

GENERAL ASSEMBLY OF NORTH CAROLINA  
1985 SESSION

CHAPTER 603  
HOUSE BILL 85

AN ACT TO CONFORM THE NORTH CAROLINA RULES OF CIVIL  
PROCEDURE TO THE FEDERAL RULES WITH REGARD TO ABUSIVE  
DISCOVERY PRACTICES, AND CLARIFYING WHEN CONTINUANCES  
MAY BE GRANTED IN CIVIL AND CRIMINAL PROCEEDINGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 26, is amended by deleting the second sentence of Rule 26(a).

Sec. 2. G.S. 1A-1, Rule 26, is further amended by rewriting Rule 26(b), to the end of Rule 26(b)(1), as follows:

"(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:

- (1) In General.—Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence nor is it grounds for objection that the examining party has knowledge of the information as to which discovery is sought.

The frequency or extent of use of the discovery methods set forth in section (a) shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under section (c)."

Sec. 3. G.S. 1A-1, Rule 26, is amended by adding a new section (f), as follows:

"(f) Discovery conference.—At any time after commencement of an action the court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery. The court may do so upon motion by the attorney for any party if the motion includes:

- (1) A statement of the issues as they then appear;
- (2) A proposed plan and schedule of discovery;
- (3) Any limitations proposed to be placed on discovery;
- (4) Any other proposed orders with respect to discovery; and
- (5) A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion. Each party and his attorney are under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the attorney for any party. Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served not later than 10 days after service of the motion.

Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on discovery, if any; and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires.

Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a pretrial conference authorized by Rule 16."

Sec. 4. G.S. 1A-1, Rule 26, is amended by adding a new section (g), as follows:

"(g) Signing of discovery requests, responses, and objections.—Every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the request, response, or objection and state his address. The signature of the attorney or party constitutes a certification that he has read the request, response, or objection and that to the best of his knowledge, information, and belief formed after a reasonable inquiry it is:

- (1) consistent with the rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;
- (2) not interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation; and
- (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention

of the party making the request, response, or objection and a party shall not be obligated to take any action with respect to it until it is signed.

If a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee."

Sec. 5. G.S. 1A-1, Rule 37, is amended by adding the words "or if a party fails to obey an order entered under Rule 26(f)" after the word and number "Rule 35," in the first sentence of Rule 37(b)(2).

Sec. 6. G.S. 1A-1, Rule 37, is amended by changing the indentation of paragraph in Rule 37(b)(2) beginning with the words "In lieu of...", by moving same three spaces toward the left margin.

Sec. 7. G.S. 1A-1, Rule 37, is amended by adding a new section (g), as follows:

"(g) Failure to participate in the framing of a discovery plan.—If a party or his attorney fails to participate in good faith in the framing of a discovery plan by agreement as is required by Rule 26(f), the court may, after opportunity for hearing, require such party or his attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure."

Sec. 8. Rule 40(b) of G.S. 1A-1 is amended by adding the following sentence: "Good cause for granting a continuance shall include those instances when a party to the proceeding, a witness, or counsel of record has an obligation of service to the State of North Carolina, including service as a member of the General Assembly."

Sec. 9. G.S. 15A-701(b)(7) is amended by adding a new subsection d after subsection c therein as follows:

"d. Good cause for granting a continuance shall include those instances when the defendant, a witness, or counsel of record has an obligation of service to the State of North Carolina, including service as a member of the General Assembly."

Sec. 10. Sections 8 and 9 of this act are effective upon ratification. The remaining sections of this act shall become effective October 1, 1985, and shall apply, insofar as just and practicable, to pending litigation.

In the General Assembly read three times and ratified, this the 4th day of July, 1985.