

# **LOCAL RULES**

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## **United States District Court**

### **for the**

## **Southern District of Florida**

**Revised April 2007**

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#### **RULE 26.1 DISCOVERY AND DISCOVERY MATERIAL (CIVIL)**

**A. Initial Disclosures.** Except in categories of proceedings specified in Federal Rule of Civil Procedure 26(a)(1)(E), or to the extent otherwise stipulated or directed by order, a party must comply with the disclosure obligations imposed under Federal Rule of Civil Procedure 26(a)(1), in the form

prescribed by Federal Rule of Civil Procedure 26(a)(4).

**B. Service and Filing of Discovery Material.** In accordance with Federal Rule of Civil Procedure 5(d), disclosures under Federal Rule of Civil Procedure 26(a)(1) or (2), and the following discovery requests and responses must not be filed with the Court or the Clerk of the Court, nor proof of service thereof, until they are used in the proceeding or the court orders filing: (i) deposition transcripts, (ii) interrogatories (including responses and objections), (iii) requests for documents, electronically stored information or things or to permit entry upon land (including responses and objections), and (iv) requests for admission (including responses and objections).

**C. Discovery Material to Be Filed with Motions.** If relief is sought under any of the Federal Rules of Civil Procedure, copies of the discovery matters in dispute shall be filed with the Court contemporaneously with any motion filed under these Local Rules by the party seeking to invoke the Court's relief.

**D. Discovery Material to Be Filed at Outset of Trial or at Filing of Pre-trial or Post-trial Motions.** If depositions, interrogatories, requests for production, requests for admission, answers or responses are to be used at trial or are necessary to a pre-trial or post-trial motion, the portions to be used shall be filed with the Clerk of the Court at the outset of the trial or at the filing of the motion insofar as their use can be reasonably anticipated by the parties having custody thereof.

**E. Discovery Material to Be Filed on Appeal.** When documentation of discovery not previously in the record is needed for appeal purposes, upon an application and order of the Court, or by stipulation of counsel, the necessary discovery papers shall be filed with the Clerk of the Court.

**F. Timing of Discovery.**

1. *When Discovery May Be Taken.* In accordance with Federal Rule of Civil Procedure 26(d), except in categories of proceedings exempted from initial disclosures under Federal Rule of Civil Procedure 26(a)(1)(E), or when authorized under the Federal Rules of Civil Procedure or by order or agreement of the parties, a party may not seek discovery from any source before the parties have conferred as required by Federal Rule of Civil Procedure 26(f).

a. Leave of Court is not required under Federal Rule of Civil Procedure 30(a)(2)(C) if a party seeks to take a deposition before the time specified in Federal Rule of Civil Procedure 26(d) if the notice contains a certification, with supporting facts, that the person to be examined is expected to leave the United States and be unavailable for examination in this country unless deposed before that time.

b. A party may depose any person who has been identified as an expert whose opinions may be presented at trial. The deposition shall not be conducted until after the expert summary or report required by Local Rule 16.1 K. is provided.

**G. Interrogatories and Production Requests.**

1. The presumptive limitation on the number of interrogatories (twenty-five questions including all discrete subparts) which may be served without leave of Court or written stipulation, as prescribed by Federal Rule of Civil Procedure 33(a), shall apply to actions in this Court. Interrogatories propounded in the form set forth in Appendix B to these Local Rules shall be deemed to comply with the numerical limitations of Federal Rule of Civil Procedure 33(a).
2. No part of an interrogatory shall be left unanswered merely because an objection is interposed to another part of the interrogatory.
3. (a) Where an objection is made to any interrogatory or subpart thereof or to any production request under Federal Rule of Civil Procedure 34, the objection shall state with specificity all grounds. Any ground not stated in an objection within the time provided by the Federal Rules of Civil Procedure, or any extensions thereof, shall be waived.  
  
(b) Where a claim of privilege is asserted in objecting to any interrogatory or production demand, or sub-part thereof, and an answer is not provided on the basis of such assertion:
  - (i) The attorney asserting the privilege shall in the objection to the interrogatory or document demand, or subpart thereof, identify the nature of the privilege (including work product) which is being claimed and if the privilege is being asserted in connection with a claim or defense governed by state law, indicate the state's privilege rule being invoked; and
  - (ii) The following information shall be provided in the objection, unless divulgence of such information would cause disclosure of the allegedly privileged information:
    - (A) For documents or electronically stored information, to the extent the information is readily obtainable from the witness being deposed or otherwise:
      - (1) the type of document (e.g., letter or memorandum) and, if electronically stored information, the software application used to create it (e.g., MS Word, MS Excel Spreadsheet); (2) general subject matter of the document or electronically stored information; (3) the date of the document or electronically stored information; and (4) such other information as is sufficient to identify the document or electronically stored information for a subpoena duces tecum, including, where appropriate, the author, addressee, and any other recipient of the document or electronically stored information, and, where not apparent, the relationship of the author, addressee, and any other recipient to each other;
    - (B) For oral communications: (1) the name of the person making the communication and the names of persons present while the communication was made and, where not apparent, the relationship of the persons present to the person making the communication; (2) the date and the place of communication;

