

## Proposed Amendments to Rule 26

Rule 26 is amended as follows:

**Rule 26. Duty to Disclose;** General Provisions Governing Discovery; ~~Duty of Disclosure~~

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

(1) Initial Disclosures.

**(A) In General.** Except in categories of proceedings specified in ~~as~~ **exempted by** Rule 26(a)(1)(E), ~~B~~ or to the extent ~~as~~ otherwise stipulated or directed by order **ordered by the court**, a party must, without awaiting a discovery request, provide to **the** other parties:

(Ai) the name and, if known, the address and telephone number of each individual likely to have discoverable information--**along with the subjects of that information**--that the disclosing party may use to support its claims or defenses, unless **the use would be** solely for impeachment, ~~identifying the subjects of the information;~~

(Bii) a copy of, ~~or a description by category and location~~ of, all documents, data ~~compilations~~ **electronically stored information**, and tangible things that ~~are in the~~ **disclosing party has in its** possession, custody, or control ~~of the party and that the disclosing party may use to support its claims or defenses, unless~~ **the use would be** solely for impeachment;

(~~E~~**iii**) a computation of ~~any~~**each** category of damages claimed by the disclosing party, ~~making~~**who must also make** available for inspection and copying as under Rule 34 the documents or other evidentiary material, ~~not~~**unless** privileged or protected from disclosure, on which ~~such~~**each** computation is based, including materials bearing on the nature and extent of injuries suffered; and

(~~D~~**iv**) for inspection and copying as under Rule 34, any insurance agreement under which ~~any person carrying on an~~ insurance business may be liable to satisfy **all or** part ~~or all of a~~ **possible** judgment ~~which may be entered in the action or to~~ indemnify or reimburse for payments made to satisfy the judgment.

(~~E~~)**B) Proceedings Exempt from Initial Disclosure.** The following ~~categories of proceedings are exempt from initial disclosure under Rule~~ **26(a)(1):**

(i) an action for review on an administrative record;

(ii) an action brought without ~~counsel~~**an attorney** by a person in **the** custody of the United States, a state, or a state subdivision;

(iii) an action to enforce or quash an administrative summons or subpoena;

(iv) an action by the United States to recover benefit payments;

(v) a proceeding ancillary to proceedings ~~proceedings~~ **a proceeding** in other courts ~~another court~~; and

(vi) an action to enforce an arbitration award.

~~These disclosures must be made~~ **(C) Time for Initial Disclosures-**

**-In General.** A party must make the initial disclosures at or within 14 days after the **parties'** Rule 26(f) conference unless a different time is set by stipulation or court order, or unless a party objects during the conference that initial disclosures are not appropriate in the circumstances of the **this** action and states the objection in the ~~Rule 26(f)~~ **proposed** discovery plan. In ruling on the objection, the court must determine what disclosures-, if any-, are to be made, and **must** set the time for disclosure.

Any

**(D) Time for Initial Disclosures--For Parties Served or Joined**

**Later.** A party **that is** first served or otherwise joined after the Rule 26(f) conference must make ~~these~~ **the initial** disclosures within 30 days after being served or joined, unless a different time is set by stipulation or court order.

**(E) Basis for Initial Disclosure; Unacceptable Excuses.** A party

must make its initial disclosures based on the information then reasonably available to it ~~and~~. **A party** is not excused from making its disclosures because it has not fully completed its investigation of **investigated** the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(2) Disclosure of Expert Testimony.

(A) In **General. In** addition to the disclosures required by paragraph **Rule 26(a)(1)**, a party shall **must** disclose to **the** other parties the identity of any person who may be used **witness it may use** at trial to present evidence under ~~Rules~~ **Federal Rule of Evidence 702, 703, or 705** of the Federal Rules of Evidence.

