Minnesota Rules of Civil Procedure

Revised Effective January 1, 1989
With amendments effective July 1, 2013

TABLE OF HEADNOTES

TEXT OF RULES

Rule 1. Scope of Rules

These rules govern the procedure in the district courts of the State of Minnesota in all suits of a civil nature, with the exceptions stated in Rule 81. They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.

It is the responsibility of the court and the parties to examine each civil action to assure that the process and the costs are proportionate to the amount in controversy and the complexity and importance of the issues. The factors to be considered by the court in making a proportionality assessment include, without limitation: needs of the case, amount in controversy, parties' resources, and complexity and importance of the issues at stake in the litigation.

(Amended effective January 1, 1997; amended effective July 1, 2013.)

Advisory Committee Comment - 1996 Amendment

This change conforms the rule to its federal counterpart. The amendment is intended to make clear that the goals of just, speedy, and inexpensive resolution of litigation are just as important--if not more important--in questions that do not involve interpretation of the rules. These goals should guide all aspects of judicial administration, and this amendment expressly so states.

Rule 3. Commencement of the Action; Service of the Complaint; Filing of the Action

3.01 Commencement of the Action

A civil action is commenced against each defendant:

(a) when the summons is served upon that defendant, or

(b) at the date of acknowledgement of service if service is made by mail, or

(c) when the summons is delivered to the sheriff in the county where the defendant resides for service; but such delivery shall be ineffectual unless within 60 days thereafter the summons is actually served on that defendant or the first publication thereof is made.

Filing requirements are set forth in Rule 5.04, which requires filing with the court within one year after commencement for non-family cases.

(Amended effective July 1, 2013.)

[For text of 3.02, see M.S. 2012, Volume 15]

Rule 5. Service and Filing of Pleadings and Other Papers

[For text of 5.01 to 5.03, see M.S. 2012, Volume 15]

5.04 Filing; Certificate of Service

Any action that is not filed with the court within one year of commencement against any party is deemed dismissed with prejudice against all parties unless the parties within that year sign a stipulation to extend the filing period. This paragraph does not apply to family cases governed by Rules 301 to 378 of the General Rules of Practice for the District Courts.

All documents after the complaint required to be served upon a party, together with a certificate of service, shall be filed with the court within a reasonable time after service, except disclosures under Rule 26, expert disclosures and reports, depositions upon oral examination and interrogatories, requests for documents, requests for admission, and answers and responses thereto shall not be filed unless upon order of the court or for use in the proceeding.

The administrator shall not refuse to accept for filing any documents presented for that purpose solely because it is not presented in proper form as required by any court rule or practice. Documents may be rejected for filing if tendered without a required filing fee or a correct assigned file number, or are tendered to an administrator other than for the court where the action is pending.

(Amended effective March 1, 1994; amended effective January 1, 1997; amended effective March 1, 2001; amended effective September 1, 2012; amended effective July 1, 2013.)

Advisory Committee Comment - 1993 Amendment

The amendment to Rule 5.04 makes it unnecessary to file notice of taking depositions in the vast majority of cases. Filing may be required as a condition precedent to issuance of a deposition subpoena pursuant to Minn. R. Civ. P. 45.04(a), though that rule only requires proof of service to be shown, not filed, and does not require filing of the notice itself in either event. The notice need not be filed because court administrators should issue subpoenas without the filing of the notice. In practice, courts have little use for deposition notices in court files, and in those rare circumstances where reference to them is necessary, they can be attached as exhibits to an affidavit, filed by leave of court, or offered in evidence just as any other discovery request or response.

Advisory Committee Comment - 2000 Amendment

The last sentence of Rule 5.04 is changed to broaden the direction to court administrators not to reject documents for filing for noncompliance with the form requirements of the rules. The rule as amended makes it clear that those form requirements, regardless of

which set of rules contains them, should not be the basis for a refusal to file the document. Any deficiency as to form should be dealt with by appropriate court order, including in most cases an opportunity to cure the defect.

[For text of 5.05 and 5.06, see M.S. 2012, Volume 15]

Rule 26. Duty to Disclose; General Provisions Governing Discovery

26.01 Required Disclosures

(a) Initial Disclosure.

(1) In General. Except as exempted by Rule 26.01(a)(2) or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties:

(A) the name and, if known, the address and telephone number of each individual likely to have discoverable information - along with the subjects of that information - that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

(B) a copy - or a description by category and location - of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

(C) a computation of each category of damages claimed by the disclosing party - who must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and

(D) for inspection and copying as under Rule 34, 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.

