

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 376

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

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

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Judiciary II.

March 30, 2015

A BILL TO BE ENTITLED

AN ACT AMENDING THE RULES OF CIVIL PROCEDURE TO MODERNIZE
DISCOVERY OF EXPERT WITNESSES AND CLARIFYING EXPERT WITNESS
COSTS IN CIVIL ACTIONS.

The General Assembly of North Carolina enacts:

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

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

...

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

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

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

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



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sub-sub-subdivision a.3. of this subdivision, regardless of the form of the communication, are protected from disclosure and are not discoverable, except to the extent that the communications:

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

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

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

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

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

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

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