**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

Notice of Proposed Amendments to Superior Court Rules of
Civil Procedure 16, 26, 33, 34, 36, 37, 45 and new CA Form 115

The District of Columbia Superior Court Rules Committee has recently completed review of proposed amendments to Superior Court Rules of Civil Procedure 16, 26, 33, 34, 36, 37, 45 and CA Form 115. The Rules Committee will recommend approval of the amendments to the Superior Court Board of Judges unless after consideration of comments from the Bar and the general public they are withdrawn or modified.

Written comments in respect to these amendments may be submitted within 60 days of the publication of this notice in the Daily Washington Law Reporter to:

David Luria
Attorney Advisor
Superior Court of the District of Columbia
500 Indiana Avenue, N.W., Room 5400
Washington, D.C. 20001

All comments submitted in respect to this notice will be available to the general public. New language is underlined and deleted language is stricken through:

# SCR CIVIL 16

Pretrial Cconferences; Pretrial Status Conferences; sScheduling; mManagement.

(a) APPLICABILITYpplicability. With the exception of cases assigned to the a magistrate judge under Rule 40-III, or, unless otherwise ordered by the judge to whom the case is assigned, the provisions of this Rrule shall apply to all civil actions, and to all small claims actions, and landlord and- tenant actions certified to the Civil Division for jury trial.

(b) INITIAL SCHEDULING AND SETTLEMENT CONFERENCEnitial scheduling and settlement conference. (1) *In General*. In every case assigned to a specific calendar or a specific judge, the court must hold an initial scheduling and settlement conference shall be held as soon as practicable after the complaint is filed.

(2) *Praecipe in Lieu of Appearance*. At that conference the judge will ascertain the status of the case, explore the possibilities for early resolution through settlement or alternative dispute resolution techniques, and determine a reasonable time frame for bringing the case to conclusion. After consulting with the attorneys for the parties and with any unrepresented parties, the judge will place the case on one of several alternative time tracks and will enter a scheduling conference order which will set dates for future events in the case. No attorney need appear in person for the scheduling conference if a praecipe conforming to the format of Civil Action Form 113 (Praecipe Requesting Scheduling Order) signed by all attorneys is filed no later than fourteen seven calendar days prior to the scheduling conference date consenting to the entry by the Ccourt of a track one or track two scheduling order outside their presence.

(A) *Praecipe Requirements*. provided that tThe praecipe must certifyies that:

(i) the case is at issue;,

(ii) all parties are represented by counsel;,

(iii) there are no pending motions; and

(iv) all counsel have discussed the provisions of Rule 16(b)(4)(B) and (C) and do not foresee any issue requiring court intervention.

(B) *Filing the Praecipe; Courtesy Copy*. tThe praecipe must be is accompanied by an addressed envelope or mailing label for each attorney and delivered with a courtesy copy must be delivered to the assigned judge's chambers. Neither addressed envelopes nor mailing labels need be provided for documents filed under the Ccourt's electronic filing program.

(3) *Scheduling Order; In General*. At the conference, the judge will ascertain the status of the case, explore the possibilities for early resolution through settlement or alternative dispute resolution techniques, and determine a reasonable time frame for bringing the case to conclusion. After consulting with the attorneys for the parties and with any unrepresented parties, the judge will place the case on one of several alternative time tracks and will enter a scheduling conference order which will set dates for future events in the case.

(4) *Contents of the Order*. The scheduling order may:

(A) modify the extent of discovery;

(B) provide for discovery of electronically stored information;

(C) include any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation material after information is produced;

(D) set dates for pretrial conferences and for trial; and

(E) include other appropriate matters.

(5) *Scheduling Order; Deadlines*. Where applicable, t~~T~~he order will ~~generally include~~specify dates for the following events:

(~~1~~A) ~~*Deadline for d*~~*Discovery ~~r~~Requests; Depositions*.~~:~~

(i) No interrogatories, requests for admission, requests for production or inspection, or motions for physical or mental examinations may be served ~~after this date~~less than 30 days before the date set for the end of discovery.

(ii) ~~Only p~~Party depositions ad testificandum and nonparty depositions duces tecum or ad testificandum ~~may~~ must be noticed ~~after this date~~not less than 5 days before the date scheduled for the deposition and no deposition may be noticed to take place after the date set for the conclusion of discovery.

(~~2~~B) *Exchange ~~l~~Lists of Ffact ~~w~~Witnesses*.~~:~~

On or before this date, each party must file and serve a listing, by name and address, of all fact witnesses known to that party, including experts who participated in, and will testify about, pertinent events. No witness may be called at trial, except for rebuttal or impeachment purposes, unless he or she was named on the list filed by one of the parties on or before this date or the calling party can establish that it did not learn of the witness until after this date.

(~~3~~C) *Proponent's Rule 26(~~a~~b)(~~4~~2)(B) ~~statement~~Report~~:~~*.

By this date, a ~~statement~~ report required by~~comporting with~~ Rule 26(~~b~~a)(~~4~~2)(B) must be filed and served by any proponent of an issue ~~(a party asserting a claim or an affirmative defense)~~ who will offer an expert opinion on such an issue.

(~~4~~D) *Opponent's Rule 26(~~b~~a)(~~4~~2)(B) Report*.~~statement:~~

By this date, a ~~statement~~ report required by ~~comporting with~~ Rule 26(~~b~~a)(~~4~~2)(B) must be filed and served by any opponent who will offer an expert opinion on such an issue.

(~~5~~E) ~~*All discovery closed*~~*Close of Discovery*.~~:~~

After this date, no deposition or other discovery may be had, nor motion relating to discovery filed, except by leave of court on a showing of good cause.

(~~6~~F) ~~*Deadline for f*~~*Filing ~~m~~Motions*~~:~~.

All motions must be filed by this date, except as provided in ~~paragraphs~~ Rule 16(b)(5)(E) and (d)~~ of this Rule~~. The order will also specify a date by which dispositive motions will be decided.

(G) *Alternative Dispute Resolution*. The order will set out a time period in which mediation or other alternative dispute resolution proceedings will be held.

(H) *Final Pretrial and Settlement Conference*. The order will specify a time period in which the final pretrial and settlement conference will be held.

(I) *Optional Deadlines*. The scheduling conference order may also set dates for the joinder of other parties and amendment of pleadings, the completion of certain discovery, the filing of particular motions and legal memoranda, and any other matters appropriate in the circumstances of the case. ~~The order will also ordinarily specify a date by which dispositive motions will generally be decided, a time period in which mediation or other alternative dispute resolution proceedings will be held, and a time period in which the final pretrial and settlement conference will be held.~~

(6) *Obligations of Parties.* All counsel and all parties must take the necessary steps to complete discovery and prepare for trial within the time limits established by the scheduling order.

(7) *Modification.*

(A) *By Leave of Court.* The scheduling order may not be modified except by leave of court upon a showing of good cause. A party seeking a modification of the scheduling order must provide the court with a copy of the existing scheduling order and a detailed discovery plan, which lists the specific methods of discovery to be conducted, the persons or materials to be examined, and the date or dates within which all further discovery must be completed.

; (B) *By Stipulation.* sStipulations between counsel shall will not be effective to change any deadlines in the order without court approval, provided, however, that any date in the scheduling order except for the date of court proceedings (e.g., status hearings, ex parte proofs, ADR sessions, pretrials and trials) may be extended once for up to 14 days upon the filing and delivery to the assigned judge of a praecipe showing that all parties who have appeared in the action consent to such the extension. Any motion to further modify a date so extended must recite that the date in question was previously extended by consent and must specify the length of that extension.

(c) MEETING FOUR WEEKS PRIOR TO PRETRIAL CONFERENCEMeeting three weeks prior to pretrial conference. (1) *Attendance.* Not less than three four weeks prior to the pretrial conference, at least one of the attorneys who will conduct the trial for each of the parties, and any unrepresented parties, shall must meet in person. If such persons are unable to agree on other arrangementa date, time, and place for the meeting, the parties must notify the judge by phone in advance that they will meet, the meeting shall be held at 9:00 a.m. atin the judge's courtroomCourthouse or such other place to be designated by the judge on theat day which is threefour weeks prior to the date of the pretrial conference.

(2) *Matters For Consideration.* The participants in the meeting shall must spend sufficient time together to thoroughly discuss the case thoroughly and shall must make a good faith effort to reach agreement on the following matters:

(1A) the formulatingon and simplifyingication of the issues, including the and eliminatingon of frivolous claims or defenses;

(2B) amending the pleadings ifthe necessarity or desirableility of amendments to the pleadings;

(3C) the possibility of obtaining admissions of facts and of documents which will avoid unnecessary proof,and stipulations about facts and documents to avoid unnecessary proof, and ruling regarding the authenticity of documents, andin advance rulings from the court on the admissibility of evidence;

(4D) the avoidingance of unnecessary proof and of cumulative evidence;

(5E) the identifyingication of witnesses and documents;

(6F) the advisability of referring matters to a commissioner magistrate judge or master;

(7G) settlingement of the case or the usinge of alternative dispute resolution procedures to resolve the dispute;

(8H) determining the form and substancecontent of the pretrial order;

(9I) the disposingtion of pending motions;

(10J) the need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems; and

(11K) such facilitating in other matters ways the just, speedy, and inexpensive as may aid in the disposition of the action.

(3) *Exhibits.*

(A) *Documentary Exhibits.* At this meeting, each party shall must provide to all other parties copies of all documentary exhibits which that party may offer at trial; affixed to each exhibit shall must be a numbered exhibit sticker and the exhibits shall must be identified, by exhibit number, on an index provided with the exhibits.

(B) *Non-Documentary Exhibits.* Each party also shall must make all non-documentary exhibits available for examination by other parties at or before this meeting.

(d) THREE WEEKS PRIOR TO PRETRIAL CONFERENCE Two weeks prior to pretrial conference. Threewo weeks before prior to the pretrial conference, each party shall must file with the Ccourt, serve on all other parties, and deliver to the assigned judge in accordance with the provisions of SCR CivilRule 5(e) any motion in limine, motion to bifurcate, or other motion respecting the conduct of the trial, which a party wishes to have the Ccourt consider.