(B) ~~Except as~~ **Written Report. Unless** otherwise stipulated or directed **ordered** by the court, this disclosure shall **must** be accompanied by a written report prepared and signed by the witness. The report shall **must** contain:

(i) a complete statement of all opinions ~~to be expressed~~ **the witness will express** and the basis and reasons therefor; ~~for them;~~ **them;**

(ii) the data or other information considered by the witness in forming the opinions; ~~them;~~ **them;**

(iii) any exhibits ~~to that will~~ be used as a summary of ~~to summarize~~ or support for ~~them;~~ **them;**

(iv) the opinions; ~~the witness's~~ qualifications of the witness, including a list of all publications authored by ~~the witness within the preceding ten~~ **in the previous 10** years; ~~the compensation to be paid for the study and testimony; and~~

(v) a listing of any ~~all~~ other cases in which, **during the previous four years**, the witness has testified as an expert at trial or by deposition ~~within the preceding four years~~; **and**

~~(C) These disclosures shall be made~~ **(vi) a statement of the compensation to be paid for the study and testimony in the case.**

**(C) Time to Disclose Expert Testimony.** A party must make **these disclosures** at the times and in the sequence directed by ~~that~~ the court. ~~In the absence of other directions from the court or~~ **orders. Absent a stipulation by the parties or a court order**, the disclosures shall **must** be made:

(i) at least 90 days before the trial ~~date~~ **set for trial or for** the date the case is to be ready for trial; or,

(ii) if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under paragraph ~~(Rule 26(a)(2)(B))~~, within 30 days after the **other party's** disclosure ~~made by the other party~~.

**(D) Supplementing the Disclosure.** The parties shall **must** supplement these disclosures when required under ~~subdivision (Rule 26(e)(1))~~.

(3) Pretrial Disclosures.

**(A) In General.** In addition to the disclosures required by Rule 26(a)(1) and (2), a party must provide to **the** other parties and promptly file

~~with the court~~ the following information ~~regarding~~ **about** the evidence that it may present at trial other than solely for impeachment:

(**Ai**) the name and, if not previously provided, the address and telephone number of each witness, ~~---~~ separately identifying those ~~whom~~ the party expects to present and those ~~whom~~ the party **it** may call if the need arises;

(**Bii**) the designation of those witnesses whose testimony is ~~expected to be presented by means of a~~ **the party expects to present by** deposition and, if not taken stenographically, a transcript of the pertinent ~~portions~~ **parts** of the deposition ~~testimony~~;  
and

(**Ciii**) an ~~appropriate~~ identification of each document or other exhibit, including summaries of other evidence, ~~---~~ separately identifying those ~~which~~ **items** the party expects to offer and those ~~which the party~~ **it** may offer if the need arises.

**(B) Time for Pretrial Disclosures; Objections.** Unless **the court orders** otherwise ~~directed by the court~~, these disclosures shall **must** be made at least 30 days before trial. Within 14 days ~~thereafter~~ **after they are made**, unless **the court sets** a different time ~~is specified by the court~~, a party may serve and promptly file a list ~~disclosing (i)~~ **of the following objections:** any objections to the use under Rule 32(a) of a deposition designated by another party under Rule 26(a)(3)(~~B~~), **A(ii)**; and ~~(ii)~~ any objection, together with the grounds ~~therefor~~ **for it**, that may be made to

the admissibility of materials identified under Rule 26(a)(3)(C).  
 Objections **A)(iii). An objection** not so disclosed, ~~other than~~  
 objections **made--except for one** under Rules 402 and 403 of the Federal  
Rules of Evidence, shall be deemed **402 or 403--is** waived unless  
 excused by the court for good cause ~~shown~~.

(4) Form of Disclosures. Unless the court orders otherwise, all disclosures  
 under Rule 26(a)(1) through (3) must be made in writing, signed, and served.

~~(5) Methods to Discover Additional Matter. Parties may obtain discovery  
 by one or more of the following methods: depositions upon oral examination or  
 written questions; written interrogatories; production of documents or things or  
 permission to enter upon land or other property under Rule 34 or 45 (a)(1)(C), for  
 inspection and other purposes; physical and mental examinations; and requests  
 for admission.~~

(b) Discovery Scope and Limits.

