REDLINE COMPARISON OF ORDER DATED MARCH 2, 2021 TO SB 224

I. RULE 56.01

56.01~~. General Provisions Governing Discovery~~ GENERAL PROVISIONS GOVERNING DISCOVERY

(a) Discovery Methods. Parties may obtain discovery by one or more of~~ 3~~ the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents, electronically stored information, or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) Scope of Discovery. Unless otherwise limited by 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 matter, not privileged, that is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other 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 of any discoverable matter, provided the discovery is proportional to the needs of the case considering the totality of the circumstances, including but not limited to, the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expenses of the proposed discovery outweighs its likely benefit.

Information within the scope of discovery need not be admissible in evidence to be discoverable if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The party seeking discovery shall bear the burden of establishing relevance.

(2) Limitations. Upon the motion of any party or on its own, the court must limit the frequency or extent of discovery if it determines that:

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

(B) The party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or

(C) The proposed discovery is outside the scope permitted by this Rule 56.01(b)(1).

(3) 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 56.01(b)(2). The court may specify conditions for the discovery.

(4) Insurance Agreements. A party may obtain discovery of the existence and contents, including production of the policy and declaration page, of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment that may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this Rule 56.01(b)(4), an application for insurance shall not be treated as part of an insurance agreement.

(5) Trial Preparation: Materials. Subject to the provisions of Rule 56.01(b)(6), a party may obtain discovery of documents and tangible things otherwise discoverable under Rule 56.01(b)(1) and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative, including an attorney, consultant, surety, indemnitor, insurer, or agent, only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and that the adverse party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. For purposes of this paragraph, a statement previously made is: (a) a written statement signed or otherwise adopted or approved by the person making it, or (b) a stenographic, mechanical, electrical, audio, video, motion picture or other recording, or a transcription thereof, of the party or of a statement made by the party and contemporaneously recorded.

(6) Trial Preparation: Experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of Rule ~~79~~ 56.01(b)(1) and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

> (A) A party may require through interrogatories ~~require~~, any other party to identify each person whom the other party expects to call as an expert witness at trial by providing such expert's name, address, occupation, place of employment, and qualifications to give an opinion~~,~~ or, if such information is available on the expert's curriculum vitae, such curriculum vitae may be attached to the interrogatory answers as a full response to such interrogatory, and to state the general nature of the subject matter on which the expert is expected to testify~~,~~ and the expert's hourly deposition fee.

(B) A party may discover by deposition the facts and opinions to which the expert is expected to testify. Unless manifest injustice would result, the court shall require that the party seeking discovery from an expert pay the expert a reasonable hourly fee for the time such expert is deposed.

(7) Trial ~~Preparations~~Preparation: Non-retained Experts. A party, through interrogatories, may require any other party to identify each non-retained expert witness, including a party, whom the other party expects to call at trial who may provide expert witness opinion testimony by providing the expert's name, address, and field of expertise. For the purpose of this Rule 56.01(b)(7), an expert witness is a witness qualified as an expert by knowledge, experience, training, or education giving testimony relative to scientific, technical, or other specialized knowledge that will assist the trier of fact to understand the evidence. Discovery of the facts known and opinions held by such an expert shall be discoverable in the same manner as for lay witnesses.

(8) Approved Interrogatories and Request for Production. A circuit court by local court rule may promulgate "approved" interrogatories and requests for production for use in specified types of litigation. Each such approved interrogatory and request for production submitted to a party shall be denominated as having been approved by reference to the local court rule and paragraph number containing the interrogatory or request for production.

(9) Claiming Privilege or Protecting Trial Preparation Materials.

(A) Information produced.

(i) If information produced in discovery 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; must not use or disclose the information until the claim is resolved; 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. The producing party must preserve the information until the claim is resolved.

(ii) An attorney who receives information that contains privileged communications involving an adverse or third party and who has reasonable cause to believe that the information was ~~**wrongfully obtained**~~incorrectly received shall not read the information or, if he or she has begun to do so, shall stop reading it. The receiving attorney shall promptly notify the sending attorney ~~**whose communications are contained in the information to**~~of such receipt; promptly return the information to the ~~**other lawyer and, if in electronic form**~~sending attorney; sequester, delete ~~**it**~~, or destroy the information and any copies thereof; and take reasonable measures to assure that the information is inaccessible. ~~**An**~~A sending attorney who has been notified about

information containing privileged communications has the obligation to preserve the information.

