
FLORIDA, MIDDLE DISTRICT DISCOVERY HANDBOOK (2015)
SECTION I: DISCOVERY IN GENERAL
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FLORIDA, MIDDLE DISTRICT DISCOVERY HANDBOOK | FEDERAL

SECTION I DISCOVERY IN GENERAL

RULES: A-F

I.A | COURTESY AND COOPERATION AMONG COUNSEL

1 - Courtesy. Discovery in this district should be practiced with a spirit of cooperation and civility. The district's attorneys and the Court are justifiably proud of the courteous practice that is traditional in the Middle District.

2 - Certificate of Good Faith Conference. Before filing any motion in a civil case, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, or to involuntarily dismiss an action, the moving party shall confer with counsel for the opposing party in a good faith effort to resolve the issues raised by the motion, and shall file with the motion a statement (1) certifying that the moving counsel has conferred with opposing counsel and (2) stating whether counsel agree on the resolution of the motion. A certification to the effect that opposing counsel was unavailable for a conference before filing a motion is insufficient to satisfy the parties' obligation to confer. The moving party retains the duty to contact opposing counsel expeditiously after filing and to supplement the motion promptly with a statement certifying whether or to what extent the parties have resolved the issue(s) presented in the motion. If the interested parties agree to all or part of the relief sought in any motion, the caption of the motion shall include the word "unopposed," "agreed," or "stipulated" or otherwise succinctly inform the reader that, as to all or part of the requested relief, no opposition exists. Local Rule, 3.01(g), Middle District of Florida.

The term "confer" in Rule 3.01(g) means a substantive discussion. Counsel must respond promptly to inquiries and communication from opposing counsel. Many potential discovery disputes are resolved (or the differences narrowed or clarified) when counsel confer in good faith. Rule 3.01(g) is strictly enforced. A motion that does not comply with the rule may be summarily denied.

3 - Scheduling. An attorney shall reasonably attempt to accommodate the schedules of opposing counsel, parties, and witnesses in scheduling discovery.

4 - Stipulations. Unless contrary to Rule 29, Federal Rules of Civil Procedure, the parties may stipulate in writing in accordance with Local Rule 4.15, Middle District of Florida, to alter, amend, or modify any practice with respect to discovery. However, any such stipulations do not relieve the parties from compliance with court orders, absent approval of the Court.

5 - Withdrawal of Motions. If counsel resolve their differences and render a pending discovery motion moot, the moving party should immediately file a notice of withdrawal of the motion in order to avoid unnecessary judicial labor.

I.B | DUTY OF DISCLOSURE

Attorneys are responsible for complying with the provisions of Rule 26(a), Federal Rules of Civil Procedure, regarding required disclosures unless modified by Court order or Local Rule.

I.C | FILING OF DISCOVERY MATERIALS AND OTHER DISCOVERY CONSIDERATIONS

1 - General Rule Governing Filing of Discovery Materials. In accordance with Local Rule 3.03(c) - (e), Middle District of Florida, copies of written interrogatories, answers and objections to interrogatories, notices of oral depositions, transcripts of oral depositions, requests for the production of documents and other things, responses to requests for production, matters disclosed pursuant to Rule 26(a)(1), Federal Rules of Civil Procedure, requests for admissions, and responses to requests for admissions shall not be filed with the Court as a matter of course. Discovery materials are filed only in limited circumstances, including if ordered by the Court, if necessary to the presentation or defense of a motion, or if required by law or rule.

Correspondence exchanged during the course of litigation either between opposing counsel or between counsel for one party and an unrepresented party should be filed with the Court only to comply with an order of the Court or when necessary to the presentation and consideration of a motion and only when the filing of traditional discovery material will clearly not suffice for the purpose. Counsel should carefully redact correspondence to exclude irrelevant and prejudicial material, e.g., settlement discussions.

2 - Filing Discovery or Other Papers Under Seal. In certain rare circumstances involving trade secrets or other confidential information, the Court may order the filing under seal of discovery in order to preserve the integrity of the information. However, the Court wishes to minimize the number of documents filed under seal. Applicable precedent allows the Court to file documents under seal only in certain limited circumstances. Therefore, no paper may be filed under seal without prior approval by the Court in accordance with Local Rule 1.09, and upon the demonstration of a sufficient legal and factual basis.

3 - Tailoring Discovery Requests to the Needs of the Case. A party should tailor discovery requests to the needs of each case. The content of the requests should apply to the particular case, and the form of discovery requested should be the one best suited to obtain the information sought. In each case a party should carefully determine which discovery methods will achieve the discovery goal of obtaining useful information as efficiently and inexpensively as possible for everyone concerned.

4 - Responding to Discovery Requests. A party responding to a discovery request should make diligent effort to provide a response that (i) fairly meets and complies with the discovery request and (ii) imposes no unnecessary burden or expense on the requesting party.

I.D | SUPPLEMENTING ANSWERS

Rule 26(e), Federal Rules of Civil Procedure, expressly provides that in many instances a party is under a duty to supplement or correct prior disclosures pursuant to Rule 26(a) or in discovery responses. Fairness and professionalism suggest a broader range of circumstances requiring supplementation. However, a party may not vary the provisions of the Federal Rules of Civil Procedure by placing supplementation language in a discovery request.

I.E | TIMELINESS AND SANCTIONS

1 - Timeliness of Discovery Responses. The Federal Rules of Civil Procedure set forth explicit time limits for responding to discovery requests. If unable to answer timely, an attorney should first seek an informal extension of time from counsel propounding the discovery. Counsel in this district typically accommodate reasonable requests for additional time. If unable to informally resolve the matter, counsel should move for an extension of time to respond. (See Local Rule 3.01(g), Middle District of Florida, requiring a certificate that counsel have conferred before seeking judicial relief.)

2 - Motions for Extensions of Time. Motions for extension of time within which to respond to discovery should be filed sparingly and only when counsel are unable to informally resolve their disputes. Counsel should be aware that the mere filing of a motion for an extension of time in which to respond does not, absent an order of the Court, extend the deadline for responding to discovery requests.

3 - Sanctions. Rule 37, Federal Rules of Civil Procedure, provides that if a party must seek relief from the Court to compel a recalcitrant party to respond, the moving party may be awarded reasonable expenses including attorney's fees incurred in compelling the responses. Rule 37 is enforced in this district. Further, if a Court order is obtained compelling discovery, unexcused failure to comply with such an order is treated by the Court with special gravity and disfavor.

4 - Stays of Discovery. Normally, the pendency of a motion to dismiss or a motion for summary judgment will not justify a unilateral motion to stay discovery pending resolution of the dispositive motion. Such motions for stay are rarely granted. However, unusual circumstances may justify a stay of discovery in a particular case upon a specific showing of prejudice or undue burden. This policy also applies to cases referred to arbitration or mediation under the Local Rules.

I.F | COMPLETION OF DISCOVERY

1 - Deadline for Discovery Completion. The Court ordinarily sets a discovery completion date through its Case Management and Scheduling Order ("CMSO") (although a Judge may have another method of setting and extending that deadline). The Court follows the rule that the completion date means that all discovery must be completed by that date. For example, interrogatories must be served more than thirty days prior to the completion date to permit the opposing party to respond before the discovery deadline. Untimely discovery requests are subject to objection on that basis. Counsel, by agreement, may conduct discovery after the formal completion date but should not expect the Court to resolve discovery disputes arising after the discovery completion date.

APPENDIX

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