

ITEM 11.04 | DISCOVERY FROM EXPERT NOT TESTIFYING AT TRIAL

While a party is entitled to reasonable discovery from and about a testifying expert witness, such access changes when the expert is withdrawn from the witness list. A party is entitled to discover facts known or opinions held by an expert who has been retained by a party in anticipation of litigation or preparation for trial and who is not expected to testify at trial, only as provided in Rule 1.360(b). Alternatively, such discovery may be had upon a 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. Thus, an expert witness that is not expected to testify in trial may not be deposed except upon such a showing of exceptional circumstances. Where a party, through answers to expert interrogatories, initially disclosed a particular doctor as an expert who would testify as a witness at trial, but later withdrew the doctor's name and he was no longer a witness who would be called at trial, it would be error for a judge to compel the doctor's deposition absent a showing of compelling circumstance.²³

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Footnotes

²³ *Rocca v. Rones*, 125 So. 3d 370 (Fla. 3d DCA 2013).

