

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

Proposed Amendments to Local Rules Necessitated by Recent Amendments to the Federal Rules of Civil Procedure

Pursuant to Rule 83 of the Federal Rules of Civil Procedure, public notice is hereby given of the proposed amendments to the Rules of the United States District Court for the Eastern District of Louisiana.

Comments may be made in writing addressed to the Clerk of Court before March 15, 2001.

Note: New Matter is Underlined; matter to be omitted is lined through. The comments are for information only and are not part of the Rules.

LR26.3E Disclosure Under *FRCvP* 26(a)

~~A. Except as otherwise ordered by a judge of the court in a particular case, the parties are not obligated to provide the initial disclosures prescribed by *FRCvP* 26(a)(1).~~

~~B. The scope and timing of disclosures under *FRCvP* 26(a)(2) and *FRCvP*(a)(3) shall be as directed by the court pursuant to the Civil Justice Expense and Delay Reduction Plan of this court. in the order issued after the preliminary conference held pursuant to Article One (1) of the Civil Justice Expense and Delay Reduction Plan of this court.~~

COMMENT

Part A of LR 26.3 is deleted as abrogated by amended *FRCvP* 26(a)(1).

The changes to Part B are stylistic only. All the time periods contemplated by *FRCvP* 26(a)(2) and (a)(3) will always be set by a case specific order entered after the preliminary conference held among the judge, magistrate judge, or courtroom deputy, and counsel for the parties.

LR26.4E Meeting of Parties Under *FRCvP 26(f)*. ~~Except as otherwise ordered by the court, the provisions of *FRCvP 26(f)*, requiring a meeting of parties prior to the scheduling conference, shall apply to all civil actions in the court subject to the following modifications.~~

~~1. The requirements for a meeting of the parties do not apply in cases exempted from the requirements of a scheduling order under LR16.1 E&M and in cases filed in, removed to, or transferred to this court before December 1, 1993.~~

~~2. The parties may agree to hold the meeting by telephone, or may agree, in writing, not to hold the meeting.~~

~~3. Any meeting of the parties shall be held in time to permit the report of the meeting to be filed with the court no later than one day prior to the date of the scheduling conference.~~

~~4. Formal discovery may begin in cases in which no meeting will be held without regard to the requirements of *FRCvP 26(d)* and *(f)*.~~

A. Except as otherwise ordered in a particular case, the conference between the parties required by *FRCvP 26(f)* shall be held no later than seven working days before the scheduled preliminary conference.

B. Except as otherwise ordered in a particular case or as indicated hereinafter, the parties are excused from submitting a written report outlining the proposed discovery plan and shall report orally on their proposed discovery plan at the Rule 16(b) conference. An oral report on the proposed discovery plan is not authorized when, during the Rule 26(f) conference, a party objects that the initial disclosures required by Rule 26(a)(1) are not appropriate in the circumstances of the action. In such

a case, no later than three working days prior to the scheduled preliminary conference, the parties must file a written report outlining the proposed discovery plan, including the nature of the objection(s) to the initial disclosure and statements by the parties detailing their positions on the objection(s) to the initial disclosure.

COMMENT

Amended Rule 26(f) deletes the authority of a court to adopt a local rule exempting parties from the meeting requirement. Thus, it abrogates the provision of LR 26.4 exempting certain classes of cases from the requirement that a Rule 26(f) conference be held and permitting the parties to agree not to have a Rule 26 conference.

Amended Rule 26(f) permits the parties to conduct a non-face to face conference. That amendment renders unnecessary the portion of LR26.4 permitting the parties to conduct the Rule 26(f) conference by telephone.

Amended Rule 26(d) provides that "[e]xcept in categories of proceedings exempted from initial disclosure under Rule 26(a)(1)(E), or when authorized under these rules or by order, or by agreement of the parties, a party may not seek discovery . . . before the parties have conferred as required by Rule 26(f)." The "categories of proceedings exempted from initial disclosure" are also exempt from the meeting requirement of *FRCvP 26(f)*. Thus, amended Rule 26(d) implies that where no meeting is held, discovery may begin at any time. This renders unnecessary that portion of of LR 26.4 exempting cases which have no meeting from the requirements of Rules 26(d) and (f).

