

RULE 26.1 | DISCOVERY AND DISCOVERY MATERIAL (CIVIL)

(a) Generally. Parties may stipulate in writing to modify any practice or procedure governing discovery hereunder unless doing so would violate a Court-ordered deadline, obligation, or restriction.

(b) Service and Filing of Discovery Material. Initial and expert disclosures and the following discovery requests, responses, objections, notices or any associated proof of service shall not be filed until they are used in the proceeding or the court orders their filing: (1) deposition transcripts; (2) interrogatories; (3) requests for documents, electronically stored information or things, or to permit entry upon land; (4) requests for admission; (5) notices of taking depositions or notices of serving subpoenas; and (6) privilege logs.

(c) Discovery Material to Be Filed at Outset of Trial or at Filing of Pre-trial or Post-trial Motions. If any written discovery is to be used at trial or is necessary to a pre-trial or post-trial motion, the portions to be used shall be filed with the Clerk of the Court, and served on all parties, at the outset of the trial or at the filing and service on all parties of the motion insofar as their use can be reasonably anticipated by the parties having custody thereof.

(d) Completion of Discovery. Party and non-party depositions must be scheduled to occur, and written discovery requests and subpoenas seeking the production of documents must be served in sufficient time that the response is due on or before the discovery cutoff date. Failure by the party seeking discovery to comply with this paragraph obviates the need to respond or object to the discovery, appear at the deposition, or move for a protective order.

(e) Interrogatories and Production Requests.

(1) Each interrogatory objection and/or response must immediately follow the quoted interrogatory, and no part of an interrogatory shall be left unanswered merely because an objection is interposed to another part of the interrogatory.

(2) Assertion of Privilege:



(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 a complete answer is not provided on the basis of such assertion, within the time provided by subpart (D) below:

(i) The party 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);
- (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) Timing for Party Discovery: Unless the parties agree on a different time frame or the Court orders otherwise, the privilege log required under subpart (C) above shall be served no later than fourteen (14) days following service of: (i) any interrogatory response or document production from which some information or documents are withheld on the basis of such privilege or protection; or (ii) the response to the request for production if all responsive documents are being withheld on the basis of such privilege or protection.

(E) Timing for Non-Party Discovery: Unless the party propounding a non-party subpoena under Federal Rule of Civil Procedure 45(e)(2)(A) and the recipient of such a subpoena agree on a different time frame or the Court orders otherwise, the information required to be provided under Federal

Rule of Civil Procedure 45(e)(2)(A)(ii) shall be served no later than (14) days following service of: (i) any document production provided in response to such a subpoena from which some documents are withheld on the basis of a claim of privilege or work product protection; or (ii) any claim of privilege or work product protection in response to the subpoena if all responsive documents are being withheld on the basis of such privilege or protection.

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

(A) any electronically stored information or summaries thereof that it either has or can adduce by a relatively simple procedure, unless those materials are privileged or otherwise immune from discovery.

(B) any relevant compilations, abstracts or summaries in its custody or readily obtainable by it, unless those materials are privileged or otherwise immune from discovery.

(C) the records and materials for inspection and copying within fourteen (14) days after service of the answers to interrogatories or at a date agreed upon by the parties.

(4) 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.

(5) The documents, electronically stored information, or things should be referenced to specific paragraphs of a request for production where practicable, unless the producing party exercises its option under Federal Rule of Civil Procedure 34(b) to produce documents as they are kept in the usual course of business. The party producing documents in response to a request for production has an obligation to explain the general scheme of record-keeping to the inspecting party. The objective is to acquaint the inspecting party generally with how and where the documents, electronically stored information, or things are maintained.

(6) Each page of any document produced in a non-electronic format must be individually identified by a sequential number that will allow the document to be identified but that does not impair review of the document.

(7) A party responding to a request for production of documents or materials shall serve a Notice of Completion of Production at the time that party produces (or otherwise makes available) the last of the documents or other materials that are responsive to the request that are not being withheld pursuant to an objection.

(f) Invocation of Privilege during Depositions.

