

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 862

Short Title: Supreme Court Rule Making. (Public)

Sponsors: Senator Clodfelter.

Referred to: Judiciary I.

March 26, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THE SUPREME COURT WITH AUTHORITY TO REVISE THE
3 RULES OF CIVIL PROCEDURE AND THE RULES OF EVIDENCE, SUBJECT TO
4 AMENDMENT OR VETO BY THE GENERAL ASSEMBLY.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 7A-34 reads as rewritten:

7 "**§ 7A-34. Rules of practice and procedure in trial courts.**

8 (a) The Supreme Court is hereby authorized to prescribe rules of practice and procedure
9 for the superior and district courts supplementary to, and not inconsistent with, acts of the
10 General Assembly. Pursuant to the authority granted it under Article IV, Section 13, of the
11 North Carolina Constitution, and as limited by this section, the General Assembly delegates
12 authority to the Supreme Court to adopt and amend the rules of civil procedure and rules of
13 evidence for the trial divisions. Rules of civil procedure and rules of evidence adopted pursuant
14 to this section, once effective, have the force and effect of statutes and shall govern proceedings
15 in the General Court of Justice.

16 (b) Upon adoption of a new or amended rule of civil procedure or rule of evidence, the
17 Supreme Court shall (i) cause the new or amended rule to be published in the North Carolina
18 Register and (ii) notify the General Assembly and the Revisor of Statutes of the rule's adoption.
19 The notification to the General Assembly and the Revisor of Statutes shall include a list of any
20 sections of the General Statutes that the Court has identified as needing to be repealed or
21 amended as a result of the new or amended rule.

22 (c) The General Assembly may amend or veto any new or amended rule of civil
23 procedure or rule of evidence before the rule becomes effective under this subsection. A new or
24 amended rule of civil procedure or rule of evidence that is published in the North Carolina
25 Register at least 25 days prior to the convening of a regular session of the General Assembly
26 becomes effective on January 1 next after that regular session adjourns if no bill to amend or
27 veto the new or amended rule (i) is ratified before that regular session adjourns and (ii)
28 becomes law. For purposes of this section, "regular session adjourns" means (i) in a regular
29 session held in an odd-numbered year, adjournment by joint resolution for more than 10 days;
30 and (ii) in a regular session held in an even-numbered year, adjournment sine die. To the extent
31 of a conflict between a rule that has become effective under this subsection and a section of the
32 General Statutes that was listed in the notice to the General Assembly and the Revisor of
33 Statutes under subsection (b) of this section, when the Supreme Court adopted the rule, the rule
34 supersedes the statute.

35 (d) The Chief Justice of the Supreme Court, or the Chief Justice's designee, may
36 authorize any of the following changes or corrections to the rules of civil procedure and rules of



1 evidence that have been adopted by the Supreme Court or amended by the Supreme Court or
2 the General Assembly pursuant to this section:

- 3 (1) Rearrange the order of rules and subparts of rules and of articles or other
4 divisions of rules into groups.
- 5 (2) Provide or revise titles for any such articles or other divisions and catchlines
6 for rules as needed.
- 7 (3) Reletter or renumber rules and subparts of rules in accordance with a
8 uniform system.
- 9 (4) Rearrange definitions and other lists in alphabetical order.
- 10 (5) Correct a citation in a rule to another rule or law when the citation has
11 become inaccurate because of the repeal or renumbering or relettering of the
12 cited rule or law.
- 13 (6) Correct spelling, grammatical, and typographical errors.
- 14 (7) If an amended rule is published in the North Carolina Register with an error
15 in any part of the rule's text that is not shown as being amended, restore the
16 correct text.
- 17 (8) Make any other changes in arrangement or in form that do not change the
18 substance of a rule and are necessary or desirable for an accurate, clear, and
19 orderly arrangement of the rules.