(e) ONE WEEK PRIOR TO PRETRIAL CONFERENCE One week prior to pretrial conference. (1) *Joint Pretrial Statement.* One week prior to the pretrial conference, the parties shall must file with the Ccourt and deliver to the assigned judge in accordance with the provisions of SCR CivilRule 5(e) a joint pretrial statement, which shall must include a certification of the date and place of the meeting held pursuant to paragraph Rule 16(c) of this Rule, shall must be in a form prescribed by the Ccourt, and shall must also include the following items:

(1A) A list of any questions which the parties desire to propound, or have propounded, onproposed voir dire questions;

(2B) A list, by number, of those proposed instructions contained in the Standardized Civil Jury Instructions for the District of Columbia which the parties wish the Court to give;

(3C) The complete text of any proposed jury instruction not found in the Standardized Civil Jury Instructions for the District of Columbia which the parties wish to have given;

(4D) Any proposed verdict form, other that [than] a general verdict, which the parties wish the Court to utilize, including any special interrogatories to be answered by the jury; and

(5E) Any objections and suggestions for alternative language that a party may have to the voir dire questions, jury instructions, or verdict form, or SCR Civ. 16(d) pretrial motions submitted by any other party.

(2) *Objections to Exhibits.* Objections, if any, by a party to the exhibits submitted by any other party also must be made at this time as part of the joint pretrial statement. A party raising an objection to an exhibit of another party shall must attach to the statement of objection a copy of the exhibit to which the objection is made. The Ccourt will not consider any objection or alternative language which that is filed beyond the time frames prescribed by this Rrule unless the party making the objection or

suggestion can establish that the objection or suggestion could not, for reasons beyond that party's control, be timely filed.

(3) *Unlisted Witnesses or Exhibits.* Except for plaintiff's rebuttal case or for impeachment purposes, no party may offer at trial the testimony of any witness not listed in the pretrial statement of the parties, nor any exhibit not served as required by this ~~R~~rule, without leave of court.

(f) PRETRIAL AND SETTLEMENT CONFERENCE~~Pretrial and settlement conference~~.

(1) *Attendance.* The lead counsel who will conduct the trial for each of the represented parties, and, unless excused by the judge for good cause ~~shown~~, all parties ~~shall~~ must attend the pretrial and settlement conference.

(2) *Exhibits.* ~~Such~~ All counsel and unrepresented parties must bring to the conference their trial exhibits, copies of which were served on other parties pursuant to ~~paragraph~~ Rule 16(d) ~~of this Rule~~. If any party proposes to offer more than 15 exhibits at trial, that party's exhibits ~~shall~~ must be arranged as follows:

(~~i~~A) *Nonjury Trials.* In nonjury trials, the original exhibits, with numbered exhibit stickers affixed, ~~shall~~ must be placed in a looseleaf, three-ring notebook with tabbed divider pages. At the front of the notebook ~~shall~~ must be an Exhibit Summary Form (copies of which are available in the ~~C~~clerk's ~~O~~office) describing each exhibit by number.

(~~ii~~B) *Jury Trials.* In jury trials, the notebook ~~shall~~ must contain copies of all the exhibits; the original exhibits, with stickers affixed, ~~shall~~ must be placed in a folder, in numerical order, along with the original Exhibit Summary Form.

(3) *Conference Details.* The conference will generally be held by the judge who will preside at trial and will not be recorded unless the judge orders ~~that the conference be recorded in chambers or conducted and recorded in open court~~otherwise. If settlement of the case cannot be achieved within a reasonable time, the judge will discuss with those attending the conference the pretrial filings of the parties ~~and such of the matters set forth in paragraph (c) hereof~~ as may be pertinent and will set a trial date for the case.

(g) PRETRIAL ORDER~~Pretrial order~~. (1) *Content of the Order.* After the pretrial conference, the court must issue an order ~~shall be entered~~ reciting the action taken. Insofar as possible, the ~~C~~court will resolve all pending disputes in the pretrial order. With respect to some matters, it may be necessary to reserve ruling until the time of trial or to require additional briefing by the parties prior to trial. Exhibits, the authenticity of which is not genuinely in dispute, will be deemed authentic and the offering party will not be required to authenticate these exhibits at trial. The pretrial order may set limits with respect to the time for voir dire, opening statement, examination of witnesses, and closing argument and may also limit the number of lay and expert witnesses who can be called by each party. The pretrial order ~~shall~~ control~~s~~ the ~~further~~ course of the action unless the court modifie~~s it~~ ~~d by a subsequent order~~.

(2) *Modification.* The pretrial order may be modified at the discretion of the ~~C~~court for good cause ~~shown~~ and ~~shall~~must be modified if necessary to prevent manifest injustice.

(h) COMMENCEMENT OF TRIAL~~Establishment of trial dates~~. On any date for which the case has been set for trial, the parties and their counsel must be prepared to commence the trial on that date or on any of the two succeeding court days in the event

that their case must trail ~~completion of the preceeding [preceding]~~another trial on the judge's calendar.

(i) OTHER SCHEDULING OR STATUS CONFERENCES~~Other scheduling or status conferences~~. In addition to the initial scheduling and settlement conference and the pretrial and settlement conference, the ~~C~~court may in its discretion order the attorneys for the parties and any unrepresented parties to appear before it for other conferences for such purposes as:

(1) ~~E~~expediting the disposition of the action;

(2) ~~E~~establishing continuing control so that the case will not be protracted because of lack of management;

(3) ~~d~~Discouraging wasteful pretrial activities;

(4) ~~I~~improving the quality of the trial through more thorough preparation;

(5) ~~F~~facilitating the settlement of the case; and

(6) ~~A~~addressing any other matters appropriate in the circumstances of the case.

(j) AUTHORITY OF COUNSEL; ATTENDANCE OF PARTIES, PRINCIPALS, AND PERSONS WITH SETTLEMENT AUTHORITY~~Authority of counsel; attendance of parties and principals~~. At least one of the attorneys for each party participating in any conference before trial, or in the meeting described in ~~paragraph~~ Rule 16(c) ~~hereof~~, must have authority to enter into stipulations, to make admissions regarding all matters that the participants may reasonably anticipate may be discussed, and to participate fully in all settlement discussions. Unless excused by the judge for good cause ~~shown~~, all parties and any person not a party whose authority may be needed to settle the case must attend any pretrial conference conducted pursuant to ~~paragraph~~ Rule 16(f) ~~of this Rule~~ and any alternative dispute resolution session ordered by the ~~C~~court.

(k) CONTINUANCES~~Continuances~~. (1) *By Court Order*. No conference provided for in this ~~R~~rule ~~shall~~ may be continued except by order of the judge ~~up~~on a showing of specific and sufficient reasons why the applicant cannot attend the conference as scheduled or will not be able by the scheduled date to report to the ~~C~~court the information required by this ~~R~~rule.

(2) *Timing of Application*. Except for applications based on circumstances arising later, application for ~~such~~ a continuance must be made to the judge not less than 30 days before the conference sought to be continued.

(3) *When Effective*. Until an order granting a continuance is docketed, the case ~~shall~~ will remain set for conference on the original date.

(l) SANCTIONS~~anctions~~. (1) *In General*. On motion or on its own, the court may issue any just orders, including those authorized by Rule 37(b)(2)(A)(ii)-(vii), i~~I~~f a party or a party's attorney:

(A) ~~fails to obey a scheduling or pretrial order, or~~ fails to appear at a scheduling or pretrial conference;

(B) ~~, or~~ is substantially unprepared to participate~~, in the conference,~~ or does not~~fails to~~ participate in good faith~~ in the conference;~~ or

(C) fails to obey a scheduling or other pretrial order ~~has otherwise not complied with the requirements of this Rule, the Court, upon motion or its own initiative, may make such orders with regard thereto as are just, including any of the orders provided in Rule 37(b)(2)(B), (C), and (D)~~.

(2) *Imposing Fees and Costs*. Instead ~~lieu~~ of or in addition to any other sanction, the court ~~shall require~~must order the party, ~~or the~~ its attorney ~~representing the party~~, or both, to pay the reasonable expenses~~,~~ including attorney's~~'~~ fees~~,~~ incurred because of any noncompliance with this ~~R~~rule unless the ~~Court finds that the~~ noncompliance was substantially justified or ~~that~~ other circumstances make an award of expenses unjust.

COMMENT TO THE 2010 AMENDMENT

This rule differs substantially from *Federal Rule of Civil Procedure 16*, and ~~has been substantially revised to~~ reflects ~~several new~~ procedures instituted by the Superior Court to reduce delay in civil litigation.

~~Thus,~~ Section (b) requires that all unrepresented parties and counsel must attend a conference early in the case at which the judge will explore the possibilities of settlement or alternative dispute resolution and will then establish a firm schedule for completion of the litigation. The scheduling order thus set may be modified with court approval and for good cause ~~shown~~ or the parties may, under certain circumstances, agree to a modification in the order without first obtaining approval from the ~~C~~court.

Section (c) provides for a meeting ~~three~~ four weeks before the pretrial conference at which counsel and any unrepresented parties ~~shall~~ must endeavor to settle the case and to simplify and shorten the trial. The meeting may be held at any location agreed to by the participants; failing agreement, it will be held in the judge's courtroom or another location designated by the judge~~at the Courthouse~~. This ~~S~~section also provides for the exchange of exhibits.

Section (d) provides that pretrial motions will be made ~~two~~ three weeks before the pretrial conference, and ~~S~~section (e) requires that pretrial statements, suggested voir dire questions, suggested jury instructions and a suggested verdict form be submitted jointly along with responses to these suggestions and to the exhibits one week before pretrial. Note that ~~s~~Section (a) permits the court to exempt appropriate cases, such as pro se prisoner cases, from any or all of the provisions contained in this rule.

Sub~~The last paragraph of S~~section (e)(3) provides that, except by leave of court, the only witnesses allowed to testify at a trial whose names were not listed in the pretrial statement of the parties will be those called as rebuttal or impeachment witnesses. See *R. & G. Orthopedic Appliances and Prosthetics, Inc. v. Curtin*, 596 A.2d 530 (D.C. 1991), and *Cooper v. Safeway Stores*, Inc., 629 A.2d 31~~,~~ (D.C. 1993).

Section (f) governs the conduct of the pretrial and settlement conference.

This ~~R~~rule does not preclude the judge to whom a case is assigned from modifying particular requirements of ~~S~~sections (d), (e) and (f), either by a standing order made available at the Initial Scheduling and Settlement Conference or otherwise as the judge finds appropriate and efficient in any particular case.

