

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

A BILL TO BE ENTITLED  
AN ACT TO AMEND VARIOUS RULES OF CIVIL PROCEDURE.

The General Assembly of North Carolina enacts:

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

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

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

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

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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.