

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 872
Committee Substitute Favorable 4/30/97

Short Title: Amend Civil Procedure Rules.

(Public)

Sponsors:

Referred to:

April 7, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND VARIOUS RULES OF CIVIL PROCEDURE.
3 The General Assembly of North Carolina enacts:

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

5 "(4) Trial Preparation; Experts. – Discovery of facts known and opinions
6 held by experts, otherwise discoverable under the provisions of
7 subsection (b)(1) of this rule and acquired or developed in anticipation
8 of litigation or for trial, may be obtained only as follows:

9 a. 1. A party may through interrogatories require any other
10 party to identify each person whom the other party expects
11 to call as an expert witness at trial, to state the subject
12 matter on which the expert is expected to testify, and to
13 state the substance of the facts and opinions to which the
14 expert is expected to testify and a summary of the grounds
15 for each opinion.

16 1a. Subject to the provisions of subdivision (b)(4)b. and
17 subsection (c) of this rule, a party may take the deposition
18 of an expert under the provisions of Rule 30 when the
19 expert has been identified as a person another party

1 expects to call as an expert witness at trial. The expert
2 may be compelled to produce evidence under the
3 provisions of Rule 45, including facts or data underlying
4 any opinion that may be offered as evidence under Rule
5 705 of the North Carolina Rules of Evidence.

6 2. Upon motion, the court may order further discovery by
7 other means, subject to such restrictions as to scope and
8 such provisions, pursuant to subdivision ~~(b)(4)e-~~(b)(4)b. of
9 this rule, concerning fees and expenses as the court may
10 deem appropriate.

11 b. Unless manifest injustice would result, (i) the court shall require
12 that the party seeking discovery pay the expert a reasonable fee
13 for time spent in responding to discovery under subdivision
14 (b)(4)a2 of this rule; and (ii) with respect to discovery obtained
15 under subdivision (b)(4)a2 of this rule the court may require the
16 party seeking discovery to pay the other party a fair portion of
17 the fees and expenses reasonably incurred by the latter party in
18 obtaining facts and opinions from the expert."

19 Section 2. G.S. 1A-1, Rule 30(c) reads as rewritten:

20 "(c) Examination and cross-examination; record of examination; oath; objections.

21 (1) Examination and cross-examination of witnesses may proceed as
22 permitted at the trial under the provisions of Rule 43(b). The person
23 before whom the deposition is to be taken shall put the deponent on oath
24 and shall personally, or by someone acting under his or her direction
25 and in his or her presence, record the testimony of the deponent. The
26 testimony shall be taken stenographically or recorded by any other
27 means ordered in accordance with ~~subsection~~-subdivision (b)(4) of this
28 rule. If requested by one of the parties, the testimony shall be
29 transcribed.

30 (2) Any objection to evidence during a deposition shall be stated concisely
31 and in a nonargumentative and nonsuggestive manner. A party may
32 instruct a deponent not to answer for any one or more of the following
33 reasons only: when necessary to preserve a privilege, to enforce a
34 limitation on evidence directed by the court, or to present a motion
35 under subdivision (d)(2) of this rule. All objections made at the time of
36 the examination to the qualifications of the person before whom the
37 deposition is taken, or to the manner of taking it, or to the evidence
38 presented, or to the conduct of any party, and any other objection to the
39 proceedings, shall be noted upon the deposition by the person before
40 whom the deposition is taken. Subject to any limitations imposed by
41 orders entered pursuant to Rule 26(c) or 30(d), evidence objected to
42 shall be taken subject to the objections. In lieu of participating in the
43 oral examination, parties may serve written questions in a sealed

1 envelope on the party who served the notice of taking the deposition,
2 and ~~he~~ that party shall transmit them to the person before whom the
3 deposition is to be taken who shall open them at the deposition,
4 propound them to the witness and record the answers verbatim."