(B) The production of privileged or work-product protected documents, electronically stored information or other information, whether inadvertent or otherwise, is not a waiver of the privilege or protection from discovery in the proceeding.

(c) Protective Orders. Upon motion by a party or by the person from ~~hom~~whom discovery is sought, including e-discovery, and for good cause shown, the court may make any 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 the discovery not be had;

(2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place or the allocation of expenses;

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

(4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

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

(6) that a deposition after being sealed be opened only by order of the court;

(7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;

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

~~f~~

If a motion for ~~a~~ protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 61.01 apply to the award of expenses incurred in relation to the motion.

In ruling on an objection that the discovery request creates an undue burden or expense, the court shall consider the issues in the case and the serving party's need for such information to prosecute or defend the case and may consider, among other things, the amount in controversy and the parties' relative resources in determining whether the proposed discovery burden or expense outweighs its benefit.

(d) Sequence and Timing of Discovery. Unless the parties stipulate or the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods

of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) Supplementation of Responses. 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) Stipulations Regarding Discovery Procedure. Unless the court orders otherwise, the parties may by written stipulation (1) provide that depositions may be taken before any person at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify the procedures provided by these Rules for other methods of discovery. Any stipulation under subdivision (2) shall be filed.

~~57.01. Interrogatories to Parties~~
~~(a) Scope.~~ (g) Cooperation in Discovery. All parties shall make reasonable efforts to cooperate for the purpose of minimizing the burden or expense of discovery.

II. RULE 57.01

57.01 INTERROGATORIES TO PARTIES

(a) Scope. Unless otherwise stipulated ~~or~~, ordered by the court, or approved by local rule pursuant to Rule 56.01(b)(6), any party may serve upon any other party no more than 25 written interrogatories, including all discrete subparts. Interrogatories may relate to any matter that can be inquired into under Rule 56.01. An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

(b) Issuance.

(1) Form. Interrogatories shall be in consecutively numbered paragraphs. The title shall identify the party to whom they are directed and state the number of the set of interrogatories directed to that party.

(2) When Interrogatories May ~~be~~Be Served. Without leave of court, interrogatories may be served on:

(A) A plaintiff after commencement of the action, and

(B) Any other party with or after the party was served with process, entered an appearance, or filed a pleading.

(3) Service. Copies of the interrogatories shall be served on all parties not in default. The party issuing the interrogatories shall also provide each answering party an electronic copy, in a commonly used medium such as a diskette, CD-ROM or as an e-mail attachment, in a format that can be read by most commonly used word processing programs, such as Word for Windows or WordPerfect 5.x or higher. In addition to the information normally in a certificate of service, the certificate of service shall also state:

(A) The name of each party who is to respond to the interrogatories;

(B) The number of the set of interrogatories,

(C) The format of the electronic copy and the medium used to transmit the electronic copy to the responding party.

At the time of service, a certificate of service, but not the interrogatories, shall be filed with the court as provided in Rule 57.01(d).

(c) Response. The interrogatories shall be answered by each party to whom they are directed. If they are directed to a public or private corporation, limited liability company, partnership, association, or governmental agency, they shall be answered by an officer or agent. The party answering the interrogatories shall furnish such information as is available to the party.

(1) When the Response ~~is~~Is Due. Responses shall be served within 30 days after the service of the interrogatories. A defendant, however, shall not be required to respond to interrogatories before the expiration of 45 days after the earlier of:

(A) The date the defendant enters an appearance, or

(B) The date the defendant is served with process.

The court may allow a shorter or longer time.

(2) Form. The title of the response shall identify the responding party and the number of the set of interrogatories. The response to the interrogatories shall quote each interrogatory, including its original paragraph number, and immediately thereunder state the answer or all reasons for not completely answering the interrogatory, including privileges, the work product doctrine, and objections.

(3) Objections and Privileges. If information is withheld because of an objection, then each reason for the objection shall be stated. If a privilege or the work product doctrine is asserted as a reason for withholding information, then without revealing the protected information, the objecting party shall state information that will permit others to assess the applicability of the privilege or work product doctrine.

