

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 827\*

Short Title: Amend Civil Procedure Rules.

(Public)

Sponsors: Senator Miller.

Referred to: Judiciary.

April 14, 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 expects to call as an expert witness at trial. The expert

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1                   may be compelled to produce evidence under the  
2                   provisions of Rule 45, including facts or data underlying  
3                   any opinion that may be offered as evidence under Rule  
4                   705 of the North Carolina Rules of Evidence.

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

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

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

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

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

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

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

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

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

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

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

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

29           "Rule 46. Objections and exceptions.

30           (a) Rulings on admissibility of evidence. –

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

39           (2) If there is proper objection to the admission of evidence and the  
40           objection is overruled, the ruling of the court shall be deemed excepted  
41           to by the party making the objection. If an objection to the admission of  
42           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. G.S. 1A-1, Rule 55(b) reads as rewritten:

27 "(b) Judgment. – Judgment by default may be entered as follows:

- 28 (1) By the Clerk. – When the plaintiff's claim against a defendant is for a  
29 sum certain or for a sum which can by computation be made certain, the  
30 clerk upon request of the plaintiff and upon affidavit of the amount due  
31 shall enter judgment for that amount and costs against the defendant, if  
32 ~~he~~ the defendant has been defaulted for failure to appear and if ~~he~~ the  
33 defendant is not an infant or incompetent person. A verified pleading  
34 may be used in lieu of an affidavit when the pleading contains  
35 information sufficient to determine or compute the sum certain.

36 In all cases wherein, pursuant to this rule, the clerk enters judgment  
37 by default upon a claim for debt which is secured by any pledge,  
38 mortgage, deed of trust or other contractual security in respect of which  
39 foreclosure may be had, or upon a claim to enforce a lien for unpaid  
40 taxes or assessments under G.S. 105-414, the clerk may likewise make  
41 all further orders required to consummate foreclosure in accordance  
42 with the procedure provided in Article 29A of Chapter 1 of the General  
43 Statutes, entitled 'Judicial Sales.'

1 (2) By the Judge. –

2 a. In all other cases the party entitled to a judgment by default shall  
3 apply to the judge therefor; but no judgment by default shall be  
4 entered against an infant or incompetent person unless  
5 represented in the action by a guardian ad litem or other such  
6 representative who has appeared therein. If the party against  
7 whom judgment by default is sought has appeared in the action,  
8 ~~he—that party~~ (or, if appearing by representative, ~~his—the~~  
9 representative) shall be served with written notice of the  
10 application for judgment at least three days prior to the hearing  
11 on such application. If, in order to enable the judge to enter  
12 judgment or to carry it into effect, it is necessary to take an  
13 account or to determine the amount of damages or to establish  
14 the truth of any averment by evidence or to take an investigation  
15 of any other matter, the judge may conduct such hearings or  
16 order such references as ~~he—the judge~~ deems necessary and proper  
17 and shall accord a right of trial by jury to the parties when and as  
18 required by the Constitution or by any statute of North Carolina.  
19 If the plaintiff seeks to establish paternity under Article 3 of  
20 Chapter 49 of the General Statutes and the defendant fails to  
21 appear, the judge shall enter judgment by default.

22 b. Motions for judgment by default will be decided by the court  
23 without oral argument when the party seeking judgment by  
24 default specifically provides in a motion that judgment by default  
25 will be decided by the court without oral argument if the party  
26 against whom judgment is sought fails to respond in writing.  
27 This subdivision does not apply when (i) the party against whom  
28 judgment is sought serves a written response stating that party's  
29 grounds for opposition to the motion within 30 days of service of  
30 the motion, or (ii) the court orders oral argument."

31 Section 6. This act becomes effective October 1, 1997, and applies to causes  
32 of action commencing on or after that date.