Section (g) ~~provides~~retains the requirement for the entry of a pretrial order which ~~shall~~ controls the subsequent course of the action.

Section (h) provides that parties and counsel must be prepared to commence trial on any trial date set by the ~~C~~court or on any of the two succeeding court days if the case must "trail" completion of an earlier trial. If a case is thus trailed, the ~~C~~court will generally permit greater flexibility in the order in which witnesses may be called in each party's case in order to accommodate any rescheduling of witnesses ~~which~~that may be necessary.

Section (i), like *Federal Rule of Civil Procedure 16(b)*, provides that the ~~C~~court may schedule other conferences beyond those called for by ~~S~~sections (b) and (f). It is expected that ~~such~~ additional conferences will generally be reserved for more complex cases.

Section (j) requires that, at any conference prior to trial, counsel must have authority to participate fully in discussion of settlement and other matters. Unless excused by the judge for good cause, ~~P~~parties and any person whose authority may be needed to settle the case must attend any pretrial and settlement conference and any alternative dispute resolution session ~~unless excused by the Court, and any person who must authorize settlement shall either attend such conference or session or be available by telephone~~.

Section (k) establishes a strict continuance policy and provides that, except for circumstances arising ~~thereafter~~later, any application for continuance of a conference must be made at least 30 days before the scheduled conference and must set forth specific and sufficient reasons why the applicant cannot attend the conference or cannot provide the information required by the ~~R~~rule by the date of the conference. ~~If the judge grants the application, the applicant shall secure a new date from the Clerk's Office but the case will remain set on the original conference date until the applicant advises the Clerk that the new date is acceptable to all parties and the Clerk enters the new date on the docket.~~

Section (l), providing for sanctions, is identical to *Federal Rule of Civil Procedure 16(f)*.

# SCR CIVIL 26

Duty to Disclose; General ~~p~~Provisions ~~g~~Governing ~~d~~Discovery~~.~~

(a) REQUIRED DISCLOSURES~~Discovery methods~~.

(1) [Omitted].

(2) *Disclosure of Expert Testimony*.

(A) *In General*. A party must disclose to the other parties the identity of any witness it may use at trial to present expert testimony.

~~Parties may obtain discovery by 1 or more of the following methods: Depositions upon oral examination or written questions; written interrogatories; production of documents 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) *Written Report*. Unless otherwise stipulated or ordered by the court, this disclosure must be accompanied by a written report if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. The report must contain:

(i) a complete statement of all opinions the witness will express and the basis and reasons for them;

(ii) the data or other information considered by the witness in forming them;

(iii) any exhibits that will be used to summarize or support them;

(iv) the witness's qualifications, including a list of all publications authored in the previous 10 years;

(v) a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition;

(vi) a statement of the compensation to be paid for the study and testimony in the case; and

(vii) the following certification, signed by the witness: "I hereby certify that this report is a complete and accurate statement of all of my opinions, and the basis and reasons for them, to which I will testify under oath."

(C) *Time to Disclose Expert Testimony*. A party must make these disclosures at the times and in the sequence set forth in the scheduling order issued pursuant to Rule 16(b)(5)(C) and (D).

(D) *Supplementing the Disclosure*. The parties must supplement these disclosures when required under Rule 26(e).

(3) [Omitted].

(4) *Form of Disclosures*. Unless the court orders otherwise, all disclosures under Rule 26(a) must be in writing, signed, and served.

(b) DISCOVERY SCOPE AND LIMITS~~iscovery scope and limits~~. (1) *Scope in General*. Unless otherwise limited by court 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 nonprivileged matter~~, not privileged,~~ that is relevant to any party's~~the~~ claim or defense~~ of any party,~~ including the existence, description, nature, custody, condition, and location of any~~ books,~~ documents, electronically stored information, or other tangible things and the identity and location of persons ~~having~~ who know~~ledge~~ of any discoverable matter. For good cause, the ~~C~~court may order discovery of any matter

relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 26(b)(2)(C).

(2) *Limitations on Frequency and Extent*.

(A) *When Permitted*. By order, the ~~C~~court may alter the limits in these rules on the number of depositions and interrogatories or length of depositions under Rule 30. By order, the ~~C~~court may also limit the number of requests under Rule 36.

(B) *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 26(b)(2)(C). The court may specify conditions for the discovery.

(C) *When Required*. On motion or on its own, the court must limit ~~T~~the frequency or extent of ~~use of the~~ discovery ~~methods set forth in paragraph (a) shall be limited by the Court~~otherwise allowed by these rules if it determines that:

(i) ~~T~~the discovery sought is unreasonably cumulative or duplicative, or can be~~is~~ obtain~~ed~~~~able~~ from some other source that is more convenient, less burdensome, or less expensive;

(ii) the party seeking discovery has had ample opportunity ~~by discovery in the action~~ to obtain the information ~~sought~~ by discovery in the action; or

(iii) the ~~discovery is unduly~~ burden~~some~~ or expens~~iv~~e of the proposed discovery outweighs its likely benefit, ~~taking into account~~considering the needs of the case, the amount in controversy, ~~limitations on~~ the parties' resources, ~~and~~ the importance of the issues at stake in the ~~litigation~~action, and the importance of the discovery in resolving the issues. ~~The Court may act upon its own initiative or pursuant to a motion under paragraph (c).~~

~~(2) Insurance agreements.~~

~~A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which 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 paragraph, an application for insurance shall not be treated as part of an insurance agreement.~~

(3) *Trial ~~p~~Preparation: Materials*.

(A) *Documents and Tangible Things*. Ordinarily~~Subject to the provisions of subdivision (b)(4) of this Rule~~, a party may not~~obtain~~ discover~~y of~~ documents and tangible things ~~otherwise discoverable under subdivision (b)(1) of this Rule and~~ that are prepared in anticipation of litigation or for trial by or for another party or ~~by or for that other party's~~its representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent). But, subject to Rule 26(b)(5), those materials may be discovered if:

(i) they are otherwise discoverable under Rule 26(b)(1); and

(ii) ~~only upon a showing that~~ the party ~~seeking discovery~~shows that it has substantial need ~~for~~of the materials ~~in the~~to prepar~~e~~eation ~~of the party's~~its case and ~~that the party is unable~~cannot, without undue hardship, ~~to~~ obtain the~~ir~~ substantial equivalent ~~of the materials~~ by other means.

(B) *Protection Against Disclosure.* I~~f~~n the court order~~s~~ing discovery of ~~such~~ those materials, ~~when the required showing has been made, the Court shall~~it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a~~n~~ party's attorney or other representative ~~of a party~~ concerning the litigation.

(C) *Previous Statement*. Any party or other person may ~~obtain~~, on request and without the required showing, obtain the person's own previous ~~a~~ statement ~~concerning~~ about the action or its subject matter ~~previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person~~. If the request is refused, the person may move for a ~~C~~court order, and~~. The provisions of~~ Rule 37(a)(~~4~~5) appl~~y~~ies to the award of expenses ~~incurred in relation to the motion~~. ~~For purposes of this paragraph, a~~A previous statement ~~previously made~~ is either

(~~A~~i) a written statement that the person has signed or otherwise adopted or approved ~~by the person making it,~~; or

(~~B~~ii) a contemporaneous stenographic, mechanical, electrical, or other recording~~,~~ or a transcription ~~there~~of it, ~~which is a substantially verbatim~~ that recit~~e~~al~~s~~ substantially verbatim ~~of an oral statement by~~ the person's oral statement~~making it and contemporaneously recorded~~.

(4) *Trial ~~p~~Preparation~~s~~: Experts*.

(A) *Expert Who May Testify*. A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If Rule 26(a)(2) requires a report from an expert, the deposition may be conducted only after the report is provided.

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

~~(A)(i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. (ii) Upon motion, the Court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision (b)(4)(C) of this Rule, concerning fees and expenses as the Court may deem appropriate.~~

(B) *Expert Employed Only for Trial Preparation*. Ordinarily, a ~~A~~ party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepar~~e~~ation for trial and who is not expected to be called as a witness at trial. But a party may do so~~,~~ only:

(i) as provided in Rule 35(b); or

(ii) upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) *Payment*. Unless manifest injustice would result, (i) the Ccourt shall must require that the party seeking discovery:

(i) pay the expert a reasonable fee for time spent in responding to discovery under Rule subdivisions 26(b)(4)(A)(ii) or and (b)(4)(B) of this Rule; and

(ii) with respect to discovery obtained under subdivision (b)(4)(A) (ii) of this Rule the Court may require, and with respect tofor discovery obtained under subdivision (b)(4)(B), also of this Rule the Court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses it reasonably incurred by the latter party in obtaining the expert's facts and opinions from the expert.

(5) *Claiming Privilege or Protecting Trial-Preparation Materials*.

(A) *Information Withheld*. When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must:

(i) expressly make the claim; and

(ii) describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

(B) *Information Produced*. 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.

(6) *Insurance Agreements*. A party may obtain for inspection and copying any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(c) PROTECTIVE ORDERSrotective orders. (1) *In General*. Upon motion by aA party or by theany person from whom discovery is sought may move for a protective order in , and for good cause shown, this Ccourt — or as an alternatively, on matters relating to a deposition, in the Ccourt in the districtfor the jurisdiction where the deposition is towill be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including 1one or more of the following:

(1A) forbidding the disclosure or That the discovery not be had;

(B2) that the discovery may be had only on specifyingied terms and conditions, including a designation of the time or place, for the disclosure or discovery;

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

(4D) that forbidding inquiry into certain matters not be inquired into, or thatlimiting the scope of the disclosure or discovery be limited to certain matters;

(5E) designating the persons who may bethat discovery be conducted with no one present except persons designated by the Court while the discovery is conducted;

(6F) requiring that a deposition after being sealed andbe opened only by court order of the Court;

(G7) requiring that a trade secret or other confidential research, development, or commercial information not be disclosed revealed or be disclosed revealed only in a designated specified way; and

(H8) requiring that the parties simultaneously file specified documents or information enclosed in sealed envelopes, to be opened as the court directsed by the Court.

(2) *Ordering Discovery.* If thea motion for a protective order is wholly or partly denied in whole or in part, the Ccourt may, on suchjust terms and conditions as are just, order that any party or person provide or permit discovery.

(3) *Awarding Expenses.* The provisions of Rule 37(a)(45) appliesy to the award of expenses incurred in relation to the motion.