Amended Rule 26(f) requires the parties to confer "as soon as practicable and in any event at least 21 days before a scheduling conference is held or a scheduling order is due under *FRCvP 16(b)*." The Eastern District of Louisiana Civil Justice Expense and Delay Reduction Plan (Article One (1))

requires a preliminary scheduling conference notwithstanding the fact that Rule 16(b) does not require such a conference. Rule 16(b) provides that "the district judge, or a magistrate judge when authorized by district court rule, shall, after receiving the report from the parties under Rule 26(f) or after consulting with the attorneys for the parties and any unrepresented parties by a scheduling conference, telephone, mail or other suitable means issue a scheduling order within 90 days after the appearance of a defendant and within 120 days after the complaint has been served on a defendant." However, Rule 26(f) states that "[i]f necessary to comply with its expedited schedule for Rule 16(b) conferences, a court may by local rule . . . require that the conference between the parties occur fewer than 21 days before the scheduling conference is held or a scheduling order is due under Rule 16(b)."

The CJEDRP sets out an expedited schedule for the Rule 16(b) conference. Within 10 days after all parties have entered an appearance a Uniform Preliminary Conference Notice scheduling a Preliminary Conference shall issue and "[s]uch conference will be scheduled no later than 20 days after issuance of the notice." Article One (1) CJEDRP.

Thus, the CJEDRP and Rule 26(f) conflict. The proposed amendment authorized by amended *FRCvP 26(f)* will reduce the time periods in the *FRCvP*, to retain current Eastern District practice, with one change to the CJEDRP. See footnote in *Exhibit*, "Comparative Time Line".

Amended Rule 26(f) provides that the parties are to submit the written report outlining the discovery plan within 14 days after the parties' conference but provides that "[i]f necessary to comply with its expedited schedule for Rule 16(b) conferences a court may by local rule . . . require that the written report outlining the discovery conference be filed fewer than 14 days after the conference between the parties." The 14 day time period for filing the report is too long considering the expedited scheduling of Rule 16(b) conferences in this district. The proposed amended local rule is designed to

give district judges sufficient time after receiving the objections to disclosure to consider and rule on the objections at or before the preliminary conference.

~~LR26.5 Non-filing of Disclosure, Discovery Requests and Responses: Retention by Requesting Party.~~ ~~Disclosure under *FRCvP 26*, Interrogatories propounded under *FRCvP 33*, and the answers thereto, Requests for Production or Inspection made under *FRCvP 34*, Requests for Admissions under *FRCvP 36*, and responses thereto shall be served upon other counsel or unrepresented parties, but shall not be filed with the court, unless the court orders that such materials be filed. Notices of depositions may be filed with the court, but depositions shall not be filed unless otherwise authorized. The party preparing and responsible for service of the disclosure or discovery material shall retain the original and become the custodian of any such non-filed materials.~~

COMMENT

The amendment to *FRCvP 5(d)* renders unnecessary the provision of the local rule restricting the filing of disclosure materials, interrogatories and the answers thereto, requests for production or inspection, requests for admission and responses thereto.

Amended Rule 5(d) does not include notices of deposition among the discovery requests which "must not be filed" until they are used in the proceeding or the court orders filing. By omitting notices of deposition from the list of discovery requests that "must not be filed" absent court order or "use" in the proceeding, amended Rule 5(d) requires the filing of notices of deposition, thereby abrogating the provision of the local rule stating that notices of deposition "may" be filed.

Although not contrary to amended Rule 5(d), the portion of the local rule identifying a custodian for non-filed discovery and disclosure is deleted as unnecessary.

~~**LR26.5.1E Filing of Disclosure or Discovery Materials.** Disclosure or discovery materials filed pursuant to the provisions of this rule shall be accompanied by a statement of the reason or reasons requiring their filing. When several items of disclosure or discovery are submitted for filing at the same time, they shall be grouped into a single document entitled "Disclosure or Discovery Materials" with a listing of the items being filed.~~

COMMENT

Amended Rule 5(d) renders this local rule unnecessary. If material is filed because it is used, it is not necessary to state how it is being used. If the material is being filed pursuant to a court order, the reasons accompanying the filing would be stated in the motion papers.

~~**LR26.5.2E Construction of the Rule.** This rule shall not be construed so as to preclude the filing of any of the aforesaid disclosure or discovery materials as exhibits or as evidence in connection with a motion or at a trial.~~

COMMENT

Amended Rule 5(d) provides for the filing of disclosure and discovery materials when they are "used in the proceeding," thereby rendering this local rule unnecessary.

~~**LR26.6E & M Disputed Disclosure and Discovery Materials to Be Filed With Request for Relief.**~~

~~If relief is sought under *FRCvP 26(c) or 37*, concerning any disclosure, interrogatories, requests for production or inspection, requests for admissions, answers to interrogatories or responses to requests for admission, copies of the portions of the disclosure, interrogatories, requests, answers or responses in dispute shall be filed with the court contemporaneously with any such motion.~~

COMMENT

Amended Rule 5(d) provides for the filing of disclosure and discovery materials when they are "used in the proceeding," thereby rendering this local rule unnecessary.

