties must supplement these disclosures
49 when required under subsection (e) of this rule."

50 **SECTION 2.** G.S. 7A-314(d) reads as rewritten:

1 "(d) ~~An~~ Subject to the specific limitations set forth in G.S. 7A-305(d)(11), an expert
2 witness, other than a salaried State, county, or municipal law-enforcement officer, shall receive
3 such compensation and allowances as the court, or the Judicial Standards Commission, in its
4 discretion, may authorize. A law-enforcement officer who appears as an expert witness shall
5 receive reimbursement for travel expenses only, as provided in subsection (b) of this section.
6 Compensation of experts acting on behalf of the court or prosecutorial offices shall be paid in
7 accordance with the rules established by the Administrative Office of the Courts.
8 Compensation of experts provided under G.S. 7A-454 shall be in accordance with rules
9 established by the Office of Indigent Defense Services."

10 **SECTION 3.** This act becomes effective October 1, 2015. Section 1 applies to
11 actions commenced on or after that date. Section 2 applies to motions or applications for costs
12 filed on or after that date.