(4) Option to Produce Business Records. If the answer to an interrogatory may be derived or ascertained from:

(A) The business records of the party upon whom the interrogatory has been served, ~~or~~

(B) An examination, audit, or inspection of such business records, or

(C) A compilation, abstract, or summary based thereon,

and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries.

(5) Signing. Answers shall be signed under oath by the person making them. Objections shall be signed by the attorney making them or by the self-represented party.

(6) Service. The party to whom the interrogatories were directed shall serve a signed original of the answers and objections, if any, on the party that issued the interrogatories and a copy on all parties not in default. The certificate of service shall state the name of the party who issued the interrogatories and the number of the set of interrogatories.

At the time of service, a certificate of service, but not the response, shall be filed with the court as provided in Rule 57.01(d).

(d) Filing. Interrogatories and answers under this Rule 57.01 shall not be filed with the court except upon court order or contemporaneously with a motion placing the interrogatories in issue. However, both when the interrogatories and answers are served, the party serving them shall file with the court a certificate of service.

The certificate shall show the caption of the case, the name of the party served, the date and manner of service, the designation of the document, e.g., first interrogatories or answers to second interrogatories, and the signature of the serving party or attorney. The answers bearing the original signature of the party answering the interrogatories shall be served on the party submitting the interrogatories, who shall be the custodian thereof until the entire case is finally disposed.

Copies of interrogatory answers may be used in all court proceedings to the same extent the original answers may be used.

(e) Enforcement. The party submitting the interrogatory may move for an order under Rule 61.01(b) with respect to any objection to or other failure to answer an interrogatory.

(f) Use at Trial. Interrogatory answers may be used to the extent permitted by the rules of evidence.

~~57.03. Depositions Upon Oral Examination~~

III. RULE 57.03

57.03 DEPOSITIONS UPON ORAL EXAMINATION

(a) When Depositions May Be Taken.

(1) After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination without leave of court, except as specified in paragraph (2) of this subdivision. The attendance of witnesses may be compelled by subpoena as provided in Rule 57.09.

(2) Leave of court, granted with or without notice, must be obtained only if:

(A) the parties have not stipulated to the deposition and:

(i) the deposition would result in more than 10 depositions being taken under this ~~rule~~Rule or Rule 57.04 by the plaintiffs, or by the defendants, or by the third-party defendants;

(ii) the deponent has already been deposed in the case; or

(iii) the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and petition upon any defendant, except that leave is not required if a defendant has served a notice of taking deposition or otherwise sought discovery; or

(B) the deponent is confined in prison.

(b) Notice of Examination: General Requirements; Special Notice; Production of Documents and Things; Deposition of Organization.

(1) A party desiring to take the deposition of any person upon oral examination shall give not less than seven days notice in writing to every other party to the action and to a non-party deponent.

The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known. If the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs shall be stated.

If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice. ~~A party may attend a deposition by telephone.~~

The parties may stipulate, or the court may upon motion order, that the deposition be taken by telephone or other remote means such as videoconferencing or teleconferencing. An officer authorized to administer any oath or affirmation required can so administer the

oath or affirmation through such means without being in the physical presence of the witness.

Any attorney of record in the proceeding or any attorney for the deponent may participate in the deposition by telephone or other remote means, including videoconferencing or teleconferencing, but it shall be the sole responsibility of the attorney to make such arrangements as are necessary to so participate in the deposition.

(2) The court may for cause shown enlarge or shorten the time for taking the deposition.

(3) The notice to a party deponent may be accompanied by a request made in compliance with Rule 58.01 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 58.01 shall apply to the request.

(4) A party may in the notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, ~~or~~ managing agents, or other persons who consent to testify on its behalf and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a ~~nonparty~~non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This Rule 57.03(b)(4) does not preclude taking a deposition by any other procedure authorized in these rules.

~~(5)~~ (A) Duration. Unless otherwise stipulated or ordered by the court, a deposition shall be limited to ~~1~~one day of ~~7~~seven hours. The court may allow additional time consistent with Rule 56.01 if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.