(1) Where a claim of privilege is asserted during a deposition and information is not provided on the basis of such assertion, upon request the attorney or deponent asserting the privilege shall state the specific nature of the privilege being claimed unless divulgence of such information would cause disclosure of privileged information.

(2) After a claim of privilege has been asserted, unless divulgence of requested information would cause disclosure of privileged information, the attorney or party seeking disclosure shall have reasonable latitude during the deposition to question the witness to



establish other relevant information concerning the assertion of the privilege, including questions about the topics set forth in Local Rule 26.1(e)(2)(B)(ii) above.

(g) Discovery Motions.

(1) Discovery Motions and Other Procedures for Resolving Discovery Disputes. Many judges have established specific discovery procedures, which practitioners and pro se parties should review carefully. Some of those procedures are available at <https://www.flsd.uscourts.gov/judges-info>. The following rules shall govern discovery disputes unless they conflict with the assigned judge's procedures, in which case such procedures shall control.

(2) Requirements and Deadlines for Seeking Court Intervention Concerning Discovery Disputes.

(A) A party must submit any discovery dispute to the Court by service of a motion (or, if the assigned judge prohibits discovery motions, in accordance with the assigned judge's discovery procedures) within the time periods set forth in (i)-(iv), as applicable:

(i) for a discovery dispute relating to a written response or objection to a discovery request or to a privilege log, a party shall submit the dispute within twenty-eight (28) days of service of the written response or objection that is the subject of the dispute;

(ii) for a discovery dispute relating to a deposition that has been completed, a party shall submit the dispute within twenty-eight (28) days of the last day of testimony in the deposition giving rise to the dispute;

(iii) for a discovery dispute relating to the sufficiency of a production of documents or other materials, a party shall submit the dispute within twenty-eight (28) days of the producing party's service of the Notice of Completion of Production as required by S.D. Fla. L.R. 26.1(e)(7); and

(iv) for any other discovery dispute, a party shall submit the dispute within twenty-eight (28) days of the date when the issue was first raised with the opposing party.

(B) Failure to submit a discovery dispute to the Court within the time periods set forth in (A)(i)-(iv), absent a showing of good cause, may, in the Court's discretion, constitute grounds for denial of the requested relief.

(C) The deadlines set forth in (A)(i)-(iv) may be extended once for up to seven (7) days by an unfiled, written stipulation between the parties, provided that the stipulation does not conflict with any Court order.

(D) The duty to conduct a pre-filing conference pursuant to S.D. Fla. L.R. 7.1(a)(3) shall not toll the deadlines set forth in (A)(i)-(iv) or any deadline provided by the assigned judge's discovery procedures unless those discovery procedures specifically provide otherwise.

(3) Unless an assigned judge's discovery procedures provide otherwise, a discovery motion and the memorandum in opposition are each limited to ten (10) pages, and the reply memorandum is limited to five (5) pages. If applicable, the moving party must attach to the motion the disputed discovery item and any objection and response thereto.

(h) 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 the State of Florida of any person upon oral examination shall give at least seven (7) 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 fourteen (14) days' notice in writing to every other party to the action and the deponent (if the deposition is not of a party).



Failure to comply with this rule obviates the need for protective order.

Notwithstanding the foregoing, in accordance with Federal Rule of Civil Procedure 32(a)(5)(A), no deposition shall be used against a party who, having received less than eleven (11) calendar days' notice of a deposition as computed under Federal Rule of Civil Procedure 6(a), has promptly upon receiving such notice filed and served a motion for protective order under Federal Rule of Civil Procedure 26(c)(1)(B) 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.

(i) Subpoenas; Cooperation. Whenever a party, before trial, receives objections, documents, electronically stored information, or other things from a non-party in response to a subpoena, the party receiving same shall promptly notify all other parties of such receipt, and shall, upon request, make the materials available for inspection to all other parties in the same form or format as received from the non-party. The other parties may request copies of objections, documents, electronically stored information, or other things, but the expense associated with providing such copies shall be borne by the party requesting the copies, except by order of the Court for good cause shown. Nothing in this subdivision is intended to create, eliminate, enlarge, or reduce any post-judgment notice, disclosure, production, or inspection obligations.

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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.