(d) TIMING AND SEQUENCE OF DISCOVERYSequence and timing of discovery. (1) *Timing.* Unless 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. Time limitations for completion of discovery will be set by Ccourt order. The Ccourt may order an enlargement of the time limitations for the completion of discovery contained herein, pursuant to paragraph Rule 16(b)(5)(eE) and (F) of this Rule.

(2) *Sequence*. Unless, on motion, the court orders otherwise for the parties' and witnesses' convenience and in the interests of justice:

(A) methods of discovery may be used in any sequence; and

(B) discovery by one party does not require any other party to delay its discovery.

(e) Motion to enlarge time for discovery.

Upon reasonable notice to all other parties, a party may apply for an order enlarging time for discovery where:

(1) Good cause is shown to exist for granting additional time for discovery; and

(2) The moving party accompanies the motion with a detailed discovery plan which lists the specific methods of discovery to be conducted, the persons and materials to be examined and the date within which all further discovery shall be completed.

(fe) SUPPLEMENTING DISCLOSURES AND RESPONSESupplementation of responses. (1) *In General.* A party who has made an expert disclosure under Rule 26(a) —or who has responded to an interrogatory, request for production, or request for admission—must discovery with a response that was complete when made is under no duty to supplement or correct its disclosure or responsethe response to include information thereafter acquired, except as follows:

(1A) in a timely manner if the party learns in some material respect the disclosure or response is 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; or

(B) as ordered by the court.

(2) *Expert Witness*. For an expert whose report must be disclosed under Rule 26(a)(2), the~~A~~ party's ~~is under a~~ duty ~~seasonably~~ to supplement extends both to information included in the report and to information given during the expert's deposition. Any additions or changes to this information must be disclosed by the time the party's pretrial disclosures under Rule 16(c) are due~~the response with respect to any question directly addressed to (A) the identity and location of persons having knowledge of discoverable matter, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which the person is expected to testify, and the substance of the person's testimony~~.

(f) [Omitted].

~~(2) A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which (A) the party knows that the response was incorrect when made, or (B) the party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.~~

~~(3) A duty to supplement responses may be imposed by order of the Court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.~~

~~(g) Discovery conference.~~

~~At any time after commencement of an action the Court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery. The Court may do so upon motion by the attorney for any party if the mo-tion includes:~~

~~(1) A statement of the issues as they then appear;~~

~~(2) A proposed plan and schedule of discovery;~~

~~(3) Any limitations proposed to be placed on discovery;~~

~~(4) Any other proposed orders with respect to discovery; and~~

~~(5) A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion. Each party and each party's attorney are under a duty to par-ticipate in good faith in the framing of a discovery plan if a plan is proposed by the attorney for any party. Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served not later than 10 days after service of the motion.~~

~~The Court may enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on discovery, if any; and determining such other matters, including the allo-cation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires.~~

~~The Court may combine the discovery conference with the scheduling conference or the pretrial conference author-ized by Rule 16.~~

(~~h~~g) SIGNING DISCOVERY REQUESTS, RESPONSES, AND OBJECTIONS~~igning of discovery requests, responses, and objections~~. (1) *Signature Required, Effect of Signature*. Every discovery request ~~for discovery or~~, response, or objection ~~thereto shall~~must be signed by at least ~~1~~one attorney of record in the attorney's ~~individual~~ own

name—or by the party personally, if unrepresented—and must state the signer's, whose address, e-mail address, and telephone number shall be stated. A party who is not represented by an attorney shall sign the request, response or objection and state his or her address. ByThe signingature, of thean attorney or party constitutes a certifiescation that the signer has read the request, response, or objection, and that to the best of the signer's person's knowledge, information, and belief formed after a reasonable inquiry, the discovery request, response, or objection it is:

(1A) Cconsistent with these Rrules and warranted by existing law or a good faithnonfrivolous argument for the extendingsion, modifyingication, or reversingal of existing law, or for establishing new law;

(2B) not interposed for any improper purpose, such as to harass, or to cause unnecessary delay, or needlessly increase in the cost of litigation; and

(3C) neitherot unreasonable nor unduly burdensome or expensive, given considering the needs of the case, the prior discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigationaction.

(2) *Failure to Sign.* Other parties have no duty to act on an unsignedIf a request, response, or objection is not signed, until it shall be stricken unless it is signed, and the court must strike it unless a signature is promptly supplied after the omission is called to the attorney's or party's attention of the party making the request, response or objection and a party shall not be obligated to take any action with respect to it until it is signed.

(3) *Sanction for Improper Certification.* If a certification is made in violatesion of this Rrule without substantial justification, the Ccourt, upon motion or upon its own initiative, shall must impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both. The sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fees, caused by the violation.

(hi) MEETING TO RESOLVE DISCOVERY DISPUTESMeeting to resolve discovery disputes. (1) *In General.* Before filing any motion relating to discovery except a motion pursuant to Rule 37(b) for sanctions for failure to comply with a court order, the affected parties or counsel must meet for a reasonable period of time in an effort to resolve the disputed matter. Any motion relating to discovery, except a motion pursuant to Rule 37(b), must contain, immediately below the signature of the attorney or party signing the motion, a certification that despite a good faith effort to secure it, the relief sought in the motion has not been provided. The certification shall must set forth specific facts describing the good faith efforts, including a statement of the date, time, and place of the meeting required by this Rrule.

(2) *Waiver.* The requirement of a meeting is waived if:

(1A) the motion concerns a failure to serve any response whatever to a Rule 33, 34 or 36 discovery request or a failure to appear for a deposition or a Rule 35 examination and the motion is accompanied by a copy of a letter, sent at least 10 days before the motion was filed, asking that the opposing counsel or party respond to the discovery request or that the deponent or examinee appear for a rescheduled deposition or examination; or

(2B) the movant certifies that, despite having sent to the opposing counsel or party, at least 10 days before the motion was filed, a letter (a copy of which shall must be

attached to the motion) proposing a time and place for such a meeting, and despite having made two telephone calls to the office of the opposing counsel or party (the date and time of which calls ~~shall~~ must be specified in the motion), the movant has been unable to convene a meeting to resolve the disputed discovery matter.

COMMENT TO THE 2010 AMENDMENT

Subsection (a)(1). *Federal Rule of Civil Procedure 26(a)(1)* is inconsistent with Superior Court practice, and would ultimately slow down the process of discovery. The Superior Court rules allow parties to begin discovery at the filing of the complaint; this process gives parties greater options for early discovery than those available under the Federal Rules.

Subsection (a)(2) is new. It requires a written report from an expert; however, it clarifies the federal rule in accordance with the Federal Advisory Committee Notes and case decisions, which explain that legal counsel are not prohibited from being substantively involved with the preparation of the expert's written report so long as the substance and conclusions are the expert's own.

Subsection (a)(3). As it relates to pretrial disclosures, *Federal Rule of Civil Procedure 26(a)(3)* is incorporated in the pretrial statement required under Rule 16.

Subsection (b). The Advisory Committee Notes to the *Federal Rules of Civil Procedure* contain a lengthy discussion of the 2006 amendments to the federal rule addressing the discovery of electronically-stored information. Because these 2010 amendments to the Superior Court Rules closely follow the 2006 *Federal Rules of Civil Procedure* amendments, parties and counsel should refer to the *Federal Rules of Civil Procedure* Advisory Committee Notes for guidance. In particular, the *Federal Rules of Civil Procedure* Advisory Committee Notes to Rule 26(b) address the potential for cost-shifting in the context of discovery and state as follows:

> The good-cause inquiry and consideration of the Rule 26(b)(2)(C) limitations are coupled with the authority to set conditions for discovery. The conditions may take the form of limits on the amount, type, or sources of information required to be accessed and produced. The conditions may also include payment by the requesting party of part or all of the reasonable costs of obtaining information from sources that are not reasonably accessible. A requesting party's willingness to share or bear the access costs may be weighed by the court in determining whether there is good cause. But the producing party's burdens in reviewing the information for relevance and privilege may weigh against permitting the requested discovery.

~~SCR Civil 26 modifies *Federal Rule of Civil Procedure 26* in several respects.~~

~~Paragraph (c) has been modified to reflect applicability only to cases pending in this Court.~~

~~Under paragraph (d) the time limitations for completion of discovery will be set by Court order.~~

~~Paragraph (e) has been added to permit a party to move to enlarge the time period for the completion of discovery. The Court will not be receptive to such motions unless they are made at the earliest practicable time.~~

~~Because of the addition of paragraph (e) former paragraph (e) has been redesignated as paragraph (f).~~

~~Paragraph (g) has been changed to give the Court discretion as to whether a discovery conference should be held, when it should be held, and if an order should be issued prescribing how discovery should proceed in a particular case.~~

~~Added to SCR Civ. 26 is paragraph (i) which makes it mandatory that the parties or counsel meet to resolve issues related to discovery before a motion concerning such matters (e.g., motion for protective order, motion for medical ex-amination, motion to regulate discovery, motion to set deposition fee of expert witness, etc.) is filed. Exceptions are made in certain specified circumstances. Note that under SCR Civ. 37(a) a meeting is required before a motion to com-pel discovery is filed and that the same exceptions listed under paragraph (i) also appear under that Rule.~~

# SCR CIVIL 33

Interrogatories to ~~p~~Parties~~.~~

(a) IN GENERAL~~Availability; procedures for use; limitation on number served~~. (1) *Number*. Unless otherwise stipulated or ordered by the court, ~~Any~~a party may serve ~~up~~on any other party no more than 40 written interrogatories, including all discrete subparts ~~to be answered by the party served or, if the party served is a public or private corporation or partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party~~. Leave to serve additional interrogatories may be granted to the extent consistent with Rule 26(b)(2).

~~Interrogatories may, without leave of Court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and the complaint upon that party.~~

~~No party shall serve upon another party, at 1 time or cumulatively, more than 40 written interrogatories, including parts and subparts, unless otherwise ordered by the Court upon motion for good cause shown or upon its own motion, or unless the parties have agreed between themselves to a greater number.~~

(2) *Scope*. An interrogatory may relate to any matter that may be inquired into under Rule 26(b). An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact, but the court may order that the interrogatory need not be answered until designated discovery is complete, or until a pretrial conference or some other time.