**(1) Scope in General.** Unless otherwise limited by **court** 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 **nonprivileged** matter ~~not~~  
~~privileged~~, that is relevant to the **any party's** claim or defense of any 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~~ **who know** of any discoverable matter. For good  
 cause, the court may order the discovery of any matter relevant to the subject  
 matter involved in the action. Relevant information need not be admissible at the

trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 26(b)(2)(C).

(2) Limitations on Frequency and Extent.

(A) When Permitted. By order, the court may alter the limits in these rules on the number of depositions or on the length of depositions and may also limit the length of depositions under Rule 30 and the number of requests under Rule 36.

(B) Specific Limitations on Electronically Stored Information. 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 Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(C) ~~The~~ When Required. **On motion or on its own, the court must limit the** frequency or extent of use of the discovery methods otherwise permitted under these rules ~~shall be limited~~ **allowed** by the court **these rules** if it determines that:

(i) the discovery sought is unreasonably cumulative or duplicative, or is ~~obtainable~~ **can be obtained** from some other source that is more convenient, less burdensome, or less expensive;

(ii) the party seeking discovery has had ample opportunity **to obtain the information** by discovery in the action ~~to obtain the information sought~~; or

(iii) the burden or expense of the proposed discovery outweighs its likely benefit, ~~taking into account~~ **considering** the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation **action**, and the importance of the ~~proposed~~ discovery in resolving the issues. ~~The court may act upon its own initiative after reasonable notice or pursuant to a motion under Rule 26(c).~~

(3) Trial Preparation: Materials. ~~Subject to the provisions of subdivision (b)(4) of this rule~~

**(A) Documents and Tangible Things. Ordinarily**, a party may obtain discovery of **not discover** documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and **that are** prepared in anticipation of litigation or for trial by or for another party or ~~by or for that other party's~~ **its** representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) ~~only upon a showing that~~ **). But, subject to Rule 26(b)(4), those materials may be discovered if:**

**(i) they are otherwise discoverable under Rule 26(b)(1);**  
**and**

**(ii) the party seeking discovery shows that it** has substantial need **of** the materials in the preparation of the party's **to prepare its** case and that the party is **unable cannot**, without undue hardship **to**, obtain the **their** substantial equivalent of the materials by other means. ~~In ordering~~

**(B) Protection Against Disclosure. If the court orders** discovery of such **those** materials ~~when the required showing has been made~~, the court shall, **it must** protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of ~~an~~ **a party's** attorney or other representative of a party concerning the litigation.

**A(C) Previous Statement. Any party or other person** may obtain **, on request and** without the required showing ~~a~~, **obtain the person's own previous** statement ~~concerning~~ **about** the action or its subject matter previously made by that party. ~~Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of, and Rule 37(a)(4) apply~~ **applies** to the award of expenses incurred in relation to the motion. For purposes of this paragraph, ~~a~~. **A previous** statement previously made is ~~(A~~ **either:**

(i) a written statement **that the person has** signed or otherwise adopted or approved ~~by the person making it;~~ or ~~(B~~

(ii) **aa contemporaneous** stenographic, mechanical, electrical, or other recording, ~~---~~ or a transcription thereof, ~~which is~~ **aof it--that recites** substantially verbatim recital of ~~an~~ **the person's** oral statement ~~by the person making it and contemporaneously recorded.~~

(4) Trial Preparation: Experts.

(A) **Expert Who May Testify.** A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If **Rule 26(a)(2)(B) requires** a report from the expert ~~is required under subdivision (a)(2)(B),~~ the deposition shall ~~not~~ **may** be conducted until ~~only~~ after the report is provided.

(B) A **Expert Employed Only for Trial Preparation.** Ordinarily, a party may, ~~through~~ **not, by** interrogatories or ~~by~~ deposition, discover facts known or opinions held by an expert **who has been retained or specially employed by another party in anticipation** of a ~~party~~ **litigation or to prepare for trial and** who is not expected to be called as a witness at trial. **But a party may do so** only:

(i) as provided in Rule 35(b); ~~or upon a~~

(ii) **on** showing of exceptional circumstances under which it is impracticable for the party ~~seeking discovery~~ to obtain facts or opinions on the same subject by other means.