20 The Chief Justice, or the Chief Justice's designee, shall notify the General Assembly and the
21 Revisor of Statutes of these changes or corrections. Subsections (b) and (c) of this section do
22 not apply to changes and corrections to rules pursuant to this subsection.

23 (e) Rules of civil procedure and rules of evidence adopted or amended pursuant to this
24 section shall not be assigned a General Statutes code number. These rules may be cited as
25 "N.C. R. Civ. P. _____" and "N.C. R. Evid. _____", as appropriate.

26 (f) The Division of Legislative Drafting and Codification of Statutes of the Department
27 of Justice, under the direction and supervision of the Attorney General, shall cause to be
28 published in an appendix or appendices to the General Statutes of North Carolina:

- 29 (1) All rules of civil procedure and rules of evidence, adopted or amended by
30 the Supreme Court as provided in this section, that the General Assembly
31 has failed to veto or amend under subsection (c) of this section.
- 32 (2) All rules of civil procedure and rules of evidence amended by the General
33 Assembly pursuant to subsection (c) of this section.

34 These rules shall be annotated in the same manner as statutes, except that the Revisor of
35 Statutes may include any additional annotations the Revisor deems appropriate.

36 (g) The Chief Justice may appoint advisory committees of up to eight members each to
37 advise the Supreme Court on the adoption and amendment of the Rules of Civil Procedure and
38 the Rules of Evidence. Each advisory committee shall consist of trial and appellate judges and
39 members of the North Carolina State Bar. In making recommendations to the Supreme Court
40 under this subsection, an advisory committee shall provide a proposed new or amended rule, an
41 explanatory note on the rule or amendment, and a written report explaining the advisory
42 committee's action, including any minority or other separate views. Members of each advisory
43 committee who are not officers or employees of the State shall receive compensation and
44 reimbursement for travel and subsistence expenses at the rates specified in G.S. 138-5.
45 Members of each advisory committee who are officers or employees of the State shall receive
46 reimbursement for travel and subsistence expenses at the rate set out in G.S. 138-6. Members of
47 each advisory committee who are legislators shall be reimbursed for subsistence and travel
48 expenses at the rates set out in G.S. 120-3.1.

49 (h) All meetings of an advisory committee appointed pursuant to subsection (g) of this
50 section shall be subject to the provisions of Article 33C of Chapter 143 of the General Statutes,

1 and all records of an advisory committee shall be considered public records under Chapter 132
2 of the General Statutes.

3 (i) The Rules of Civil Procedure as set forth in Chapter 1A of the General Statutes and
4 the Rules of Evidence as set forth in Chapter 8C of the General Statutes in effect on January 1,
5 2010, are deemed adopted by the Supreme Court until modified by the Supreme Court pursuant
6 to this section. References to former Chapter 1A and former Chapter 8C of the General
7 Statutes, and to the Rules of Civil Procedure and Evidence formerly set out in G.S. 1A-1 and
8 G.S. 8C-1, shall be construed as references to the Rules of Civil Procedure and Rules of
9 Evidence adopted under this section, respectively."

10 **SECTION 2.** Chapter 1A of the General Statutes and Chapter 8C of the General
11 Statutes are repealed.

12 **SECTION 3.** The Revisor of Statutes is authorized to replace references to former
13 Chapter 1A and former Chapter 8C of the General Statutes, and to the rules formerly set out in
14 G.S. 1A-1 and G.S. 8C-1, with references to the Rules of Civil Procedure and Rules of
15 Evidence deemed adopted under G.S. 7A-34(i), as appropriate, throughout the General Statutes.

16 **SECTION 4.** The Judicial Department shall implement this act using funds
17 appropriated to the Department for travel and subsistence to reimburse members of the
18 advisory committees on the Rules of Civil Procedure and Evidence authorized by
19 G.S. 7A-34(g). This act shall not be construed to obligate the General Assembly to make any
20 additional appropriation to implement the provisions of this act.

21 **SECTION 5.** This act becomes effective January 1, 2010.