(B) Sanction. The court may impose an appropriate sanction, including the reasonable expenses and ~~**attorney's**~~attorney fees incurred by any party, on a person who impedes, delays, or frustrates the fair examination of the deponent.

(c) Non-stenographic Recording - ~~Video Tape~~Videotape. Depositions may be recorded by the use of ~~video tape~~videotape or similar methods. The recording of the deposition by ~~video tape~~videotape shall be in addition to a usual recording and transcription method unless the parties otherwise agree.

(1) If the deposition is to be recorded by ~~video tape~~videotape, every notice or subpoena for the taking of the deposition shall state that it is to be ~~video taped~~videotaped and shall state the name, address, and employer of the recording technician. If a party upon whom notice for the taking of a deposition has been served desires to have the testimony additionally recorded by other than stenographic means, that party shall serve notice on the opposing party and the witness that the proceedings are to be ~~video taped~~videotaped. Such notice must be served not less than three days prior to the date designated in the

original notice for the taking of the depositions and shall state the name, address, and employer of the recording technician.

(2) Where the deposition has been recorded only by ~~video tape~~videotape and if the witness and parties do not waive signature, a written transcription of the audio shall be prepared to be submitted to the witness for signature as provided in Rule ~~83~~ 57.03(f).

(3) The witness being deposed shall be sworn as a witness on camera by an authorized person.

(4) More than one camera may be used, either in sequence or simultaneously.

(5) The attorney for the party requesting the ~~video taping~~videotaping of the deposition shall take custody of and be responsible for the safeguarding of the ~~video tape~~videotape and shall, upon request, permit the viewing thereof by the opposing party and, if requested, shall provide a copy of the ~~video tape~~videotape at the cost of the requesting party.

(6) Unless otherwise stipulated to by the parties, the expense of ~~video taping~~videotaping is to be borne by the party utilizing it and shall not be taxed as costs.

(d) Record of Examination; Oath; Objections. The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with Rule 57.03(c). If requested by one of the parties, the testimony shall be transcribed.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, to the evidence presented, to the conduct of any party, or any other objection to the proceedings shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition, and that party shall transmit them to the officer before whom the deposition is to be taken, who shall propound them to the witness, and the questions and answers thereto shall be recorded.

(e) Motion to Terminate or Limit Examination. At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or a court having general jurisdiction in the place where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 56.01(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 61.01(g) apply to the award of expenses incurred in relation to the motion.

(f) Submission to Witness; Changes; Signing. When the testimony is fully transcribed, the officer shall make the deposition available to the witness for examination, reading, and signing, unless such examination, reading, and signing are waived by the witness or by the parties. Any changes in form or substance that the witness desires to make shall be entered upon an errata sheet provided to the witness with a statement of the reasons given for making such changes. The answers or responses as originally given, together with the changes made and reasons given ~~therefor~~therefore, shall be considered as a part of the deposition. The deposition shall then be signed by the witness before a notary public unless the witness is ill, cannot be found, is dead, or refuses to sign. If the deposition is not signed by the time of trial, it may be used as if signed, unless, on a motion to suppress, the court holds that the reasons given for the refusal to sign requires rejection of the deposition in whole or in part.

(g) Certification, Delivery, and Filing; Exhibits; Copies.

(1) Certification and Delivery. The officer shall certify on the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. Upon payment of reasonable charges ~~therefor~~therefore, the officer shall deliver the deposition to the party who requested that the testimony be transcribed.

(2) Filing.

~~(a~~

(A) By the Officer. Upon delivery of a deposition, the officer shall file with the court a certificate showing the caption of the case, the name of the deponent, the date the deposition was taken, the name and address of the person having custody of the original deposition, and whether the charges have been paid. The officer shall not file a copy of the deposition with the court except upon court order.

~~(b~~

(B) By a Party. A party shall not file a deposition with the court except upon specific court order or contemporaneously with a motion placing the deposition or a part thereof in issue. The court may enact local court rules requiring a party who intends to use a deposition at a hearing or trial to file that deposition with the court on or prior to the date of the hearing or trial.

~~(c~~

(C) Return of Deposition. At the conclusion of the hearing or trial the deposition that has been filed or delivered to the court shall be returned to the party that filed or delivered the deposition.

