

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015**

**HOUSE BILL 376
RATIFIED BILL**

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. 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:~~ 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 this subsection and acquired or developed in anticipation of litigation or for trial, may be obtained only as provided by this subdivision:

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

b. ~~Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivision (b)(4)a.2. of this rule; and (ii) with respect to discovery obtained under subdivision (b)(4)a.2. of this rule the court may require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.~~

- 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. — 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 opinions the witness will express and the basis and reasons for them.
- II. The facts or data considered by the witness in forming them.
- III. Any exhibits that will be used to summarize or support them.
- IV. The witness' qualifications, including a list of all publications authored in the previous 10 years.
- V. A list of all other cases in which, during the previous four years, the witness testified as an expert at trial or by deposition.
- VI. A statement of the compensation to be paid for the study and testimony in the case.

3. Witnesses not providing expert reports. – Unless otherwise stipulated to by the parties, or ordered by the court, 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 pursuant to Rule 702, Rule 703, or Rule 705 of the North Carolina Rules of Evidence 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.

b. Depositions. –

1. Depositions of an expert who may testify. – A party may depose any person who has been identified as an expert pursuant to this subdivision, with such deposition to be conducted after any written report is provided or identification by response to interrogatory has been made pursuant to sub-subdivision f. of this subdivision.

2. Expert employed only for trial preparation. – Except as otherwise provided in this sub-sub-subdivision, a party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial. A party may take such discovery only as provided in Rule 35(b) or upon showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

c. Payment. – Unless manifest injustice would result and absent court order, the party seeking discovery under sub-subdivision b. of this subdivision shall pay the expert a reasonable fee for the time spent at that expert's deposition.

d. Trial preparation protection for draft reports or disclosures. – Drafts of reports provided under sub-sub-subdivision 2. of sub-subdivision a. of this subdivision are protected from disclosure and are not discoverable regardless of the form in which the draft is recorded.

e. Trial preparation protection for communications between a party's attorney and expert witness. – Except as otherwise provided in this sub-subdivision, communications between a party's attorney and any witness providing a report pursuant to sub-sub-subdivision 2. of sub-subdivision a. of this subdivision or identified under sub-sub-subdivision 3. of sub-subdivision a. of this subdivision, regardless of the form of the communication, are protected from disclosure and are not discoverable. Such communications are

discoverable only to the extent that the communications do any of the following:

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.
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 sub-sub-division 2. of sub-sub-division a. of this subdivision 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 sub-sub-division a. of this subdivision, 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.

The time requirements of this sub-sub-division shall not apply if all parties had less than 120-days' notice of the trial date.

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. Section 1 applies to actions commenced on or after that date. Section 2 applies to motions or applications for costs filed on or after that date.

In the General Assembly read three times and ratified this the 15th day of July, 2015.

s/ Daniel J. Forest
President of the Senate

s/ Tim Moore
Speaker of the House of Representatives

Pat McCrory
Governor

Approved _____ .m. this _____ day of _____, 2015