(C) **Payment.** Unless manifest injustice would result, ~~(i) the court shall~~ **must** require that the party seeking discovery:

**(i)** pay the expert a reasonable fee for time spent in responding to discovery under ~~this subdivision; and (ii) with respect to discovery obtained under subdivision~~ **Rule 26(b)(4)(A) or (B)** of this rule ~~the court shall require the party seeking discovery to~~; **and**

**(ii) for discovery under (B), also** pay the other party a fair portion of the fees and expenses **it** reasonably incurred ~~by the latter party in obtaining~~ **the expert's** facts and opinions ~~from the expert.~~

(5) ~~Claims of~~ **Claiming** ~~Privilege or Protection of~~ **Protecting** ~~Trial--~~

Preparation Materials.

(A) Information Withheld. When a party withholds information otherwise discoverable ~~under these rules~~ by claiming that it ~~the~~ **information** is privileged or subject to protection as trial--preparation material, the party shall **must**:

**(i) expressly** make the claim ~~expressly~~; and shall

**(ii)** describe the nature of the documents, communications, or **tangible** things not produced or disclosed ~~--and do so~~ in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the ~~privilege or protection~~ **claim**.

(B) Information Produced. If ~~Information is~~ **information** 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. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has ~~and may~~; **must** not use or disclose the information until the claim is resolved. ~~A receiving~~; **must take reasonable steps to retrieve the information if the party disclosed it before being notified; and** may promptly present the information to the court under seal for a determination of the claim. ~~If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it.~~ The producing party must preserve the information until the claim is resolved.

(c) Protective Orders. ~~Upon motion by a~~

**(1) In General.** A party or ~~by the~~ **any** person from whom discovery is sought, ~~accompanied by~~ **may move for a protective order. The motion must include** a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, ~~and~~. **The court may,** for good cause shown, ~~the court may make any,~~ **issue an** order which justice ~~requires~~ to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

~~(1) that~~ **(A) forbidding** the disclosure or discovery ~~not be had;~~

~~(2) that the disclosure or discovery may be had only on specified terms and conditions, including~~ **(B) specifying terms, including time and place, for the disclosure or discovery;**

**(C) prescribing** a designation of the time or place;

~~(3) that the discovery may be had only by a method of discovery other than that~~ **the one** selected by the party seeking discovery;

~~(4) that~~ **(D) forbidding inquiry into** certain matters not be inquired into, or that **limiting** the scope of the disclosure or discovery be limited to certain matters;

~~(5) that discovery be conducted with no one present except persons designated by the court;~~

~~(6)~~ **(E) designating the persons who may be present while the discovery is conducted;**

**(F) requiring** that a deposition, after being **be** sealed, be **and** opened only by **on court** order of the court;

~~(7)~~ **(G) requiring** that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated **specified** way; and

~~(8)~~ **(H) requiring** that the parties simultaneously file specified documents or information ~~enclosed in sealed envelopes,~~ to be opened as directed by the court **directs**.

**(2) Ordering Discovery.** If the ~~a~~ motion for a protective order is **wholly or partly** denied in whole or in part, the court may, on such **just** terms and

~~conditions as are just, order that any party or other person provide or permit discovery. The provisions of~~

**(3) Awarding Expenses.** ~~Rule 37(a)(4) 4) apply~~ **applies** to the award of expenses incurred in relation to the motion.

(d) Timing and Sequence of Discovery.