(2) Proceedings Exempt from Disclosure. Unless otherwise ordered by the court in an action, the following proceedings are exempt from disclosures under Rule 26.01(a), (b), and (c):

(A) an action for review on an administrative record;

(B) a forfeiture action in rem arising from a state statute;

(C) a petition for habeas corpus or any other proceeding to challenge a criminal conviction or sentence;

(D) an action brought without an attorney by a person in the custody of the United States, a state, or a state subdivision;

(E) an action to enforce or quash an administrative summons or subpoena;

(F) a proceeding ancillary to a proceeding in another court;

(G) an action to enforce an arbitration award;

(H) family court actions under Minn. Gen. R. Prac. 301-378;

(I) Torrens actions;

(J) conciliation court appeals;

(K) forfeitures;

(L) removals from housing court to district court;

(M) harassment proceedings;

(N) name change proceedings;

(O) default judgments;

(P) actions to either docket a foreign judgment or re-docket a judgment within the district;

(Q) appointment of trustee;

(R) condemnation appeal;

(S) confession of judgment;

(T) implied consent;

(U) restitution judgment; and

(V) tax court filings.

(3) Time for Initial Disclosures - In General. A party must make the initial disclosures at or within 60 days after the original due date when an answer is required, unless a different time is set by stipulation or court order, or unless an objection is made in a proposed discovery plan submitted as part of a civil cover sheet required under Rule 104 of the General Rules of Practice for the District Courts. In ruling on the objection, the court must determine what disclosures, if any, are to be made and must set the time for disclosure.

(4) Time for Initial Disclosures - For Parties Served or Joined Later. A party that is first served or otherwise joined after the initial disclosures are due under Rule 26.01(a)(3) must make the initial disclosures within 30 days after being served or joined, unless a different time is set by stipulation or court order.

(5) Basis for Initial Disclosure; Unacceptable Excuses. A party must make its initial disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(b) Disclosure of Expert Testimony.

(1) In General. In addition to the disclosures required by Rule 26.01(a), a party must disclose to the other parties the identity of any witness it may use at trial to present evidence under Minnesota Rule of Evidence 702, 703, or 705.

(2) Witnesses Who Must Provide a Written Report. Unless otherwise stipulated or ordered by the court, this disclosure must be accompanied by a written report - prepared and signed by the witness - 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:

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

(B) the facts or data considered by the witness in forming them;

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

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

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

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

(3) Witnesses Who Do Not Provide a Written Report. Unless otherwise stipulated or ordered by the court, if the witness is not required to provide a written report, this disclosure must state:

(A) the subject matter on which the witness is expected to present evidence under Minnesota Rule of Evidence 702, 703, or 705; and

(B) a summary of the facts and opinions to which the witness is expected to testify.

(4) Time to Disclose Expert Testimony. A party must make these disclosures at the times and in the sequence that the court orders. Absent a stipulation or a court order, the disclosures must be made:

(A) at least 90 days before the date set for trial or for the case to be ready for trial; or

(B) if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Rule 26.01(b)(2) or (3), within 30 days after the other party's disclosure.

(5) Supplementing the Disclosure. The parties must supplement these disclosures when required under Rule 26.05.

(c) Pretrial Disclosures

(1) In General. In addition to the disclosures required by Rule 26.01(a) and (b), a party must provide to the other parties the following information about the evidence that it may present at trial other than solely for impeachment:

(A) the name and, if not previously provided, the address and telephone number of each witness - separately identifying those the party expects to present and those it may call if the need arises;

(B) the designation of those witnesses whose testimony the party expects to present by deposition and, if not taken stenographically, a transcript of the pertinent parts of the deposition; and

(C) an identification of each document or other exhibit, including summaries of other evidence - separately identifying those items the party expects to offer and those it may offer if the need arises.

(2) Time for Pretrial Disclosures; Objections. Unless the court orders otherwise, these disclosures must be made at least 30 days before trial. Within 14 days after they are made, unless the court sets a different time, a party may serve and promptly file a list of the following objections: any objections to the use under Rule 32.01 of a deposition designated by another party under Rule 26.01(c)(1)(B); and any objection, together with the grounds for it, that may be made to the admissibility of materials identified under Rule 26.01(c)(1)(C). An objection not so made - except for one under Minnesota Rule of Evidence 402 or 403 - is waived unless excused by the court for good cause.

(d) Form of Disclosures. Unless the court orders otherwise, all disclosures under Rule 26.01 must be in writing, signed, and served.

(Amended effective July 1, 2013.)

26.02 Discovery Methods, Scope and Limits

Unless otherwise limited by order of the court in accordance with these rules, the methods and scope of discovery are as follows:

(a) Methods. Parties may obtain discovery by one or more of the following methods: depositions by 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 (including blood) and mental examinations; and requests for admission.