(3) *Electronic Format*. A party, represented by counsel, serving interrogatories must, upon request of any other party, promptly transmit to such other party an electronic version of the interrogatories in a format that will enable the receiving party to copy the language of the interrogatories electronically. A self-represented party may participate in electronic discovery pursuant to this rule, provided that the party files a completed Civil Action Form 115, which includes the party's email address and confirms the party's capacity to file documents and receive the filings of other parties electronically and on a regular basis.

(b) ANSWERS AND OBJECTIONS. (1) *Responding Party*. The interrogatories must be answered:

(A) by the party to whom they are directed; or

(B) if that party is a public or private corporation, a partnership, an association, or a governmental agency, by any officer or agent, who must furnish the information available to the party

(2) *Time to Respond*.

~~In answering interrogatories, the responding party shall in writing:~~

~~(1) Copy seriatim each interrogatory;~~

~~(2) Immediately following each interrogatory, give the answer thereto fully or, if objected to, the grounds therefor.~~

~~(b) Answers and objections.~~

~~(1) Each interrogatory shall be answered separately and fully in writing, under oath, unless it is objected to, in which event the objecting party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable.~~

~~(2) The answers are to be signed by the person making them, and the objections signed by the attorney making them.~~

~~(3)~~ The responding party ~~upon whom the interrogatories have been served shall~~must serve ~~a copy of the~~its answers~~,~~ and any objections ~~if any,~~ within 30 days after being~~the~~ serve~~d~~ice with ~~of~~ the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint upon that defendant or within 75 days after service of the summons and complaint upon the District of Columbia or its officer or agency or the United States or its officer or agency. A shorter or longer time may be stipulated to under Rule 29 or be ordered~~directed~~ by the ~~C~~court ~~or, in the absence of such an order, agreed to in writing by the parties subject to Rule 29~~.

(3) *Answering Each Interrogatory*. Each interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath. Answers and objections to interrogatories must identify and quote each interrogatory in full immediately preceding the answer or objection.

(4) *Objections*. ~~All~~ The grounds for ~~an~~ objecting~~on~~ to an interrogatory ~~shall~~ must be stated with specificity. Any ground not stated in a timely objection is waived unless the ~~party's failure to object is excused by the C~~court, for good cause ~~shown~~, excuses the failure.

(5) *Signature*. The person who makes the answers must sign them, and the attorney who objects must sign any objections~~party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer in an interrogatory~~.

(c) ~~Scope; use at trial~~USE. ~~Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and~~An ~~the~~ answer~~s~~ to an interrogatory may be used to the extent ~~permitted~~ allowed by the ~~rules~~ law of evidence.

~~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 pre-trial conference or other later time.~~

(d) O~~ption to produce business records~~PTION TO PRODUCE BUSINESS RECORDS. ~~Where~~If the answer to an interrogatory may be de~~rived or ascertained from the~~termined by examining, auditing, compiling, abstracting, or summarizing a party's business records (including electronically stored information) ~~of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, including a compilation, abstract or summary thereof~~, and if the burden of deriving or ascertaining the answer is substantially the same for ~~the~~ either party, the responding party may answer by:

(1) ~~serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to~~ specifying the records that must be reviewed, ~~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. A specification shall be~~ in sufficient detail to ~~permit~~ enable the interrogating party to locate and ~~to~~ identify them~~,~~ as readily as ~~can the~~

party served, the records from which the answer may be ascertainedthe responding party could; and

(2) giving the interrogating party a reasonable opportunity to examine and audit the records and to make copies, compilations, abstracts, or summaries.

(e) FILINGiling. Except as provided for in Rule 5(d), interrogatories, and answers, and any objections must responses thereto shall not be filed with the Ccourt.

COMMENT TO THE 2010 AMENDMENT

Similar This rule is identical to *Federal Rule of Civil Procedure 33*, as amended in 2007, with certain exceptions. The rule retains four provisions of the existing rule that differ from the federal rule: (1) except that Federal Rule 33 limits the number of interrogatories to 25, whereas the above paragraphthe provision in subsection (a)(1) that allows limits parties to 40 interrogatories rather than 25, given that Rule 26 does not require the initial disclosures contemplated by *Federal Rule of Civil Procedure 26*;, (2) the requirement of subsection (b)(3) that a party quote and there is no cross-reference in paragraph (a) to Rule 26(d), since the changes in that Rule have not been adopted herein. Subparagraph (a)(2) adds a requirement that a party answering interrogatories shall copy each interrogatory in full beforeand set forth his answering or grounds for objectingon to it immediately thereafter. Additionally,; (3) the substitution of "law of evidence" for "rules of evidence" in section (c), because evidence in the District of Columbia is governed by statute and common law principles rather than rules comparable to the Federal Rules of Evidence; and (4) the requirement in section (e) that parties not file interrogatories, answers, and any objections with the court unless so ordered.

The rule adds a new subsection (a)(3), requiring represented parties, and self-represented parties electing to participate in electronic discovery to, upon request, transmit electronic copies of interrogatories to another party, facilitating compliance with subsection (b)(3). The additional language in subsection (b)(3) comes from Local Rule 26.2(d) of the United States District Court for the District of Columbia.subparagraph (b)(3) provides additional time for the service of answers or objections when the defendant is the District of Columbia or the United States. Paragraph (e) indicates that interrogatories and the responses thereto shall not be filed unless relevant to a motion or opposition or authorized to be filed by order of the Court.

A list of model interrogatories appears in the Appendix to these Civil Rules.

# SCR CIVIL 34

Producingtion of dDocuments, and Electronically Stored Information, and Tangible tThings, andor eEnteringry upon onto lL and, for iInspection and oOther pPurposes.

(a) IN GENERALScope. Any party may serve on any other party a request within the scope of Rule 26(b):

(1) to produce and permit the requesting party making the request, or someone acting on the requestor's behalfits representative, to inspect, and 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, phono-sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained either directly or, translated, if necessary, after translation by the responding partyent through detection devices into a reasonably usable form),; or

(B) to inspect and copy, test, or sample any designated tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or

(2) to permit entry upon onto designated land or other property in the possessedion or controlled by the responding of the party, so that upon whom the requesting party may is served for the purpose of inspection, and measureing, surveying, photographing, testing, or sampleing the property or any designated object or operation thereon it, within the scope of Rule 26(b).

(b) PROCEDURErocedure. (1) *Contents of the Request*. The request:

(A) may, without leave of Court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth, either by individualmust describe with reasonable particularity each item or by category, the of items to be inspected;,

(B) and describe each item and category with reasonable particularity. The request shallmust specify a reasonable time, place, and manner forof making the inspection and performing the related acts; and.

(C) may specify the form or forms in which electronically stored information is to be produced.

(2) *Responses and Objections*.

(A) *Time to Respond*. The party upon to whom the request is served directed shall must respond in writingserve a written response within 30 days after beingthe servedice of the request, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant or within 75 days after service of the summons and complaint upon the District of Columbia or its officer or agency or the United States or its officer or agency. A shorter or longer time may be directed stipulated to under Rule 29 or be ordered by the Ccourt or, in the absence of such an order, agreed to in writing by the parties, subject to Rule 29.

(B) *Responding to Each Item*. For each item or category, Tthe response shall must either state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for or state an objection to the request, including the reasons shall be stated.

(C) *Objections*. ~~If~~ An objection ~~is made~~ to part of a~~n item or category, the part shall~~ request must ~~be~~ specify~~ied~~ the part and ~~inspection~~ permit~~ted~~ inspection of the ~~remaining parts~~rest.

(D) *Responding to a Request for Production of Electronically Stored Information*. The response may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form—or if no form was specified in the request—the party must state the form or forms it intends to use.~~The party submitting the request may move for an order under Civil Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.~~

(E) *Producing the Documents or Electronically Stored Information*. Unless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information:

(i) A party must ~~who~~ produce~~s~~ documents ~~for inspection shall produce them~~ as they are kept in the usual course of business or ~~shall~~ must organize and label them to correspond ~~with~~ to the categories in the request;~~.~~

(ii) If a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and

(iii) A party need not produce the same electronically stored information in more than one form.

(F) *Quoting Each Request in Full*. Responses and objections to requests for production of documents must identify and quote each request in full immediately preceding the response or objection.

(3) *Electronic Format*. A party, represented by counsel, requesting production must, upon request of any other party, promptly transmit to such other party an electronic version of the request in a format that will enable the receiving party to copy the language of the request electronically. A self-represented party may participate in electronic discovery pursuant to this rule, provided that the party files a completed Civil Action Form 115, which includes the party's email address and confirms the party's capacity to file documents and receive the filings of other parties electronically and on a regular basis.

(c) ~~Persons not parties~~NONPARTIES. As provided in Rule 45, ~~A~~a non~~-person not a~~ party ~~to the action~~ may be compelled to produce documents and tangible things or to ~~submit to~~permit an inspection ~~as provided in Rule 45~~.

COMMENT TO THE 2010 AMENDMENT

~~This Rule is substantially i~~Identical to *Federal Rule of Civil Procedure 34*, as amended in 2007, except for: (1) the addition of language in subsection~~that paragraph~~ (b)(2)(A), clarifying the extended ~~grants~~ 75 ~~–~~days response period to requests for ~~to the District of Columbia or~~ the United States, the District of Columbia, or officers or agents of either, and the extended 45-day response period to requests for all other defendants; (2) ~~after service of the summons and complaint upon them, to respond to a request for production of documents, etc., and there is no cross-reference in paragraph (b) to Rule 26(d), since the changes in that Rule have not been adopted herein~~ the addition of subsection (b)(2)(F), which requires that the responses and objections to requests for

production must quote each request in full preceding the response or objection; and (3) the addition of subsection (b)(3), requiring represented parties, and self-represented parties electing to participate in electronic discovery to, upon request, transmit electronic copies of requests to any other party.

The language in subsection (b)(2)(F) comes from Local Rule 26.2(d) of the United States District Court for the District of Columbia.

# SCR CIVIL 36

## Requests for aAdmission.

(a) SCOPE AND PROCEDURERequest for admission. (1) *Scope.* A party may serve upon any other party a written request for theto admitssion, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b)(1) set forth in the request that relateing to:

(A) statements or opinions of facts, or of the application of law to fact, or opinions about either; and

(B)including the genuineness of any described documents described in the request.

