

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H.B. 376
Mar 26, 2015
HOUSE PRINCIPAL CLERK

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HOUSE DRH10149-LR-59A (02/19)

Short Title: Civ Pro/Modernize Expert Discovery. (Public)

Sponsors: Representatives Jordan, Stam, Bishop, and Glazier (Primary Sponsors).

Referred to:

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.** Chapter 1A-1, Rule 26(b) of the Rules of Civil Procedure, is
7 amended by adding a new subdivision to read:

8 "(b) Discovery scope and limits. – Unless otherwise limited by order of the court in
9 accordance with these rules, the scope of discovery is as follows:

10 ...

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

16 a. 1. In general. In order to provide openness and avoid unfair
17 tactical advantage in the presentation of a case at trial, a party
18 must disclose to the other parties in accordance with this
19 subdivision the identity of any witness it may use at trial to
20 present evidence under Rule 702, Rule 703, or Rule 705 of
21 the North Carolina Rules of Evidence.

22 2. Witnesses providing a written report. Unless otherwise
23 stipulated or ordered by the court, the parties shall have the
24 option, in connection with the disclosures required by this
25 subdivision, of accompanying the disclosure with a written
26 report prepared and signed by the witness if the witness is one
27 retained or specifically employed to provide expert testimony
28 in the case or one whose duties as the party's employee
29 regularly involve giving expert testimony. If the parties agree
30 to accompany their disclosure pursuant to this subdivision
31 with a written report, the report must contain all of the
32 following:

33 I. A complete statement of all opinion the witness will
34 express and the basis and reasons for them.

35 II. The facts or data considered by the witness in forming
36 the them.



1 the communication, are protected from disclosure and are not
2 discoverable, except to the extent that the communications:

- 3 1. Relate to compensation for the expert's study or testimony;
- 4 2. Identify facts or data that the party's attorney provided and
5 that the expert considered in forming the opinions to be
6 expressed; or
- 7 3. Identify assumptions that the party's attorney provided and
8 that the expert relied on in forming the opinions to be
9 expressed.

10 f. Time to disclose expert witness testimony. Parties agreeing to the
11 submission of written reports pursuant to Rule 26(b)(6)a.2. or parties
12 otherwise seeking to obtain disclosure as set forth herein by
13 interrogatory shall, unless otherwise stipulated, set by scheduling
14 order or otherwise ordered by the court, serve such written report or
15 in the case of no agreement on the submission of written reports,
16 interrogatory:

- 17 1. At least 90 days before the date set for trial or the case to be
18 ready for trial; or
- 19 2. If the evidence is intended solely to contradict or rebut
20 evidence on the same subject matter identified by another
21 party under Rule 26(b)(6)a., within 30 days after the other
22 party's disclosure. If a party fails to provide timely disclosure
23 under this rule, the court may, upon motion, take such action
24 as it deems just, including ordering that the party may not
25 present at trial the expert witness for whom disclosure was
26 not timely made.

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

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

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

39 **SECTION 3.** This act becomes effective October 1, 2015, with Section 1 applying
40 to claims pending on or after that date, and Section 2 applying to motions or applications for
41 costs filed on or after that date.