

V. DEPOSITIONS AND DISCOVERY

26.1 Discovery

(a) **Required Disclosures; Methods to Discover Additional Matter.**

- (1) **Initial Disclosures.** The provisions of Fed. R. Civ. P. 26(a)(1) apply in this district unless the court orders otherwise.
- (2) **Disclosure of Expert Testimony.** The provisions of Fed. R. Civ. P. 26(a)(2) apply in this district unless the court orders otherwise.
- (3) **Pretrial Disclosures.** The provisions of Fed. R. Civ. P. 26(a)(3) apply in this district unless the court orders otherwise.

(b) **Discovery Schedule.**

- (1) **When Due.** Within 45 days after filing the answer — the last answer in multiple defendant cases — counsel for the parties must confer as required by Fed. R. Civ. P. 26(f), and as a result of that conference must *jointly* prepare and file a *single* schedule providing for the completion of discovery no later than 8 months after the last answer was filed.
- (2) **Form.** Counsel must conform any proposed stipulated discovery schedule to the sample form following LR 33.1. Copies of this form are available at the Clerk's Office. Locally produced discovery schedules are permitted provided that they conform to the sample in both form and content. Schedules that do not comply will be returned to plaintiff's counsel for resubmission.

- (3) **What to Include.** The proposed schedule must include at least the following deadlines, as seen in the form below:
- (A) initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1); including, where appropriate, deadlines for disclosure of electronically stored information;
 - (B) service of all interrogatories, and requests for production, including, where appropriate, deadlines for discovery of electronically stored information.
 - (C) completion of non-expert witness depositions;
 - (D) disclosure and deposition of plaintiff's expert witnesses;
 - (E) disclosure and deposition of defendant's expert witnesses;
 - (F) service of all requests for admission;
 - (G) in cases subject to Early Neutral Evaluation under LR 16.3(b), the date and time of the ENE session and the evaluator assigned;
 - (H) discovery deadline;
 - (I) deadline for joining parties and amending pleadings;
 - (J) motion filing deadline, including summary judgment motions but excluding motions relating to the conduct of the trial;
 - (K) other such deadlines as counsel may find necessary in a particular case; and
 - (L) a ready-for-trial date.

Parties are encouraged to include provisions for the disclosure of electronically stored information, including agreements the parties have reached for the form of disclosure, timetable for disclosure and assertions of privilege or work product after production.

- (4) **Noncompliance.** Counsel must comply strictly with the terms of this section. Failure to do so constitutes a waiver of the need for discovery and the case will be scheduled for trial when reached.
 - (5) **Final Order.** Once approved by the court, the discovery schedule becomes the scheduling order provided by Fed. R. Civ. P. 16(b).
 - (6) **Extensions.** If additional discovery time is required — due to case complexity or other extraordinary circumstances — counsel may move for an extension of time for good cause shown. Absent exceptional circumstances, requests must be made before the discovery deadline expires.
- (c) **Third-Party Discovery Schedule.** Third-party proceedings are subject to subsection (b)(1) above except that their discovery schedule must be filed no more than 45 days after the third-party answer is filed. The schedule must provide for completion of discovery no later than the later of these two dates: the date provided by any schedule filed pursuant to subsection (b)(1) above, or 3 months after the third-party answer is filed.
- (d) **Motions Related to Discovery Procedure.**
- (1) **Good Faith Effort.** Counsel are obligated to make good faith efforts among themselves to reduce all differences relating to discovery procedures and to avoid filing unnecessary discovery motions.
 - (2) **Filing Discovery Motions.**

- (A) Before Filing. Motions made pursuant to Fed. R. Civ. P. 26 and 37 must not be filed unless the movant has conferred with opposing counsel in a good faith effort to reduce or eliminate the area of controversy or arrive at a mutually satisfactory resolution.

- (B) Motion with Affidavit. If discovery issues are not resolved and a motion is necessary, an affidavit containing the following must be filed with the motion:
 - (i) certification that counsel have conferred in good faith to resolve the dispute without court intervention;
 - (ii) any issues still unresolved and the reasons therefor; and
 - (iii) the date or dates of consultation with opposing counsel, the names of the participants, and the length of time of the conferences.

- (C) Costs Assessed. Counsel seeking discovery is obligated to initiate conferences promptly. If a refusal to confer in good faith results in the filing of a discovery motion, counsel may be subject to the imposition of costs, including the attorney's fees of opposing counsel, under Fed. R. Civ. P. 26(c), 30(d), 30(g)(1)(2), and 37(a)(4).

- (D) Supporting Memoranda. Memoranda as noted in LR 7.1(a) must be filed with discovery motions. The memoranda must contain:
 - (i) a concise statement of the nature of the case; and
 - (ii) except where the motion is based upon the failures described in Fed. R. Civ. P. 37(d), a

specific verbatim listing of each discovery item sought or opposed, followed immediately by the reason the item should be allowed or disallowed.

- (e) **Answers and Objections to Interrogatories.** The interrogatory being answered must be repeated immediately before the answer. The interrogatory being objected to must be repeated immediately before the written objection.
- (f) **Discovery Papers in Civil Actions.** Pursuant to Fed. R. Civ. P. 5(d), all depositions, interrogatories, requests for documents, requests for admissions, answers to this discovery, notices of deposition, requests to permit entry upon land, expert disclosures and expert reports must *not* be filed unless required to support interlocutory motions or for use at trial. For these discovery documents, only a properly captioned certificate of service is required to be filed, unless the court orders otherwise.
- (g) **Disclosure of Expert Testimony.** If the parties seek an exemption from the disclosures required by Fed. R. Civ. P. 26(a)(2) by stipulation, they must state with particularity the reasons why such disclosures are impracticable in the context of the case and their discovery schedule. An exemption is subject to court approval and shall not ordinarily be granted.