~~(d~~

(D) Retention of Deposition. The original deposition shall be maintained until the case is finally disposed.

(3) Exhibits. Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition and may be inspected and copied by any party, except that (A) the person producing the materials may substitute copies to be marked for identification if the person affords to all parties fair opportunity to verify the copies by comparison with the originals and (B) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy

them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court pending final disposition of the civil action.

(4) Copies. Upon request and payment of reasonable charges ~~therefor~~therefore, the officer shall furnish a copy of the deposition to any party or to the deponent.

(h) Failure to Attend or to Serve Subpoena; Expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving notice to pay to such other party the reasonable expenses incurred by that other party and that other party's attorney in attending, including reasonable ~~attorney's~~attorney fees.

(2) If a witness fails to appear for a deposition and the party giving the notice of the taking of the deposition has not complied with these rules to compel the attendance of the witness, the court may order the party giving the notice to pay to any party attending in person or by attorney the reasonable expenses incurred by that other party and that other party's attorney in attending, including reasonable ~~attorney's~~attorney fees.

IV. RULE 57.04

~~57.04. Depositions Upon Written Questions~~

57.04 DEPOSITIONS UPON WRITTEN QUESTIONS

(a) Serving Questions; Notice.

(1) After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions, without leave of court, except as specified in paragraph (2) of this subdivision. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 57.09.

(2) Leave of court, granted with or without notice, must be obtained only if:

(A) the parties have not stipulated to the deposition and:

(i) the deposition would result in more than 10 depositions being taken under this ~~**rule**~~Rule or Rule 57.03 by the plaintiffs, or by the defendants, or by the third-party defendants;

(ii) the deponent has already been deposed in the case; or

(iii) the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and petition upon any defendant, except

that leave is not required if a defendant has served a notice of taking deposition or otherwise sought discovery; or

(B) the deponent is confined in prison.

(3) A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating: (A) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs and (B) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 57.03(b)(4).

(4) Within ~~thirty~~30 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within ~~ten~~10 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within ~~ten~~10 days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

(b) Officer to Take Responses and Prepare Record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 57.03(d), (f), and (g), to take the testimony of the witness in response to the questions and to prepare, certify, and deliver the deposition, attaching thereto the copy of the notice and the questions.

(c) Notice of Delivery. When the deposition is delivered, the party taking it promptly shall give notice thereof to all other parties.

V. RULE 58.01

~~58.01. Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes~~

58.01 PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES

(a) Scope. Any party may serve on any other party a request to:

(1) Produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control:

(A) Any designated documents or electronically stored information including writings, drawings, graphs, charts, photographs, ~~records,~~ sound recordings, images, electronic records, and other data or compilations from which information can be obtained either directly or indirectly or, if necessary, after translation by the responding party into ~~a~~ reasonably usable form; or

(B) Any designated tangible things; or

(2) Permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, and photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 56.01(b).

This Rule 58.01 does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land.

(b) Issuance.

(1) Form. In consecutively numbered paragraphs the request shall:

(A) Set forth with reasonable particularity each item or category of items to be inspected;

(B) Specify a reasonable time, place, and manner of making the inspection and performing the related acts; and

(C) May specify that electronically stored information be produced in native format.

The title shall identify the party to whom the requests are directed and state the number of the set of requests directed to that party.

(2) When Requests May ~~be~~Be Served. Without leave of court, requests may be served on:

(A) A plaintiff after commencement of the action~~;~~, and

(B) Any other party with or after the party was served with process, entered an appearance, or filed a pleading.

(3) Service. Copies of the requests shall be served on all parties not in default. The party issuing the requests shall also provide each responding party an electronic copy in a commonly used medium, such as a diskette, CD-ROM, or as an e-mail attachment, in a format that can be read by most commonly used word processing programs, such as Word for Windows or WordPerfect 5.x or higher. In addition to the information normally in a certificate of service, the certificate of service shall also state the:

(A) Name of each party who is to respond to the requests;

(B) Number of the set of requests; and

(C) Format of the electronic copy and the medium used to transmit the electronic copy to the responding party.

At the time of service, a certificate of service, but not the requests, shall be filed with the court as provided in Rule 58.01(d).

