

Red-line Version of Proposed Changes

Rule 26. Discovery.

(a) Discovery Schedule.

(1) *Discovery Conference.* Counsel for the parties must confer as required by Fed. R. Civ. P. 26(f), and 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) *Timing.***~~ Unless otherwise required by Fed. R. Civ. P. 16(b) and 26(f), the Discovery Schedule is due within 45 days after filing the answer (within 45 days of the last answer in multiple defendant cases). Absent a court order, the pendency of a motion to dismiss does not alter these deadlines. For good cause, any party may file a motion to extend the time to file the Discovery Schedule.

~~**(2) *Timing of the Discovery Schedule.***~~ Fed. R. Civ. P. 16(b)(2) requires the court to issue a scheduling order within the earlier of 90 days after any defendant has been served with the complaint or 60 days after any defendant has appeared. The Discovery Schedule must be filed by the parties within the earlier of 75 days after any defendant has been served with the complaint or 45 days after any defendant has appeared. If the Discovery Schedule is not filed within that deadline, the case will be set for a scheduling conference. For good cause, any party may file a motion to extend the time to file the Discovery Schedule.

~~**(3) *Form.***~~ Counsel must conform any proposed stipulated discovery schedule to the sample Stipulated Discovery Schedule/Order form found on the court's website (see L.R. 84). Alternative discovery schedules are permitted if they conform to the sample in both form and content. Discovery schedules that do not conform will be returned to plaintiff's counsel for re-submission.

~~**(3) *Pending Motions.***~~ Discovery, including the obligation to file a Discovery Schedule, shall not be stayed during the pendency of a Fed. R. Civ. P. 12(b) or (c) motion. A party may request a stay, or phased discovery, until the motion is decided, if a stay or phasing will help to secure the just, speedy, and inexpensive determination of the action. Fed. R. Civ. P. 1. Participation in discovery as required under this rule will not be deemed a forfeiture or waiver of any Fed. R. Civ. P. 12 defenses.

~~**(4) *Deadlines Indicated.***~~ The proposed discovery schedule must indicate at least the following deadlines, as seen in the form:

~~**(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 L.R. 16.1(b)(1), the date and time of the ENE session and the evaluator assigned;~~

~~(H) completion of discovery;~~

~~(I) 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 deadlines that counsel find necessary in a particular case; and~~

~~(L) a ready-for-trial date.~~

(4) Form. The Discovery Schedule must conform to the sample Stipulated Discovery Schedule/Order form found on the court's website (see L.R. 84). Discovery Schedules that do not conform will be returned to the parties' counsel for re-submission.

(5) Noncompliance. Failure to strictly comply with the terms of this section constitutes a waiver of the need for discovery and the case will be scheduled for trial.

(6) Final Order. Once approved, the discovery schedule becomes the scheduling order required by Fed. R. Civ. P. 16(b).

(7) 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. Absent exceptional circumstances, requests must be made before the discovery deadline expires.

(b) Third-Party Discovery Schedule.

(1) *General.* Third-party proceedings are subject to subsection (a)~~(1)~~ except that the discovery schedule must be filed no more than 45 days after the third-party answer ~~is filed~~ has appeared.

(2) *Discovery Completion Deadline.* The schedule must provide for completion of discovery by the later of:

- (A) the date provided by any ~~schedule filed pursuant to subsection (a)(1)~~ Discovery Schedule previously approved; or
- (B) 3 months after the third-party answer ~~is filed~~ has appeared.

~~(c) Early Discovery Requests. Unless otherwise agreed to by the parties, when discovery requests are served before entry of the discovery schedule/order, responses to these requests are due by the later of:~~

- ~~(1) 30 days of service of the requests; or~~
- ~~(2) 21 days after entry of the discovery schedule/order.~~

~~(d)~~(c) Motions Related to Discovery Procedure.

(1) *Before Filing.* A party may not file a Fed. R. Civ. P. 26 or 37 motion unless the filing party has conferred with opposing counsel in a good faith effort to reduce or eliminate the controversy or arrive at a mutually satisfactory resolution.

(2) *Motion with Affidavit.* If discovery issues are not resolved, a motion must include an affidavit with the following:

- (A) certification that counsel have conferred in good faith to resolve the dispute without court intervention;
- (B) dates of consultation with opposing counsel;
- (C) names of the participants;
- (D) length of time of the conferences;
- (E) any issues still unresolved; and
- (F) the reasons for the unresolved issues.

(3) *Supporting Memoranda.* In addition to complying with L.R. 7, memoranda must include:

- (A) a concise statement of the nature of the case; and
- (B) a specific, verbatim listing of each discovery item sought or opposed, including the reason the item should be allowed or disallowed, except where the motion is based upon the failures under Fed. R. Civ. P. 37(d).

(e) Designated Portions of Videotaped Deposition Testimony Under Fed. R. Civ. P. 32(a)(6).

At least 30 days before trial unless the court orders otherwise, counsel must provide to opposing counsel the designated portions of videotaped depositions they intend to offer at trial. Within 7 business days after service, opposing counsel must both notify the offering party of any objections and provide any counter-designations pursuant to Fed R. Civ. P. 32(a)(6).