

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

FILED SENATE
Apr 3, 2023
S.B. 476
PRINCIPAL CLERK

S

D

SENATE BILL DRS15196-LR-1E

Short Title: Civ. Pro./Amend Rule 53 Reference Procedure. (Public)

Sponsors: Senators Galey, Britt, and Overcash (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING RULE 53 OF THE NORTH CAROLINA RULES OF CIVIL
3 PROCEDURE TO ALLOW REFERENCE IN FAMILY LAW MATTERS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 1A-1, Rule 53 of the Rules of Civil Procedure reads as rewritten:

6 **"Rule 53. Referees.**

7 (a) Kinds of reference. –

8 (1) By Consent. – Any or all of the issues in an action may be referred upon the
9 written consent of the parties except in ~~actions-requests~~ to annul a marriage,
10 ~~actions-requests~~ for absolute divorce, ~~actions-and requests~~ for divorce from
11 bed and board, ~~actions for alimony without the divorce or actions in which a~~
12 ~~ground of annulment or divorce is in issue.~~board. Upon the written consent of
13 the parties, a court may refer issues of alimony, child custody, child support,
14 and equitable distribution, as well as requests for attorney fees associated with
15 those claims. A use of reference shall not relieve parties of the obligation to
16 participate in a mediated settlement conference or other settlement procedure
17 required pursuant to G.S. 7A-38.4A. Issues related to child custody shall not
18 be referred until the parties have completed mandatory child custody and
19 visitation mediation required by G.S. 50-13.1(b). The appointment of a referee
20 in a child custody matter shall not impact the authority of the court to appoint
21 a parenting coordinator pursuant to Article 5 of Chapter 50 of the General
22 Statutes.

23 (2) Compulsory. – Where the parties do not consent to a reference, the court may,
24 upon the application of any party or on its own motion, order a reference in
25 the following cases:

- 26 a. Where the trial of an issue requires the examination of a long or
27 complicated account; in which case the referee may be directed to hear
28 and decide the whole issue, or to report upon any specific question of
29 fact involved therein.
30 b. Where the taking of an account is necessary for the information of the
31 court before judgment, or for carrying a judgment or order into effect.
32 c. Where the case involves a complicated question of ~~boundary,~~ or
33 ~~boundary~~ or requires a personal view of the premises.
34 d. Where a question of fact arises outside the pleadings, upon motion or
35 otherwise, at any stage of the action.



1 e. Where the case involves an issue of alimony, child custody, child
2 support and equitable distribution, or requests for attorney fees
3 associated with those claims, and the court determines that the case
4 involves a complicated issue of fact, classification, valuation, or
5 income, and the court determines that the parties have the ability to
6 pay the cost of the reference. Claims for annulment, absolute divorce,
7 and divorce from bed and board shall not be submitted to reference. A
8 use of reference shall not relieve parties of the obligation to participate
9 in a mediated settlement conference or other settlement procedure
10 required under G.S. 7A-38.4A. Issues related to child custody shall not
11 be referred until the parties have completed mandatory child custody
12 and visitation mediation as required by G.S. 50-13.1(b). The
13 appointment of a referee in a child custody matter shall not impact the
14 authority of the court to appoint a parenting coordinator pursuant to
15 Article 5 of Chapter 50 of the General Statutes.

16 f. For cases with alimony, child custody, child support, or equitable
17 distribution as a cause of action, if the parties do not consent to a
18 referee and sharing the referee costs, the court shall not appoint a
19 referee unless the movant consents to pay all the referee costs.

20 (b) Jury trial. –

21 (1) Where the reference is by consent, the parties waive the right to have any of
22 the issues within the scope of the reference passed on by a jury.

23 (2) A compulsory reference does not deprive any party of ~~his~~ the party's right to
24 a trial by jury, which right ~~he~~ the party may preserve by

25 a. Objecting to the order of compulsory reference at the time it is made,
26 and

27 b. By filing specific exceptions to particular findings of fact made by the
28 referee within 30 days after the referee files ~~his~~ the report with the
29 clerk of the court in which the action is pending, and

30 c. By formulating appropriate issues based upon the exceptions taken
31 and demanding a jury trial upon such issues. Such issues shall be
32 tendered at the same time the exceptions to the referee's report are
33 filed. If there is a trial by jury upon any issue referred, the trial shall
34 be only upon the evidence taken before the referee.

35 (c) Appointment. – The parties may agree in writing upon one or more persons not
36 exceeding three, and a reference shall be ordered to such person or persons in appropriate cases.
37 If the parties do not agree, the court shall appoint one or more referees, not exceeding three, but
38 no person shall be appointed referee to whom all parties in the action object. A referee must be
39 an attorney licensed to practice law in the State of North Carolina.