~~Except~~ **(1) Timing.** **A party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except** in categories of proceedings **a proceeding** exempted from initial disclosure under Rule 26(a)(1)(~~EB~~), or when authorized ~~under~~ **by** these rules, **by stipulation**, or by **court** order or agreement of the parties, ~~a party may not seek discovery from any source before the parties have conferred as required by Rule 26(f).~~

**(2) Sequence.** ~~Unless the court up, on motion,~~ **the court orders otherwise** for the **parties' and witnesses'** convenience of parties and witnesses and in the interests of justice, ~~orders otherwise,:~~

**(A)** methods of discovery may be used in any sequence, ~~;~~ and the fact that a

**(B) discovery by one** party is ~~conducting discovery, whether by deposition or otherwise, does not operate to delay~~ **require** any other party's ~~party to delay its~~ discovery.

(e) Supplementing Disclosures and Responses.

**(1) In General.** A party who has made a disclosure under subdivision ~~Rule 26(a)-~~ **or who has** responded to a **an interrogatory**, request for discovery with a disclosure **production**, or response is under a duty to **request for**

**admission--must** supplement or correct the ~~its~~ disclosure or response to include information thereafter acquired if:

**(A) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or**

**(B) as** ordered by the court ~~or in the following circumstances:~~.

~~(1) A party is under a duty to supplement at appropriate intervals its disclosures under subdivision (a) if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. With respect to testimony of an expert from whom a report is required under subdivision (a)(2)(B) the duty extends both to information contained in the report and to information provided through a deposition of the expert, and any~~

**(2) Expert Witness. For an expert whose report must be disclosed under Rule 26(a)(2)(B), the party's duty to supplement extends both to information included in the report and to information given during the expert's deposition. Any** additions or ~~other~~ changes to this information ~~shall~~**must** be disclosed by the time the party's **pretrial** disclosures under Rule 26(a)(3) are due. ~~(2) A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if~~

~~the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.~~

(f) Conference of the Parties; Planning for Discovery.

(1) **Conference Timing.** Except in categories of proceedings **a proceeding** exempted from initial disclosure under Rule 26(a)(-1)(E); **B)** or when **the court orders** otherwise ordered, the parties must, **confer** as soon as practicable after the filing of a complaint, ~~and~~ and in any event at least 21 days before a scheduling conference is **to be** held or a scheduling order is due under Rule 16(b), confer to ).

(2) **Conference Content; Parties' Responsibilities.** In conferring, the **parties must** consider the nature and basis of their claims and defenses and the possibilities for a prompt settlement **promptly settling** or resolution of **resolving** the case, ~~to~~; make or arrange for **the** disclosures required by Rule 26(a)(1), ~~to~~; discuss any issues relating to **about** preserving discoverable information; and ~~to~~ develop a proposed discovery plan. **The attorneys of record and all unrepresented parties** that ~~indicates~~ **have appeared in the case are jointly responsible for arranging and being present or represented at the conference, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within 14 days after the conference a written report outlining the plan. The court may order the parties or attorneys to attend the conference in person.**

**(3) Discovery Plan. A discovery plan must state** the parties' views and proposals concerning **on**:

(4**A**) what changes should be made in the timing, form, or requirement for disclosures under Rule 26(a), including a statement ~~as to~~ **of** when **initial** disclosures ~~under Rule 26(a)(1)~~ were made or will be made;

(2**B**) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused ~~upon~~ **on** particular issues;

(3**C**) any issues ~~relating to~~ **about** disclosure or discovery of electronically stored information, including the form or forms in which it should be produced;

(4**D**) any issues ~~relating to~~ **about** claims of privilege or of protection as trial-preparation materials, including--if the parties agree on a procedure to assert ~~such~~ **these** claims after production--whether to ask the court to include their agreement in an order;

(5**E**) what changes should be made in the limitations on discovery imposed under these rules, and what other limitations should be imposed; and

(6**F**) any other orders that **the court** should ~~be entered by the court~~ **issue** under Rule 26(c) or under Rule 16(b) and (c). ~~The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging and being present or represented at the~~

~~conference, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within 14 days after the conference a written report outlining the plan. The court may order that the parties or attorneys attend the conference in person.~~

**(4) Expedited Schedule.** If necessary to comply with its expedited schedule for Rule 16(b) conferences, the court may ~~(i:~~

**(A)** require that ~~the~~**the parties'** conference ~~between the parties to~~ occur ~~fewer~~**less** than 21 days before the scheduling conference is held or a scheduling order is due under Rule 16(b),**);** and ~~(ii~~

**(B)** require that the written report outlining the discovery plan **to** be filed ~~fewer~~**less** than 14 days after the **parties'** conference ~~between the parties,~~ or excuse the parties from submitting a written report and permit them to report orally on their discovery plan at the Rule 16(b) conference.