(b) Scope and Limits. Discovery must be limited to matters that would enable a party to prove or disprove a claim or defense or to impeach a witness and must comport

with the factors of proportionality, including without limitation, the burden or expense of the proposed discovery weighed against its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues. Subject to these limitations, parties may obtain discovery regarding any matter, not privileged, that is relevant to a claim or defense of any party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. Upon a showing of good cause and proportionality, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information sought need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.

(1) Authority to Limit Frequency and Extent. The court may establish or alter the limits on the number of depositions and interrogatories and may also limit the length of depositions under Rule 30 and the number of requests under Rule 36. The court may act upon its own initiative after reasonable notice or pursuant to a motion under Rule 26.03.

(2) Limits on Electronically Stored Evidence for Undue Burden or Cost. 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 and proportionality, considering the limitations of Rule 26.02(b)(3). The court may specify conditions for the discovery.

(3) Limits Required When Cumulative; Duplicative; More Convenient Alternative; and Ample Prior Opportunity. The frequency or extent of use of the discovery methods otherwise permitted under these rules shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; or (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought. The court may act upon its own initiative after reasonable notice or pursuant to a motion under Rule 26.03.

(c) Insurance Agreements. In any action in which there is an insurance policy that may afford coverage, any party may require any other party to disclose the coverage and limits of such insurance and the amounts paid and payable thereunder and, pursuant to Rule 34, may obtain production of the insurance policy; provided, however, that this provision will not permit such disclosed information to be introduced into evidence unless admissible on other grounds.

(d) Trial Preparation: Materials. Subject to the provisions of Rule 26.02(e) a party may obtain discovery of documents and tangible things otherwise discoverable pursuant to Rule 26.02(b) and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a party or other person may obtain without the required showing a statement concerning the action or its

subject matter previously made by that person who is not a party. If the request is refused, the person may move for a court order. The provisions of Rule 37.01(d) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (1) a written statement signed or otherwise adopted or approved by the person making it, or (2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, that is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(e) Trial Preparation: Experts. Discovery of facts known and opinions held by experts, otherwise discoverable pursuant to Rule 26.02(b) and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(1)(A) 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. (B) Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to Rule 26.02(e)(3), concerning fees and expenses, as the court may deem appropriate.

(2) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35.02 or 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.

(3) Unless manifest injustice would result, (A) the court shall require the party seeking discovery to pay the expert a reasonable fee for time spent in responding to discovery pursuant to Rules 26.02(e)(1)(B) and 26.02(e)(2); and (B) with respect to discovery obtained pursuant to Rule 26.02(e)(1)(B), the court may require, and with respect to discovery obtained pursuant to Rule 26.02(e)(2) the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(f) Claims of Privilege or Protection of Trial Preparation Materials.

(1) When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(2) If information is produced in discovery that 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 and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.

(Amended effective July 1, 2000; amended effective January 1, 2006; amended effective July 1, 2007; amended effective May 28, 2008; amended effective July 1, 2013.)

Advisory Committee Comment - 2006 Amendment

The amendment to Rule 26.02 is simple but potentially quite important. The rule is amended to conform to Fed. R. Civ. P. 26(b) as amended in 2000. Although the proposed

changes were expected to create as many problems as they solved, see, e.g., John S. Beckerman, Confronting Civil Discovery's Fatal Flaws, 84 MINN. L. REV. 505, 537-43 (2000); Jeffrey W. Stempel & David F. Herr, Applying Amended Rule 26(b)(1) in Litigation: The New Scope of Discovery, in 199 F.R.D. 396 (2001), the change in the scope of discovery, to limit it to the actual claims and defenses raised in the pleadings, has worked well in federal court, and most feared problems have not materialized. See generally Thomas D. Rowe, Jr., A Square Peg in a Round Hole? The 2000 Limitation on the Scope of Federal Civil Discovery, 69 TENN. L. REV. 13, 25-27 (2001); Note, The Sound and the Fury or the Sound of Silence?: Evaluating the Pre-Amendment Predictions and Post-Amendment Effects of the Discovery Scope-Narrowing Language in the 2000 Amendments to Federal Rule of Civil Procedure 26(b)(1), 37 GA. L. REV. 1039 (2003). Courts have simply not found the change dramatic nor given it a draconian interpretation. See, e.g., Sanyo Laser Prod., Inc. v. Arista Records, Inc., 214 F.R.D. 496 (S.D. Ind. 2003).