(2) *Form; Copy of a Document*. Each matter must be separately stated. A request to admit the genuineness of a document must be accompanied by a Ccopyies of the documents shall be served with the request unless it is orthey hasve been, or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

(3) *Time to Respond; Effect of not Responding*. Each matter of which an admission is requested shall be separately set forth. TheA matter is admitted unless, within 30 days after being servedice , of the request, or within such shorter or longer time as the Court may allow or as the parties may agree to in writing, subject to Rule 29, the party to whom the request is directed serves upon the requesting party requesting the admission a written answer or objection addressed to the matter, and signed by the party or by the party'its attorney., A shorter or longer time for responding may be stipulated to under Rule 29 or be ordered by the court. Howeverbut, unless the Ccourt shortens the time, a defendant shall is not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon that defendant or before the expiration of 75 days after service of the summons and complaint upon the District of Columbia or its officer or agency or the United States or its officer or agency.

(4) *Answer.* If a matter is not admittedobjection is made, the reasons therefor shall be stated. Tthe answer shall must specifically deny the matterit or set forthstate in detail the reasons why the answering party cannot truthfully admit or deny the matterit. A denial shall must fairly meet respond to the substance of the requested admissionmatter, and when good faith requires that a party qualify an answer or deny only a part of the a matter of which an admission is requested, the party shallanswer must specify the part admittedso much of it as is true and qualify or deny the remainderrest. An The answering party may not giveassert lack of information knowledge or knowledge information as a reason for failingure to admit or deny unless only if the party states that the partyit has made reasonable inquiry and that the information it knowsn or can readily obtainable by the party is insufficient to enable the partyit to admit or deny.

(5) *Objections*. The grounds for objecting to a request must be stated. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial maymust not object, solely on theat ground alone, object to the request;

the party that the request presents a genuine issue for trialmay, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why the party cannot admit or deny it.

(6) *Motion Regarding the Sufficiency of an Answer or Objection*.

The requesting party who has requested the admissions may move to determine the sufficiency of the an answers or objections. Unless the Ccourt determines findsthat an objection is justified, it shall must order that an answer be served. On findingIf the Court determines that an answer does not comply with the requirements of this Rrule, it the court may order either that the matter is admitted or that an amended answer be served. The Ccourt may, in lieu of these orders, determine that defer its final decision disposition of the request be made atuntil a pre-trial conference or at a designated specified time prior tobefore trial. The provisions of Rule 37(a)(45) appliesy to thean award of expenses incurred in relation to the motion.

(b) EFFECT OF AN ADMISSION; WITHDRAWING OR AMENDING ITffect of admission. Any matter admitted under this Rrule is conclusively established unless the Ccourt, on motion, permits the admission to be withdrawnal or amendedment of the admission. Subject to the provisions of Rule 16(e), governing amendment of a pre-trial order, the Ccourt may permit withdrawal or amendment if it would promotewhen the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy theif the Ccourt is not persuaded that withdrawal or amendment willit would prejudice theat requesting party in maintaining the action or defendingse the action on the merits. Any admission made by a party under this Rrule is for the purpose of the pending action only and is not an admission for any other purpose and cannot nor may it be used against the party in any other proceeding.

(c) QUOTING EACH REQUEST IN FULL. Answers and objections to requests for admissions must identify and quote each request in full immediately preceding the answer or objection.

(d) ELECTRONIC FORMAT. A party, represented by counsel, serving requests for admission must, upon request of any other party, promptly transmit to the other party an electronic version of the requests for admission in a format that will enable the receiving party to copy the language of the requests for admission electronically. A self-represented party may participate in electronic discovery pursuant to this rule, provided that the party files a completed Civil Action Form 115, which includes the party's email address and confirms the party's capacity to file documents and receive the filings of other parties electronically and on a regular basis.

COMMENT TO THE 2010 AMENDMENT

This Rule is substantially iIdentical to *Federal Rule of Civil Procedure 36*, as amended in 2007, except that paragraph (a) does not cross-reference Rule 26(d), since the changes in that Rule have not been incorporated herein, and grants additional time to the District of Columbia and the United States to serve answers or objections to requests for admissionsfor: (1) the addition of language in subsection (a)(3), clarifying the extended 75-day response period to interrogatories for the United States, the District of Columbia, or officers or agents of either, and the extended 45-day response period to interrogatories for all other defendants; (2) the addition of section (c), which requires that the responses and objections to requests for production must quote each

request in full preceding the response or objection; and (3) the addition of section (d), requiring that represented parties, and self-represented parties electing to participate in electronic discovery, upon request, transmit electronic copies of requests for admission to any other party..

The language in section (c) comes from Local Rule 26.2(d) of the United States District Court for the District of Columbia.

# SCR CIVIL 37

Failure to ~~make or c~~Cooperate in ~~d~~Discovery~~:~~; Sanctions~~.~~

(a) MOTION FOR ORDER COMPELLING DISCOVERY~~otion for order compelling discovery~~. (1) *In General*.

(A) *Certification of Good Faith Effort to Secure Required Discovery*. Before any motion to compel discovery is filed, the affected parties or counsel must meet in person for a reasonable period of time in an effort to resolve the disputed matter. The movant ~~shall~~ must accompany any motion to compel discovery with a certification that despite a good faith effort to secure it, the discovery material sought has not been provided.

(B) *Contents of Certification*. This certification ~~shall~~ must set ~~forth~~ out specific facts describing the good faith effort, including a statement of the date, time and place of the meeting required by ~~this~~ Rule 37(a)(1)(A), and ~~shall~~ must be placed immediately below the signature of the attorney or party signing the motion.

(C) *Requirement of Meeting Waived if No Response Made*. The requirement of a meeting is waived if

(i) the motion concerns a failure to serve any response ~~whatever~~ to a Rule 33, 34 or 36 discovery request, ~~or~~ a failure to appear for a deposition, or a Rule 35 examination, and the motion is accompanied by a copy of a letter, sent at least 10 days before the motion was filed, asking that the opposing counsel or party respond to the discovery request or that the deponent or examinee appear for a rescheduled deposition or examination; or

(ii) the movant certifies that, despite having sent to the opposing counsel or party, at least 10 days before the motion was filed, a letter (a copy of which ~~shall~~ must be attached to the motion) proposing a time and place for ~~such~~ a meeting, and despite having made two telephone calls to the office of the opposing counsel or party (the date and time of ~~which~~ each call~~s~~ ~~shall~~ must be specified in the motion), the movant has been unable to convene a meeting to resolve the disputed discovery matter.

(D) *Format of Motion to Compel.* Any motion to compel discovery must set ~~forth~~ out verbatim the question propounded and the answer given, or a description of the other discovery requested and the response to this request. The motion must also set ~~forth~~ out the reason or reasons the answer or response is inadequate.

(~~1~~2) *Appropriate ~~c~~Court*. An application for an order to a party ~~shall~~ must be made to this ~~C~~court, or, on matters relating to a deposition, to the court in the ~~district~~ jurisdiction where the deposition is being taken. A~~n~~ ~~application~~motion for an order to a ~~person who is not a~~ nonparty ~~shall~~ must be made ~~to~~in the court ~~in the district~~ where discovery is ~~being,~~ or will~~is to~~ be~~,~~ taken.

(~~2~~3) *Specific Motion*s.

(A) [Omitted].

(B) *To Compel a Discovery Response*. A party seeking discovery may move for an order compelling an answer, designation, production, or inspection. This motion may be made if:

(i) ~~If~~ a deponent fails to answer a question ~~propounded or submitted~~ asked under Rule 30 or 31~~;, or~~

(ii) a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a)(4);, or

(iii) a party fails to answer an interrogatory submitted under Rule 33;, or

(iv) if a party, in response to a request for inspection submitted under Rule 34, fails to produce documents, electronically stored information, or tangible things, or fails to respond that inspection will be permitted — as requested — or fails to permit inspection — as requested under Rule 34, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request.

(C) *Related to a Deposition.* When taking an oral deposition on oral examination, the proponent party asking of the a question may complete or adjourn the examination before applying moving for an order.

(34) *Evasive or iIncomplete aAnswer or Rresponse*. For purposes of Rule 37(a)this subdivision, an evasive or incomplete answer or response is tomust be treated as a failure to answer or respond.

(45) *Payment of Expenses; and sanctions Protective Orders*.

(A) *If the Motion Is Granted (or Discovery Is Provided After Filing).* If the motion is granted — or if the requested discovery is provided after the motion was filed, — the Ccourt shallmust, after affording giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, or the party or attorney advising such that conduct, or both of them to pay to the movant'sing party the reasonable expenses incurred in making the motion, including attorney's fees. But, unless the Ccourt must not order this payment if:

(i) the movant filed the motion before attempting in good faith to obtain the discovery without court action;finds that the requirements of subparagraph (a) were not met or

(ii) the opposingtion party's response to the motion or objection was substantially justified;, or

(iii)that other circumstances make an award of expenses unjust.

(B) *If the Motion Is Denied.* If the motion is denied, the Ccourt may enter issue any protective order authorized under Rule 26(c) and shallmust, after affording giving an opportunity to be heard, require the moving party ormovant, the attorney advising filing the motion, or both of them to pay to the party or deponent who opposed the motion theits reasonable expenses incurred in opposing the motion, including attorney's fees., unless But the Ccourt must not order this payment iffinds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

(C) *If the Motion Is Granted in Part and Denied in Part.* If the motion is granted in part and denied in part, the Ccourt may enter issue any protective order authorized under Rule 26(c) and may, after affording giving an opportunity to be heard, apportion the reasonable expenses incurred in relation tofor the motion among the parties and persons in a just manner.

(b) FAILURE TO COMPLY WITH A COURT ORDERailure to comply with order. (1) *Sanctions in the Jurisdiction by court in district wWhere the dDeposition iIs tTaken*.

If the court where the discovery is taken orders a deponent fails to be sworn or to answer a question and the deponent fails to obeyafter being directed to do so by the

~~court in the district in which the deposition is being taken~~, the failure may be ~~considered~~ treated as contempt of ~~that~~ court.

(2) *Sanctions by ~~T~~this Court*.