(g) Signing Disclosures and Discovery Requests, Responses, and Objections.

**(1) Signature Required; Effect of Signature.** Every disclosure made pursuant to subdivision ~~under Rule 26(a)(1) or subdivision (a)(3) shall~~**and every discovery request, response, or objection must** be signed by at least one attorney of record in the attorney's individual **own** name, whose address shall be stated. An unrepresented ~~--or by the party shall sign the disclosure and personally, if unrepresented--and must~~ state the party's **signer's address, e-mail address, and telephone number. By signing, an** attorney or party constitutes a certification **certifies** that to the best of the

signer's **person's** knowledge, information, and belief, formed after a reasonable inquiry, ~~the~~:

**(A) with respect to a disclosure, it** is complete and correct as of the time it is made; **and**

~~(2) Every~~ **(B) with respect to a** discovery request, response, or objection ~~made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the request, response, or objection and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the request, response, or objection,~~ **it** is:

(Ai) consistent with these rules and warranted by existing law or **by** a good faith **nonfrivolous** argument for the extension, modification **extending, modifying,** or reversal of **reversing** existing law; **or for establishing new law;**

(Bii) not interposed for any improper purpose, such as to harass ~~or to~~, cause unnecessary delay, or ~~needless~~ **needlessly** increase ~~in~~ the cost of litigation; and

~~(C) not~~ **(iii) neither** unreasonable **nor** unduly burdensome or expensive, ~~given~~ **considering** the needs of the case, ~~the~~ **prior** discovery ~~already had~~ in the case, the amount in controversy, and the importance of the issues at stake in the litigation **action**. ~~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.~~

**(2) Failure to Sign. Other parties have no duty to act on an unsigned disclosure, request, response, or objection until it is signed, and the court must strike it unless a signature is promptly supplied after the omission is called to the attorney's or party's attention.**

**(3) Sanction for Improper Certification. If a certification violates this rule** without substantial justification ~~a certification is made in violation of the rule,~~ the court, upon motion or upon **on** its own initiative, shall, **must** impose upon the person who made the certification **an appropriate sanction on the signer**, the party on whose behalf the disclosure, request, response, or objection is made **signer was acting**, or both, ~~an appropriate.~~ **The** sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fees, **caused by the violation.**

**PRACTICE COMMENT:** Rule 26(a)(2) requires disclosure of certain information concerning expert witnesses. Practitioners who are familiar with Fed. R. Civ. P. 26(a)(2) should note that Rule 26(a)(2) is more expansive. The Federal Rule only applies to a witness who is retained or specially employed to testify as an expert, including any employee of a party whose duties regularly involve giving expert testimony. The CIT rule makes no distinction among experts, whether they are outside experts specially retained by a party, in-house employees whose duties regularly involve giving expert testimony, or employees who do not routinely testify as experts, but do so in a specific case.

**PRACTICE COMMENT:** Rule 26(f) requires the parties to confer "as soon as practicable after the filing of a complaint, and in any event at least 21 days

before a scheduling conference is held or a scheduling order is due under Rule 16(b)....” However, time permitting, parties may frequently find it more practical to confer after the answer has been filed.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Aug. 29, 2000, eff. Jan. 1, 2001; Dec. 18, 2001, eff. Apr. 1, 2002; Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 27, 2007, eff. Jan. 1, 2008; March 24, 2009, eff. May 1, 2009; \_\_\_\_\_, 2009, eff. \_\_\_\_\_, 2010.)

**Advisory Committee Note**

The language of Rule 26 has been amended as part of the general restyling of these rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.