and (3) the general subject matter of the communication.

(c) This rule requires preparation of a privilege log with respect to all documents, electronically stored information, things and oral communications withheld on the basis of a claim of privilege or work product protection except the following: written and oral communications between a party and its counsel after commencement of the action and work product material created after commencement of the action.

(d) If information (written documents, electronically stored information or otherwise) is produced in discovery that is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim, and the basis for it, and seek to retrieve the information and protect it from disclosure using the procedures set forth in Federal Rule of Civil Procedure 26(b)(5).

4. Interrogatories shall be so arranged that following each question there shall be provided sufficient blank space for inserting a typed response. If the space allotted is insufficient, the responding party shall retype the pages repeating each question in full followed by the answer or objection thereto.

5. Whenever a party answers any interrogatory by reference to records from which the answer may be derived or ascertained, as permitted in Federal Rule of Civil Procedure 33(d):

(a) The specification of business records and materials to be produced shall be in sufficient detail to permit the interrogating party to locate and identify the records and to ascertain the answer as readily as could the party from whom discovery is sought.

(b) The producing party shall make available any electronically stored information or summaries thereof that it either has or can adduce by a relatively simple procedure, unless these materials are privileged or otherwise immune from discovery.

(c) The producing party shall provide any relevant compilations, abstracts or summaries in its custody or readily obtainable by it, unless these materials are privileged or otherwise immune from discovery.

(d) The business records and materials shall be made available for inspection and copying within ten days after service of the answers to interrogatories or at a date agreed upon by the parties.

6. A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the Court may nonetheless order discovery from such sources if the

requesting party shows good cause, considering the limitations of Federal Rule of Civil Procedure 26(b)(2)(C). The Court may specify conditions for the discovery. Absent exceptional circumstances, the Court may not impose sanctions under these Local Rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.

#### **H. Discovery Motions.**

1. *Time for Filing.* All motions related to discovery, including but not limited to motions to compel discovery and motions for protective order, shall be filed within thirty days of the occurrence of grounds for the motion. Failure to file discovery motion within thirty days, absent a showing of reasonable cause for a later filing, may constitute a waiver of the relief sought.

2. *Motions to Compel.* Except for motions grounded upon complete failure to respond to the discovery sought to be compelled or upon assertion of general or blanket objections to discovery, motions to compel discovery in accordance with Federal Rules of Civil Procedure 33, 34, 36 and 37, or to compel compliance with subpoenas for production or inspection pursuant to Federal Rule of Civil Procedure 45(c)(2)(B), shall, for each separate interrogatory, question, request for production, request for admission, subpoena request, or deposition question, state: (a) verbatim the specific item to be compelled; (b) the specific objections; (c) the grounds assigned for the objection (if not apparent from the objection); and (d) the reasons assigned as supporting the motion as it relates to that specific item. The party shall write this information in immediate succession (e.g., specific request for production, objection, grounds for the objection, reasons to support motion; next request for production, objection, grounds for the objection, reasons to support motion; and so on) to enable the Court to rule separately on each individual item in the motion.

3. *Motions for Protective Order.* Except for motions for an order to protect a party or other person from whom discovery is sought from having to respond to an entire set of written discovery, from having to appear at a deposition, or from having to comply with an entire subpoena for production or inspection, motions for protective order under Federal Rule of Civil Procedure 26(c) shall, for each separate interrogatory question, request for production, request for admission, subpoena request, or deposition question, state: (a) verbatim the specific item of discovery; (b) the type of protection the party requests; and (c) the reasons supporting the protection. The party shall write this information in immediate succession (e.g., specific request for protection, protection sought for that request for production, reasons to support protection; next request for production, protection sought for that request for production, reasons to support protection; and so on) to enable the Court to rule separately on each individual item in the motion.