(A) *For Not Obeying a Discovery Order*. If a party or a~~n~~ party's officer, director, or managing agent ~~of a party~~ or a ~~person~~ witness designated under ~~Civil~~ Rule 30(b)(6) or 31(a)~~(3) to testify on behalf of a party~~ fails to obey an order to provide or permit discovery, including an order ~~made~~ under ~~subparagraph~~ Rule 26(e), ~~(a) of this Rule or Civil Rule~~ 35, or 37(a) ~~if a party fails to obey an order entered under Civil Rule 26(f)~~, the ~~C~~court may ~~make such~~issue further just orders ~~in regard to the failure as are just,~~. They may includ~~e~~eing among ~~others~~ the following:

(~~A~~i) ~~An order~~directing that the matters ~~regarding which~~embraced in the order ~~was made~~ or ~~any~~ other designated facts ~~shall~~ be taken ~~to be~~as established for the purposes of the action, as the prevailing ~~in accordance with the~~party claims ~~of the party obtaining the order~~;

(~~B~~ii) prohibiting ~~An order refusing to allow~~ the disobedient party ~~to~~ from supporting or opposinge designated claims or defenses, or ~~prohibiting that party~~ from introducing designated matters in evidence;

(~~C~~iii) ~~An order~~ striking ~~out~~ pleadings in whole or in parts ~~thereof, or~~;

(iv) staying further proceedings until the order is obeyed;~~,~~

(v) ~~or~~ dismissing the action or proceeding in whole or ~~any~~ in part ~~thereof,~~;

(vi) ~~or~~ rendering a default judgment ~~by default~~ against the disobedient party; or

(~~D~~vii) ~~In lieu of any of the foregoing orders or in addition thereto, an order~~ treating as ~~a~~ contempt of ~~C~~court the failure to obey any order~~s~~ except an order to submit to a physical or mental examination.;

(~~E~~B) *For Not Producing a Person for Examination*. ~~Where~~ If a party ~~has~~ fail~~s~~ed to comply with an order under ~~Civil~~ Rule 35(a), requiring ~~that party~~it to produce another person for examination, the court may issue any of the~~such~~ orders ~~as are~~ listed in ~~paragraph[s]~~ Rule 37(b)(2)(A)(i)–(v)(A), (B), and (C) of this subparagraph, unless the disobedient party ~~failing to comply~~ shows that ~~party is unable to~~it cannot produce ~~such~~ the other person ~~for examination~~.

(C) *Payment of Expenses*. In~~stead lieu~~ of or in addition to ~~any of~~ the ~~foregoing~~ orders above ~~or in addition thereto~~, the ~~C~~court ~~shall~~ must order~~require~~ the disobedient party ~~failing to obey the order or~~, the attorney advising that party, or both to pay the reasonable expenses, including attorney's 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.

(c) FAILURE TO ADMIT~~Expenses on failure to admit~~. If a party fails to admit what is ~~the genuineness of any document or the truth of any matter as~~ requested under Rule 36~~,~~ and if the requesting party later~~requesting the admissions thereafter~~ proves ~~the genuineness of the~~ a document to be genuine or the matter true~~th of the matter~~, the requesting party may ~~apply~~ move that ~~to the Court for an order requiring~~ the ~~other~~ party who failed to admit ~~to~~ pay the reasonable expenses, including attorney's fees, incurred in making that proof~~, including reasonable attorney's fees~~. The ~~C~~court ~~shall make the~~must so order unless:

~~it finds that~~ (~~1~~A) the request was held objectionable ~~pursuant to~~under Rule 36(a);~~,~~ ~~or~~

___ (~~2~~B) the admission sought was of no substantial importance~~;~~, ~~or~~
___ (~~3~~C) the party failing to admit had reasonable ground to believe that ~~the party~~it might prevail on the matter~~;~~, or
___ (~~4~~D) there was other good reason for the failure to admit.

(d) PARTY'S FAILURE TO ATTEND ITS OWN DEPOSITION, SERVE ANSWERS TO INTERROGATORIES, OR RESPOND TO A REQUEST FOR INSPECTION~~Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection~~. (1) *In General*.

(A) *Motion; Grounds for Sanctions*. The court may, on motion, order sanctions ~~I~~if:

(i) a party or a~~n~~ party's officer, director, or managing agent~~ of a party~~ or a person designated under Rule 30(b)(6) or 31(a)(3)~~ to testify on behalf of a party~~ fails, after being served with proper notice, ~~(1)~~ to appear ~~before the officer who is to take the~~for that person's deposition~~, after being served with a proper notice,~~; or

(~~2~~ii) a party, after being properly served with interrogatories under Rule 33 or a request for inspection under Rule 34, fails to serve answers ~~or~~, objections ~~to interrogatories submitted under Rule 33, after proper service of the interrogatories~~, or ~~(3) to serve~~ a written response~~. to a request for inspection submitted under Rule 34, after proper service of the request, the Court on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (A), (B), and (C) of subdivision (b)(2) of this Rule. In lieu of any order or in addition thereto, the Court shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney's 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.~~

(B) *Certification*. A motion for sanctions for failing to answer or respond must include a certification that the movant has in good faith conferred or attempted to confer with the party failing to act in an effort to obtain the answer or response without court action.

(2) *Unacceptable Excuses for Failing to Act*. ~~The~~A failure ~~to act~~ described in ~~this subdivision may~~Rule 37(d)(1)(A) is not ~~be~~ excused on the ground that the discovery sought ~~i~~was objectionable, unless the party failing to act has a pending motion for a protective order ~~as provided by~~under Rule 26(c).

(3) *Types of Sanctions*. Sanctions may include any of the orders listed in Rule 37(b)(2)(A)(i)–(vi). Instead of or in addition to these sanctions, the court must require the party failing to act, the attorney advising that party, or both, to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(e) ~~[Vacant]~~FAILURE TO PROVIDE ELECTRONICALLY STORED INFORMATION.~~.~~ Absent exceptional circumstances, a court may not impose sanctions under these 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.

(f) EXPENSES AGAINST UNITED STATES OR DISTRICT OF COLUMBIA~~xpenses against United States or District of Columbia~~. Except to the extent permitted by statute, expenses and fees may not be awarded against the United States or the District of Columbia under this ~~R~~rule.

~~(g) Failure to participate in the framing of a discovery plan.~~

~~If a party or a party's attorney fails to participate in good faith in the framing of a discovery plan by agreement as is required by Civil Rule 26(g), the Court may, after opportunity for hearing, require such party or attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure.~~

COMMENT TO THE 2010 AMENDMENT

~~SCR Civil 37 differs from~~Identical to *Federal Rule of Civil Procedure 37*, as amended in 2007, except for: (1) the deletion of references ~~in several respects. There is no cross-reference in subparagraph (a)(2)~~ to initial disclosures under Rule 26(a) throughout~~, since the changes in that Rule have not been adopted herein.~~; (2) the substitution of District of Columbia specific provisions for subsections (a)(1) and (2) and section (f); (3) the omission of subsection (a)(3)(A); (4) the addition of language referring to the production of documents, electronically stored information, and tangible things in subsection (a)(3)(B)(iv) to eliminate any arguable ambiguity as to the obligation to produce such items; (5) the substitution of District of Columbia specific titles in subsections (b)(1) and (2); and (6)~~–~~ the omission of subsection (c)(1). Section (g) from previous versions of the rule has been deleted.

The words "in person" have been added to subsection (a)(1) to clarify that the required meeting should be in person, which has always been the intention of the rule. As per the General Order, motions to compel discovery and motions relating to discovery must comply with Rules 5, 26(i) and 37(a) and must include the various certifications required by Rule 37(a). The meeting required under the circumstances set forth in Rule 37(a) must be face to face, for a reasonable period of time (usually at least 60 minutes) in an effort to resolve the matter before filing a motion. Motions lacking any certification required by Rule 37(a), including the date, time, and place at which a meeting was held, will be summarily denied**.** Motions lacking a Certificate Regarding Discovery will not be accepted for filing.

~~In addition, paragraph (a) requires that the affected parties or counsel meet in an effort to resolve the disputed matter and that the moving party must certify in writing that a good faith effort has been made to obtain informally the discovery material sought and must certify as to the date, time and place of the meeting held in an effort to resolve the dispute. The requirement of a meeting is waived where the opposing counsel or party makes no response to the discovery request or does not respond to requests to convene a meeting to resolve the disputed discovery matter. This paragraph also requires that the motion to compel specify verbatim the questions asked and answers given, an accurate description of documents or other discovery sought and the responses thereto, and reasons why the answers or responses are not adequate. If the motion to compel concerns a discovery request to which no response has been received, it shall be sufficient to attach the interrogatories or other discovery request to the motion and state that no response thereto has been provided.~~

# SCR CIVIL 45

## Subpoena.

(a) IN GENERAL. (1) *Form; issuance and Contents*.

(1A) *Requirements—In General*. Every subpoena shall must:

(Ai) state the name of the Ccourt; and

(Bii) state the title of the action, and its civil action number, and the individual calendar number, when known, and if assigned to a specific judge or magistrate judge, the name of that judge or magistrate judge; and

(Ciii) command each person to whom it is directed to do the following at a specified time and place within the District of Columbia, unless the parties and person subpoenaed otherwise agree or the court, upon application, fixes another convenient location: attend and give testifymony; or to produce and permit inspection and copying of designated books, documents, electronically stored information, or tangible things in thate person's possession, custody or control of that person,; or to permit the inspection of premises, at a time and place therein specified; and

(Div) set forth out the text of subdivisions Rule 45(c) and (d) of this rule.

(EB) *Command to Attend a Deposition—Notice of the Recording Method*. and where theA subpoena is tocommanding attendance at a deposition, must state the method for recording deposition the testimony.

(C) *Combining or Separating a Command to Produce or to Permit Inspection; Specifying the Form for Electronically Stored Information*. A command to produce evidence documents, electronically stored information, or tangible things or to permit the inspection of premises may be joined included in a subpoenawith a commanding attendance at a to appear at trial or hearing or at deposition, hearing, or trial, or may be issued set out in a separately subpoena. A subpoena may specify the form or forms in which electronically stored information is to be produced.

(2D) *Command to Produce; Included Obligations*. A command in a subpoena to produce documents, electronically stored information, or tangible things requires the responding party to permit inspection, copying, testing, or sampling of the materials.

A subpoena for a deposition, production, or inspection shall specify a place for the deposition, production, or inspection which is within the District of Columbia, unless the parties and person subpoenaed otherwise agree or the Court, upon application, fixes another convenient location.

(2) [Omitted].