5 Section 3. G.S. 1A-1, Rule 30(d) reads as rewritten:

6 "(d) Motion to terminate or limit examination. –

7 (1) By order or local rule, the court may limit the time permitted for
8 conducting a deposition. The court shall allow additional time when
9 needed for a fair examination of the deponent or when a deponent or
10 other party impedes or delays the examination. If the court finds such
11 an impediment, delay, or other conduct has frustrated the fair
12 examination of the deponent, it may impose an appropriate sanction
13 upon the persons responsible for that conduct, including reasonable
14 costs and attorneys' fees incurred by a party as a result of that conduct.

15 (2) At any time during the taking of the deposition, on motion of a party or
16 of the deponent and upon a showing that the examination is being
17 conducted in bad faith or in such manner as unreasonably to annoy,
18 embarrass, or oppress the deponent or party, a judge of the court in
19 which the action is pending or any judge in the county where the
20 deposition is being taken may order before whom the examination is
21 being taken to cease forthwith from taking the deposition, or may limit
22 the scope and manner of the taking of the deposition as provided in Rule
23 26(c). If the order made terminates the examination, it shall be resumed
24 thereafter only upon the order of a judge of the court in which the action
25 is pending. Upon demand of the objecting party or deponent, the taking
26 of the deposition shall be suspended for the time necessary to make a
27 motion for an order. The provisions of Rule 37(a)(4) apply to the award
28 of expenses incurred in relation to the motion."

29 Section 4. G.S. 1A-1, Rule 46 reads as rewritten:

30 "Rule 46. Objections and exceptions.

31 (a) Rulings on admissibility of evidence. –

32 (1) When there is objection to the admission of evidence on the ground that
33 the witness is for a specified reason incompetent or not qualified or
34 disqualified, it shall be deemed that a like objection has been made to
35 any subsequent admission of evidence from the witness in question.
36 Similarly, when there is objection to the admission of evidence
37 involving a specified line of questioning, it shall be deemed that a like
38 objection has been taken to any subsequent admission of evidence
39 involving the same line of questioning.

40 (2) If there is proper objection to the admission of evidence and the
41 objection is overruled, the ruling of the court shall be deemed excepted
42 to by the party making the objection. If an objection to the admission of
43 evidence is sustained or if the court for any reason excludes evidence

1 offered by a party, the ruling of the court shall be deemed excepted to
2 by the party offering the evidence.

3 (3) No objections are necessary with respect to questions propounded to a
4 witness by the court or a juror but it shall be deemed that each such
5 question has been properly objected to and that the objection has been
6 overruled and that an exception has been taken to the ruling of the court
7 by all parties to the action.

8 (b) Rulings—Pretrial rulings, interlocutory orders, trial rulings, and other orders not
9 directed to the admissibility of evidence. — With respect to ~~rulings—pretrial rulings,~~
10 interlocutory orders, trial rulings, and other orders of the court not directed to the
11 admissibility of evidence, formal objections and exceptions are ~~unnecessary—unnecessary~~
12 and are deemed to be preserved until entry of final judgment. In order to preserve an
13 exception to any such ruling or order or to the court's failure to make any such ruling or
14 order, it shall be sufficient if a party, at the time the ruling or order is made or sought,
15 makes known to the court ~~his—the party's~~ objection to the action of the court or makes
16 known the action ~~which he—that the party~~ desires the court to take and ~~his ground therefor;~~
17 the party's grounds for this action; and if a party has no opportunity to object or except to
18 a ruling or order at the time it is made, the absence of an objection or exception does not
19 thereafter prejudice ~~him—that party.~~ In order to preserve these rulings and orders for
20 appellate review, a party shall present to the court a timely request, objection, or motion,
21 stating the specific grounds for the ruling that the party desires the court to make, and
22 shall obtain a ruling upon the party's request, objection, or motion.

23 (c) ~~Instruction.—If there is error, either in the refusal of the judge to grant a prayer~~
24 ~~for instructions, or in granting a prayer, or in his instructions generally, the same is~~
25 ~~deemed excepted to without the filing of any formal objections."~~

26 Section 5. This act becomes effective October 1, 1997, and applies to causes
27 of action commencing on or after that date.