**I. Certificate of Counsel.** See Local Rule 7.1.A.3 and Federal Rule of Civil Procedure 37(a)(2).

**J. Reasonable Notice of Taking Depositions.** Unless otherwise stipulated by all interested

parties, pursuant to Federal Rule of Civil Procedure 29, and excepting the circumstances governed by Federal Rule of Civil Procedure 30(a), a party desiring to take the deposition within this State of any person upon oral examination shall give at least five working days' notice in writing to every other party to the action and to the deponent (if the deposition is not of a party), and a party desiring to take the deposition in another State of any person upon oral examination shall give at least ten working days' notice in writing to every other party to the action and the deponent (if the deposition is not of a party).

Failure by the party taking the oral deposition to comply with this rule obviates the need for protective order.

Notwithstanding the foregoing, in accordance with Federal Rule of Civil Procedure 32(a)(3), no deposition shall be used against a party who, having received less than eleven calendar days' notice of a deposition as computed under Federal Rule of Civil Procedure 6(a), has promptly upon receiving such notice filed a motion for protective order under Federal Rule of Civil Procedure 26(c)(2) requesting that the deposition not be held or be held at a different time or place and such motion is pending at the time the deposition is held.

**K. Length of Depositions.** Unless otherwise authorized by the Court or stipulated by the parties, a deposition is limited, under Federal Rule of Civil Procedure 30(d), to one day of seven hours.

Effective Dec. 1, 1994; amended effective April 15, 1996; April 15, 1998; April 15, 2001; paragraph G.3 amended effective April 15, 2003; April 15, 2004; April 15, 2005; April 15, 2007.

#### **Authority**

(1993) Former Local Rule 10I. New portions of Section E [1994, now Subsections G.2–8] are based on S.D.N.Y. local rule.

#### **Comments**

(1993) Section G [1994, now Section I] was modified to include all discovery motions at the recommendation of the Civil Justice Advisory Group.

(1994) A., F., G.1., J. (third paragraph). The amendments are necessary in light of the December 1, 1993 amendment to Federal Rules of Civil Procedure 26, 32(a)(3), and 33(a).

(1996)[F.1.] Local Rule 26.1.F.1. was added to make the timing of expert witness depositions consistent with that prescribed by Federal Rule of Civil Procedure 26(b)(4)(A).

(1996)[I.] The "attempt to confer" language is added to mirror the obligations imposed by Federal Rule of Civil Procedure 37(a)(2)(A) and (B) and in recognition of the circumstance in which counsel for the moving party has attempted to confer with counsel for the opposing party, who fails or refuses to communicate. Violations of the Local Rule, whether by counsel for the moving or opposing party,

may be cause to grant or deny the discovery motion on that basis alone, irrespective of the merits of the motion, and may justify the imposition of sanctions. The sanctions language is modeled after Federal Rules of Civil Procedure 26(g)(3) and 37(a)(4).

(1998) Local Rule 26.1.G.2 is amended to reflect the Court's approval of "form" interrogatories which comply with the subject limitations of the rule. Prior Local Rule 26.1.H, regarding motions to compel, is renumbered Local Rule 26.1.H.2. Local Rule 26.2.H.1 is added to ensure that discovery motions are filed when ripe and not held until shortly before the close of discovery or the eve of trial. Local Rule 26.1.K is added to limit depositions to six hours absent Court order or agreement of the parties and any affected non-party witness. The rule is adopted after an eighteen month pilot program was implemented pursuant to Administrative Order 96-26.

(2001) Local Rules 26.1.A, B, F, G and K are amended to conform with the December 2000 amendments to Federal Rules of Civil Procedure 5, 26 and 30. Local Rule 26.1.I is amended to make clear that the obligation to confer in advance of moving to compel production of documents, electronically stored information or things sought from a non-party by subpoena includes consultation with all parties who may be affected by the relief sought and with the non-party recipient of the subpoena.

(2003) The amendment to Local Rule 26.1.G.3 is based on N.D. Okla. Local Rule 26.4(b) and eliminates the requirement to include in a privilege log (1) communications between a party and its counsel after commencement of the action, and (2) work product material created after commencement of the action.

(2004) Local Rule 26.1.I is amended in conjunction with the amendment of Local Rule 7.1.A.3 to avoid confusion and clarify pre-filing conference obligations.

(2005) Local Rule 26.1.H.2 is expanded to apply to motions to compel compliance with subpoenas for production or inspection issued pursuant to Federal Rule of Civil Procedure 45(c)(2)(B).

(2007) Section H.3 added to apply to protective orders as well as motions to compel. Section H.2 clarified.