~~**LR26.7 Pretrial Filing of Disclosure and Discovery Materials to Be Used at Trial.** If disclosure or pretrial discovery materials will be used at trial or are necessary to a pretrial motion which might result in a final order on any issue, the portions to be used shall be filed with the clerk at the outset of the trial or at the filing of the motion insofar as their use can be reasonably anticipated. Nothing in this rule is intended to preclude use of disclosure or discovery materials for impeachment if the attorney could not reasonably anticipate that it would be used at trial.~~

COMMENT

Amended Rule 5(d) provides for the filing of disclosure and discovery materials when they are "used in the proceeding," thereby rendering this local rule unnecessary.

~~**LR26.8 Filing of Disclosure or Discovery Materials for Appeal Purposes.** When documentation of disclosure or discovery not previously in the record is needed for appeal purposes, upon an application and order of the court or by stipulation of counsel, the necessary disclosure or discovery papers shall be filed with the clerk.~~

COMMENT

Amended Rule 5(d) renders this rule unnecessary. Disclosure or discovery material needed for appeal purposes would have been "used in the proceeding" and would be filed pursuant to amended Rule 5.

LR33.1 Number of Interrogatories ~~No party shall serve on any other party more than 25 interrogatories in the aggregate without leave of court. Each sub-part of an interrogatory shall count as an additional interrogatory. Any party desiring to serve additional interrogatories more than the 25 interrogatories permitted by *FRCvP 33(a)* shall file a written motion setting forth the proposed additional interrogatories and the reasons establishing good cause for their use. Leave to serve additional interrogatories shall be granted to the extent consistent with the principles of *FRCvP 26(b)(2)*.~~

COMMENT

Amended Rule 26(b)(2) eliminates a court's authority to promulgate a local rule altering the limit on the number of interrogatories, thereby abrogating the limitation in the local rule. Additionally, *FRCvP 33(a)* provides that "[w]ithout leave of court, any party may serve upon any other party written interrogatories, not exceeding 25 in number including all discrete parts." Thus, that portion of the local rule providing that subparts are counted separately is not necessary.

The portion of LR 33.1 setting out the procedure for seeking leave for permission to file more than 25 interrogatories remains desirable and is not precluded by the recent amendments to the Federal Rules of Civil Procedure.

LR36.1 Objections to Requests for Admission. Objections to requests for admission, and objections to the answers to them, shall be set forth in full, immediately preceding each answer or objection, the request for admission or answer to which objection is being made.

COMMENT

Local Rule 36.1 will be unchanged. The Court considered adopting a local rule limiting the number of requests for admission, as authorized by *FRCvP 26(b)(2)*, but decided not to do so. A case-

specific order is preferable, if it is necessary to restrict the number of requests for admission.

" E X H I B I T "

COMPARATIVE TIME LINE

<u>Day</u>	<u>FRCvP Triggering Event</u>	<u>LR or CJEDRP Triggering Event</u>
1	Appearance of Defense Counsel	Appearance of Defense Counsel
1 - 10		Notice of Preliminary Conference must issue within 10 days scheduling a Preliminary Conference no later than 20 days after issuance of the notice. ¹
		Parties must confer to develop a discovery plan and discuss disclosure no later than 7 working days before Preliminary Conference (recommended)
		Written report of conference due at least 3 working days before Preliminary Conference when there are objections to disclosure (recommended)
16 - 30		Latest date to hold Preliminary Conference
		Scheduling Order Issues

¹ To accommodate the problem arising from objections to initial disclosure, the court proposes an amendment to the last sentence of Article One (1) of the CJEDRP so that it will read as follows: "Such conference will be scheduled no sooner than 20 days nor no later than 30 days from the issuance of notice."

69 Rule 26(f) provides that the parties must confer to discuss disclosure under 26(a)(1) and discovery at least 21 days before a scheduling conference is held or a scheduling order is issued under Rule 16(b). Rule 16(b) does not require a scheduling conference and requires that the scheduling order issue within 90 days after the appearance of defendant and within 120 days after the complaint has been served on a defendant. Thus, if no scheduling conference is held, the parties have at least 69 days from appearance of the defendant before they are required to meet for the Rule 26(f) conference.

83 Written report of discovery plan due (14 days after parties confer)

90 Scheduling Order must issue, if the triggering event is the appearance of defendant

120 Scheduling Order must issue, if the triggering event is service of the complaint on defendant.

February 12, 2001

LORETTA G. WHYTE, CLERK