(c) Response. The requests shall be answered by each party to whom they are directed.

(1) When Response ~~is~~Is Due. Responses shall be served within 30 days after the service of the request. A defendant, however, shall not be required to respond to the request before the expiration of 45 days after the earlier of:

(A) The date the defendant enters an appearance; or

(B) The date the defendant is served with process.

The court may allow a shorter or longer time.

(2) Form. The title of the response shall identify the responding party and the number of the set of the requests. The response shall quote each request, including its original paragraph number, and immediately thereunder state that the requested items will be produced or the inspection and related activities will be permitted as requested, unless the request is objected to, in which event each reason for objection shall be stated in detail.

(3) Objections and Privileges. If information is withheld because of an objection, then each reason for the objection shall be stated. An objection to part of a request must specify the part and permit inspection of the rest. If a privilege or the work product doctrine is asserted as a reason for the objection, then without revealing the protected information, the objecting party shall state information that will permit others to assess the applicability of the privilege or work product doctrine.

(4) Method of Production. A party who produces documents for inspection shall produce them as they are kept in the usual course of business so long as this form is reasonably usable by the requesting party, or shall organize and label them to correspond with the categories in the request.

(5) Signing. The response shall be signed by the attorney or by the party if the party is not represented by an attorney.

(6) Service. The party to whom the requests were directed shall serve a signed original of the response and objections, if any, on the party that issued the requests and a copy upon all parties not in default. The certificate of service shall state the name of the party who issued the requests and the number of the set of requests.

At the time of service, a certificate of service, but not the response, shall be filed with the court as provided in Rule 58.01(d).

(d) Filing. The request and responses thereto shall not be filed with the court except upon court order or contemporaneously with a motion placing the request in issue. However, both when the request and responses are served, the party serving them shall file with the court a certificate of service. The certificate shall show the caption of the case, the name of the party served, the date

and manner of service, and the signature of the serving party or attorney. Each party filing a certificate shall maintain a copy of the document that is the subject of the certificate until the case is finally disposed.

(e) Enforcement. The party submitting the request may move for an order under Rule 61.01(d) with respect to any objection or other failure to respond to the request or any part thereof or any failure to permit inspection as requested.

VI. RULE 59.01

~~59.01. Request for and Effect of Admissions~~

59.01 REQUEST FOR AND EFFECT OF ADMISSIONS

(a) Scope. After commencement of an action, a party may serve upon any other party no more than 25 written requests for the admission, without leave of court or stipulation of the parties, for purposes of the pending action only, of the truth of any matters within the scope of Rule 56.01(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness or foundation of any documents described in the request. However, the limitation on the number of requests for admission specified by this Rule 59.01 shall not apply to requests for admission regarding the genuineness or admissibility of documents.

A failure to timely respond to requests for admissions in compliance with this Rule 59.01 shall result in each matter being admitted.

The request for admissions shall have included at the beginning of said request the following language in all capital letters, boldface type, and a character size that is as large as the largest character size of any other material in the request:

"A FAILURE TO TIMELY RESPOND TO REQUESTS FOR ADMISSIONS IN COMPLIANCE WITH RULE 59.01 SHALL RESULT IN EACH MATTER BEING ADMITTED BY YOU AND NOT SUBJECT TO FURTHER DISPUTE."

(b) Effect of Admission. Any matter admitted under this Rule 59.01 is conclusively established unless the court on motion permits withdrawal or amendment of the admission.

Subject to the provisions of Rule 62.01 governing amendment of a pre-trial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice the party in maintaining the action or defense on the merits.

Any admission made by a party under this Rule 59.01 is for the purpose of the pending action only and is not an admission by the party for any other purpose nor may it be used against the party in any other proceeding.

(c) Issuance.

(1) Form. In consecutively numbered paragraphs, the request shall set forth each matter for which an admission is requested. Copies of documents about which admissions are requested shall be served with the request unless copies have already been furnished. The title shall identify the party to whom the request for admissions are directed and state the number of the set of requests directed to that party.

(2) When Requests May ~~be~~Be Served. Without leave of court, requests may be served on:

(A) A plaintiff after commencement of the action,

(B) A defendant or respondent upon the expiration of 30 days after the first event of the defendant entering an appearance or being served with process, and

(C) Any other party with or after the party was served with process, entered an appearance, or filed a pleading.