(3) *Issued by Whom*. The clerk shall must issue a subpoena, signed but otherwise in blank, to a party who requestsing it. That party must, who shall complete it before service. An attorney as officer of the courtauthorized to practice in the District of Columbia also may also issue and sign a subpoena as an officer of the court.

(b) SERVICEervice. (1) *By Whom; Tendering Fees; Serving a Copy of Certain Subpoenas*. A subpoena may be served by any person who is at least 18 years old and not a party and is not less than 18 years of agemay serve a subpoena. Servingce of a subpoena requires upon a person named therein shall be made by delivering a copy thereof to such the named person and, if the subpoena requires that person's attendance is commanded, by tendering to that person the fees for one day's

attendance and the mileage allowed by law. Fees and mileage need not be tendered ~~Wwhen the subpoena is issued~~ on behalf of the United States or the District of Columbia or any officers or agencies~~y~~ of either ~~thereof, fees and mileage need not be tendered~~. ~~Prior notice of any~~If the subpoena commanded production of documents, electronically stored information, or ~~and~~ tangible things or the inspection of premises before trial, then before it is ~~shall be~~ served, a notice must be served on each party ~~on each party in the manner prescribed by Rule 5(b)~~.

(2) *Service in the District of Columbia.* Subject to ~~the provisions of clause~~Rule 45(c)(3)(A)(ii) ~~of subparagraph (c)(3)(A) of this Rule~~, a subpoena ~~for a hearing or trial~~ may be served at any place:

(A) within the District of Columbia;~~,~~

(B) ~~or at any place without~~outside the District of Columbia ~~that is~~but within 25 miles of the place ~~of the hearing or trial; a subpoena~~specified for ~~a~~ the deposition, hearing, trial, production, or inspection; or

(C) ~~may be served at any place which is within the District of Columbia or within 25 miles of the District of Columbia. When~~that the court authorizes on motion and for good cause, if an applicable statute so provides ~~therefor, the Court upon proper application and cause shown may authorize the service of a subpoena at any other place~~.

(3) *Serving in a Foreign Country. 28, U.S.C. § 1783* governs issuing and serving a~~A~~ subpoena directed to a ~~witness in a foreign country who is a~~United States national or resident who is in a foreign country ~~of the United States shall issue under the circumstances and in the manner and be served as provided in Title *28, U.S.C. § 1783*.~~

(~~3~~4) *Proof of Service.* Proving~~of of~~ service, when necessary, ~~shall be made by~~requires filing with the clerk of the court a statement ~~of~~ showing the date and manner of service and ~~of~~ the names of the persons served. The statement must be~~,~~ certified by the ~~person who made the~~ serverice.

(c) PROTECTING A PERSON SUBJECT TO SUBPOENA~~rotection of persons subject to subpoenas~~. (1) *Avoiding Undue Burden or Expense; Sanctions.* A party or ~~an~~ attorney responsible for ~~the~~ issuingance and servingce ~~of~~ a subpoena ~~shall~~ must take reasonable steps to avoid imposing undue burden or expense on a person subject to the~~at~~ subpoena. The ~~C~~court ~~shall~~ must enforce this duty and impose ~~upon the party or attorney in breach of this duty~~ an appropriate sanction—~~,~~ which may include~~, but is not limited to,~~ lost earnings and ~~a~~ reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce ~~and permit inspection and copying of designated books, papers,~~ documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for deposition, hearing or trial.

~~(2)~~(B) *Objections.* ~~Subject to paragraph (d)(2) of this Rule, a~~A person commanded to produce documents, electronically stored information, or tangible things or to~~and~~ permit inspection ~~and copying~~ may~~, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service,~~ serve ~~up~~on the party or attorney designated in the subpoena a written objection to inspecting,~~on~~ ~~or~~ copying, testing or sampling ~~of~~ any or all of the ~~designated~~ materials or

~~of~~ to inspecting the premises~~—~~or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If objection is made, the following rules apply:

(i) At any time, ~~party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the Court. If objection has been made, the party serving the subpoena may, upon~~ notice to the ~~person~~ commanded person, the serving party may ~~to produce,~~ move ~~at any time~~the court for an order ~~to~~ compel~~ling the~~ production or inspection.

(ii) These acts may be required only as directed in the order, and the ~~Such an~~ order ~~to compel production shall~~must protect a~~ny~~ person who is n~~ot~~either a party nor a party's~~n~~ officer ~~of a party~~ from significant expense resulting from ~~the inspection and copying commanded~~compliance.

(3)~~(A)~~ *Quashing or Modifying a Subpoena.*

(A) *When Required*. On timely motion, the ~~C~~court ~~shall~~ must quash or modify ~~the~~ a subpoena ~~if it~~ that:

(i) fails to allow reasonable time ~~for~~ to comply~~iance~~;

(ii) requires a person who is neither~~ot~~ a party nor a party's~~n~~ officer ~~of a party~~ to travel ~~to a place~~ more than 25 miles from ~~the place~~ where that person resides, is employed, or regularly transacts business in person~~—~~, except that, subject to ~~the provisions of clause~~Rule 45(c)(3)(B)(iii) ~~of this Rule~~, ~~such a~~the person may ~~in order to attend trial~~ be commanded to attend a trial by ~~to~~ travel~~ing~~ from any such place to the place of trial;~~, or~~

(iii) requires disclosure of privileged or other protected matter, if ~~and~~ no exception or waiver applies;~~,~~ or

(iv) subjects a person to undue burden.

(B) *When Permitted*. To protect a person subject to or affected by ~~If~~ a subpoena, the court may, on motion, quash or modify the subpoena if it requires:

(i) ~~requires~~ disclos~~ing~~ure ~~of~~ a trade secret or other confidential research, development, or commercial information;~~, or~~

(ii) ~~requires~~ disclos~~ing~~ure ~~of~~ an unretained expert's opinion or information that does not describe~~ing~~ specific ~~events or~~ occurrences in dispute and result~~sing~~ from the expert's study ~~made~~ that was not ~~at the~~ request~~ed~~ by~~of~~ a~~ny~~ party~~,~~; or

(iii) ~~requires~~ a person who is neither~~ot~~ a party nor a~~n~~ party's officer ~~of a party~~ to incur substantial expense to travel more than 25 miles to attend trial.

(C) *Specifying Conditions as an Alternative*. In the circumstances described in Rule 45(c)(3)(B), the ~~C~~court may, ~~to protect a person subject to or affected by the subpoena,~~instead of quash~~ing~~ or modify~~ing~~ ~~the~~ a subpoena ~~or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the Court may,~~ order appearance or production ~~only upon~~under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) DUTIES IN RESPONDING TO A SUBPOENA~~uties in responding to subpoena~~. (1) *Producing Documents or Electronically Stored Information*. These precedures apply to producing documents or electronically stored information.

(A) *Documents*. A person responding to a subpoena to produce documents ~~shall~~ must produce them as they are kept in the ~~usual~~ ordinary course of business or ~~shall~~ must organize and label them to correspond ~~with~~ to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified*. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form*. The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information*. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding 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 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection*.

(A) *Information Withheld*. A person withholding subpoenaed ~~When~~ information ~~subject to a subpoena is withheld on~~under a claim that it is privileged or subject to protection as trial-~~-~~preparation materials must:~~,~~

(i) expressly make the claim~~; shall be made expressly~~ and

(ii) ~~shall be supported by a~~ describeption of the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will~~not produced that is sufficient to~~ enable the ~~demanding~~ parties~~y~~ to ~~contest~~ assess the claim.

(B) *Information Produced*. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person 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 person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT~~ontempt~~. The court may hold in contempt ~~Failure by a~~~~ny~~ person who, having been served, fails without adequate excuse to obey ~~a~~the subpoena. ~~served upon that person may be deemed a con-tempt of the Court. An adequate cause for~~ A nonparty's failure to obey must be excused if the~~exists when a~~ subpoena purports to require ~~a~~the non-party to attend or produce at a place ~~not within~~outside the limits ~~provided by clause (ii) of subparagraph~~of Rule 45(c)(3)(A)(ii).

COMMENT TO THE 2010 AMENDMENT

~~Pursuant to the Congressional mandate set forth in *D.C. Code § 11-946*, Rule 45 has been completely revised to conform as closely as possible to the version of *Federal Rule of Civil Procedure 45* which became effective December 1, 1991.~~ Identical to *Federal Rule of Civil Procedure 45*, as amended in 2007, except for: (1) ~~R~~references to 100 mile limits in the~~at~~ federal rule have been changed to 25 miles, which ~~in the Superior Court rule in order to~~ preserves the geographic proportionality originally expressed by Congress in *D.C. Code § 11-942*; (2) the omission of the inapplicable subsection (a)(2); (3) the addition of language in subsection (a)(1)(A)(iii) providing that the deposition, production, or inspection of documents must be in the District of Columbia, unless otherwise agreed or ordered by the court; and (4) the substitution of specific local language for inapplicable federal language in subsections (a)(1)(A)(i)–(ii), (a)(3), (b)(2), and (c)(3)(A)(ii).

This ~~R~~rule provides a means for issuing deposition subpoenas for non~~-~~residents of the District of Columbia in cases which qualify ~~under this Rule~~, but does not preclude the alternatives of filing with the ~~C~~court a motion for appointment of an examiner under Rule 28-I or resorting directly to the courts of another jurisdiction under its rules and statutes.

Subpoenas issued by attorneys under subsection~~division~~ (a)(3) ~~of this Rule shall~~must be substantially in the format of Civil Action Form 14.

Form CA 115

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**
**CIVIL DIVISION**

Case Number: _____

_____ vs. _____
*Plaintiff* *Defendant*

**NOTICE OF SELF-REPRESENTED PARTY'S WILLINGNESS TO PARTICIPATE IN ELECTRONIC DISCOVERY PURSUANT TO CIVIL RULES 33, 34, AND 36**

I, _____ (print or type full name), am representing myself in this case and would like to participate in electronic discovery.

My email address is _____.

I am willing and able to file documents and receive the filings of other parties electronically and on a regular basis.

On _____, 20__, I mailed a copy of this form to all of the other parties in this case (listed below).

Party Name and Address:
_____
_____
_____
_____

Party Name and Address:
_____
_____
_____
_____

Party Name and Address:
_____
_____
_____
_____

Party Name and Address:
_____
_____
_____
_____

Party Name and Address:
_____
_____
_____
_____

Party Name and Address:
_____
_____
_____
_____

**Date:** _____ **Signature:** _____