40 (d) Compensation. – The compensation to be allowed a referee shall be fixed by the court
41 and charged in the bill of ~~costs~~ costs, as provided by G.S. 7A-305(d)(7). After appointment of a
42 referee, the court may from time to time order advancements by one or more of the parties of
43 sums to be applied to the referee's compensation. ~~Such~~ The advancements may be apportioned
44 between the parties in such manner as the court sees fit. Advancements so made shall be taken
45 into account in the final fixing of costs and ~~such~~ the adjustments made as the court then deems
46 proper.

47 (e) Powers. – The order of reference to the referee shall direct the referee to determine
48 all the issues in the entire action or specific issues, report issues, perform particular acts, or
49 receive and report evidence only. The order of reference may specify or limit ~~his~~ the referee's
50 powers and ~~may direct him to report only upon particular issues or to do or perform particular~~
51 acts or to receive and report evidence only and may fix the time and place for beginning and

1 closing the hearings and for the filing of the referee's report. Subject to the specifications and
2 limitations stated in the order, every referee has power to administer oaths in any proceeding
3 before ~~him, the referee~~ and has generally the power vested in a referee by law. The referee shall
4 have the same power to grant adjournments and to allow amendments to pleadings and to the
5 summons as the judge and upon the same terms and with like effect. The referee shall have the
6 same power as the judge to preserve order and punish all violations thereof, to compel the
7 attendance of witnesses before ~~him, the referee~~ by attachment, and to punish them as for contempt
8 for nonattendance or for refusal to be sworn or to testify. The parties may procure the attendance
9 of witnesses before the referee by the issuance and service of subpoenas as provided in Rule 45.

10 (f) Proceedings. –

11 (1) Meetings. – When a reference is made, the clerk shall forthwith furnish the
12 referee with a copy of the order of reference. Upon receipt thereof unless the
13 order of reference otherwise provides, the referee shall forthwith set a time
14 and place for the first meeting of the parties or their attorneys to be held within
15 20 days after the date of the order of reference and shall notify the parties or
16 their attorneys. It is the duty of the referee to proceed with all reasonable
17 diligence. Any party, on notice to all other parties and the referee, may apply
18 to the court for an order requiring the referee to expedite the proceedings and
19 to make ~~his~~ the report. If a party fails to appear at the time and place appointed,
20 the referee may proceed ex parte, or, in ~~his~~ the referee's discretion, may
21 adjourn the proceedings to a future day, giving notice to the absent party of
22 the adjournment. When the order of reference requires that the referee make
23 findings of fact, the referee shall conduct a hearing in the same manner as a
24 court trying an issue without a jury, unless the court orders otherwise with the
25 consent of the parties.

26 (2) Statement of Accounts. – When matters of accounting are in issue before the
27 referee, ~~he~~ the referee may prescribe the form in which the accounts shall be
28 submitted and in any proper case may require or receive in evidence a
29 statement by a certified public accountant or other qualified accountant who
30 is called as a witness. Upon objection of a party to any of the items thus
31 submitted or upon a showing that the form of statement is insufficient, the
32 referee may require a different form of statement to be furnished, or the
33 accounts of specific items thereof to be proved by oral examination of the
34 accounting parties or upon written interrogatories or in such other manner as
35 ~~he~~ the referee directs.

36 (3) ~~Testimony Reduced to Writing to be Recorded.~~ – The proceedings and
37 testimony of all witnesses must be reduced to writing by the referee, or by
38 someone acting under his direction before the referee must be recorded and
39 shall be filed in the cause and constitute a part of the record. A written
40 transcript of the testimony is not required unless ordered by the court.

41 (g) Report. –

42 (1) Contents and Filing. – The referee shall prepare a report upon the matters
43 submitted to ~~him, the referee~~ by the order of reference and shall include therein
44 ~~his~~ the referee's decision on all matters so submitted. If required to make
45 findings of fact and conclusions of law, ~~he~~ the referee shall set them forth
46 separately in the report. ~~He~~ The referee shall file the report with the clerk of
47 the court in which the action is pending and unless otherwise directed by the
48 order of reference, shall file with it a transcript of the testimony in the
49 proceedings and of the evidence and the original exhibits. Before filing ~~his~~ the
50 report a referee may submit a draft thereof to counsel for all parties for the

1 purpose of receiving their suggestions. The clerk shall forthwith mail to all
2 parties notice of the filing.
3 (2) Exceptions and Review. – All or any part of the report may be excepted to by
4 any party within 30 days from the filing of the report. Thereafter, and upon 10
5 days' notice to the other parties, any party may apply to the judge for action
6 on the ~~report~~ report or the court may schedule the matter for hearing on its
7 own motion. The judge after hearing may adopt, modify or reject the report in
8 whole or in part, render judgment, or may remand the proceedings to the
9 referee with instructions. No judgment may be rendered on any reference
10 except by the judge."
11 **SECTION 2.** This act becomes effective December 1, 2023, and applies to orders
12 for reference entered on or after that date.