(3) Service. Copies of the requests shall be served on all parties not in default. The party issuing the requests shall also provide each responding party an electronic copy in a commonly used medium, such as a diskette, CD-ROM, or as an e-mail attachment, in a format that can be read by most commonly used word processing programs, such as Word for Windows or WordPerfect 5.x or higher. In addition to the information normally in a certificate of service, the certificate of service shall also state the:

(A) Name of each party who is to respond to the requests;

(B) Number of the set of requests~~,~~; and

(C) Format of the electronic copy and the medium used to transmit the electronic copy to the responding party.

At the time of service, a certificate of service, but not the requests, shall be filed with the court as provided in Rule 59.01(d).

(d) Response. The requests shall be answered by each party to whom they are directed.

(1) When Response ~~is~~Is Due. Responses shall be served within 30 days after the service of the requests for admissions. A defendant or respondent, however, shall not be required to respond to requests for admissions before the expiration of 60 days after the earlier of the defendant:

(A) Entering an appearance, or

(B) Being served with process.

The court may allow a shorter or longer time.

(2) Form. The title of the response shall identify the responding party and the number of the set of the requests for admissions. The response shall quote each request, including its original paragraph number, and immediately thereunder specifically:

(A) Admit the matter; ~~or~~

(B) Deny the matter; ~~or~~

(C) Object to the matter and state each reason for the objection; or

(D) Set forth in detail the reasons why the responding party cannot truthfully admit or deny the matter.

A denial shall fairly meet the substance of the requested admission.

When good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as true and qualify or deny the remainder.

A responding party may give lack of information or knowledge as a reason for failure to admit or deny if such party states that the party has made reasonable inquiry and the information known or readily obtainable by the party is insufficient to enable the party to admit or deny.

A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; such party may deny the matter, subject to the provisions of Rule 61.01(c), or set forth reasons why the party cannot admit or deny it.

(3) Objections and Privileges. If an objection is asserted, then each reason for the objection shall be stated. If a failure to admit or deny a request is based on a privilege or the work product doctrine, then without revealing the protected information, the objecting party shall state information that will permit others to assess the applicability of the privilege or work product doctrine.

(4) Signing. The response shall be signed by the party or the ~~party's~~party's attorney.

(5) Service. The party to whom the requests were directed shall serve a signed original of the response and objections, if any, on the party that issued the requests and a copy upon all parties not in default. The certificate of service shall state the name of the party who issued the requests and the number of the set of requests.

At the time of service, a certificate of service, but not the response, shall be filed with the court as provided in Rule 59.01(d).

(e) Filing Request and Responses. The request and response thereto shall not be filed with the court except upon court order or contemporaneously with a motion placing the request in issue. However, both when the request and the response are served the party serving them shall file

with the court a certificate of service. Each party filing a certificate shall maintain a copy of the document that is the subject of the certificate until the case is finally disposed.

(f) Enforcement. The party who has requested the admissions may move to have determined the sufficiency of the answers or objections. Unless the court determines that an objection is proper, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this Rule 59.01, it may order either that:

(1) The matter is admitted, or

(2) An amended answer be served.

The provisions of Rule 61.01(c) apply to the award of expenses incurred in relation to the motion.

VII. RULE 6.101

~~61.01. Failure to Make Discovery: Sanctions~~

61.01 FAILURE TO MAKE DISCOVERY: SANCTIONS

(a) Failure to Act - Evasive or Incomplete Answers. Any failure to act described in this Rule 61 may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has served timely objections to the discovery request or has applied for a protective order as provided by Rule 56.01(c).

For the purpose of this Rule 61, an evasive or incomplete answer is to be treated as a failure to answer.

(b) Failure to Answer Interrogatories. If a party fails to answer interrogatories or serve objections thereto within the time provided by law, or if objections are served thereto that are thereafter overruled and the interrogatories are not timely answered, the court may, upon motion and reasonable notice to other parties, take such action in regard to the failure as are just and among others the following:

(1) Enter an order striking pleadings or parts thereof or dismissing the action or proceeding or any part thereof or render a judgment by default against the disobedient party;

(2) Upon the showing of reasonable excuse, grant the party failing to answer the interrogatories additional time to serve answers, but such order shall provide that if the party fails to answer the interrogatories within the additional time allowed, the pleadings of such party shall be stricken or the action shall be dismissed or that a default judgment shall be rendered against the disobedient party.

(c) Failure to Answer Request for Admissions. If a party, after being served with a request to admit the genuineness of any relevant documents or the truth of any relevant and material

matters of fact, fails to serve answers or objections thereto, as required by Rule 59.01, the genuineness of any relevant documents or the truth of any relevant and material matters of fact contained in the request for admissions shall be taken as admitted. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 59.01, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the party requesting the admissions may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney fees. The court shall make the order unless it finds that:

(1) The request was held objectionable pursuant to Rule 59.01;

(2) The admission sought was of no substantial importance;

(3) The party failing to admit had reasonable grounds to believe that such party might prevail on the matter; or

(4) There was other good reason for the failure to admit.

(d) Failure to Produce Documents, and Things or to Permit Inspection. If a party fails to respond that inspection will be permitted as requested, fails to permit inspection, or fails to produce documents and tangible things as requested under Rule 58.01, or timely serves objections thereto that are thereafter overruled and the documents and things are not timely produced or inspection thereafter is not timely permitted, the court may, upon motion and reasonable notice to other parties, take such action in regard to the failure as are just and among others the following:

(1) Enter an order refusing to allow the disobedient party to support or oppose designated claims or defenses or prohibiting the disobedient party from introducing designated matters in evidence;

(2) Enter an order striking pleadings or parts thereof or staying further proceedings until the order is obeyed or dismissing the action or proceeding or any part thereof or render a judgment by default against the disobedient party;

(3) Enter an order treating as a contempt of court the failure to obey; or

(4) Enter an order requiring the party failing to obey the order or the attorney advising the party or both to pay the reasonable expenses, including attorney fees, caused by the failure unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(e) Failure to Appear for Physical Examination. If a party fails to obey an order directing a physical or mental or blood examination under Rule 60.01, the court may, upon motion and reasonable notice to the other parties and all persons affected thereby, make such orders in regard to the failure as are just, and among others, it may take any action authorized under Rules 61.01(d)(1), (2), and (4). Where a party has failed to comply with an order requiring the production of another for examination, the court may enter such orders as are authorized by this Rule 61.01, unless the party failing to comply shows an inability to produce such person for examination.

(f) Failure to Attend Own Deposition. If a party, or an officer, director ~~or~~, managing agent of a party, or ~~a~~ person designated under Rules 57.03(b)(4) and 57.04(a~~),~~) to testify on behalf of a party, fails to appear before the officer who is to take his or her deposition, after being served with notice, the court may, upon motion and reasonable notice to the other parties and all persons affected thereby, make such orders in regard to the failure as are just and among others, it may take any action authorized under paragraphs (1), (2), (3~~)~~), and (4) of subdivision (d) of this Rule.

(g) Failure to Answer Questions on Deposition. If a witness fails or refuses to testify in response to questions propounded on deposition, the proponent of the question may move for an order compelling an answer. The proponent of the question may complete or adjourn the deposition examination before applying for an order. In ruling upon the motion, the court may make such protective order as it would have been empowered to make on a motion pursuant to Rule 56.01(c).

If the motion is granted, the court, after opportunity for hearing, shall require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including ~~attorney's~~attorney fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court, after opportunity for hearing, shall require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including ~~attorney's~~attorney fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

If the motion is granted and if the persons ordered to respond fail to comply with the court's order, the court, upon motion and reasonable notice to the other parties and all persons affected thereby, may make such orders in regard to the failure as are just, and among others, it may take any action authorized under Rule 61.01(d).

(h) Objections to Approved Discovery. If objections to Rule 56.01(b)(8) approved interrogatories or requests for production are overruled, the court may assess against such objecting party, attorney, or attorney's law firm, or all of them, the ~~attorney's~~attorney fees reasonably incurred in having such objection overruled. If such fees are not paid within ~~sixty~~60 days, the court may enter such other appropriate orders against the disobedient party, including an order striking pleadings, dismissing the action, or entering a judgment by default.