The narrowing of the scope of discovery as a matter of right does not vitiate in any way the traditional rule that discovery should be liberally allowed. It should be limited to the claims and defenses raised by the pleadings, but the requests should still be liberally construed. See, e.g., Graham v. Casey's General Stores, 206 F.R.D. 251, 253 (S.D. Ind. 2002) ("Even after the recent amendments to Federal Rule of Civil Procedure 26, courts employ a liberal discovery standard.").

Advisory Committee Comment - 2007 Amendment

Rule 26.02(b)(2) is a new provision that establishes a two-tier standard for discovery of electronically stored information. The rule makes information that is not "reasonably accessible because of undue burden or cost" not normally discoverable. This rule is identical to its federal counterpart, adopted in 2006. The rule requires that it be identified in response to an appropriate request, but if it is identified as "not reasonably accessible," it need not be produced in the absence of further order. It is not strictly exempt from discovery, as the court may, upon motion that "shows good cause," order disclosure of the information. The rule explicitly authorizes the court to impose conditions on any order for disclosure of this information, and conditions that either ease the undue burden or minimize the total cost or cost borne by the producing party would be appropriate.

Rule 26.02(f)(2) is a new provision that creates a uniform procedure for dealing with assertions of privilege that are made following production of information in discovery. The rule creates a mandatory obligation to return, sequester, or destroy information that is produced in discovery if the producing party asserts that it is subject to a privilege or work-product protection. The information cannot be used for any purpose until the privilege claim is resolved. The rule provides a mechanism for the receiving party to have the validity of the privilege claim resolved by the court. The rule does not create any presumption or have any impact on the validity of the claim of privilege, nor does it excuse the inadvertent or regretted production. If the court determines that that production waived an otherwise valid privilege, then the information should be ordered for production or release from sequestration of the information.

[For text of 26.03, see M.S. 2012, Volume 15]

26.04 Timing and Sequence of Discovery

(a) **Timing.** Notwithstanding the provisions of Rules 26.02, 30.01, 31.01(a), 33.01(a), 34.02, 36.01, and 45, parties may not seek discovery from any source before the parties have conferred and prepared a discovery plan as required by Rule 26.06(c) except in a proceeding exempt from initial disclosure under Rule 26.01(a)(2), or when allowed by stipulation or court order.

(b) **Sequence.** 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.

(c) **Expedited Litigation Track.** Expedited timing and modified content of certain disclosure and discovery obligations may be required by order of the supreme court adopting special rules for the pilot expedited civil litigation track.

(Amended effective July 1, 2013.)

[For text of 26.05, see M.S. 2012, Volume 15]

26.06 Discovery Conference

(a) Conference Timing. Except in a proceeding exempted from initial disclosure under Rule 26.01(a)(2) or when the court orders otherwise, the parties must confer as soon as practicable - and in any event within 30 days from the initial due date for an answer.

(b) Conference Content; Parties' Responsibilities. In conferring, the parties must consider the nature and basis of their claims and defenses and the possibilities for promptly settling or resolving the case; make or arrange for the disclosures required by Rule 26.01(a), (b); discuss any issues about preserving discoverable information; and develop a proposed discovery plan. The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging the conference, and for attempting in good faith to agree on the proposed discovery plan. A written report outlining the discovery plan must be filed with the court within 14 days after the conference or at the time the action is filed, whichever is later. The court may order the parties or attorneys to attend the conference in person.

(c) Discovery Plan. A discovery plan must state the parties' views and proposals on:

(1) what changes should be made in the timing, form, or requirement for disclosures under Rule 26.01, including a statement of when initial disclosures were made or will be made;

(2) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues;

(3) any issues about disclosure or discovery of electronically stored information, including the form or forms in which it should be produced;

(4) any issues about claims of privilege or of protection as trial-preparation materials, including - if the parties agree on a procedure to assert these claims after production - whether to ask the court to include their agreement in an order;

(5) what changes should be made in the limitations on discovery imposed under these rules or by local rule, and what other limitations should be imposed; and

(6) any other orders that the court should issue under Rule 26.03 or under Rule 16.02 and 16.03.

(d) Conference with the Court. At any time after service of the summons, the court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery. The court shall do so upon motion by the attorney for any party if the motion includes:

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

(2) A proposed plan and schedule of discovery;

(3) Any issues relating to disclosure or discovery of electronically stored information, including the form or forms in which it should be produced;

(4) Any issues relating to claims of privilege or of protection as trial-preparation material, including - if the parties agree on a procedure to assert such claims after production - whether to ask the court to include their agreement in an order;

(5) Any limitations proposed to be placed on discovery;

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

(7) A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matter set forth in the motion. All parties and attorneys are under a duty to participate in good faith in the framing of any proposed discovery plan.

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 the service of the motion.

Following the discovery conference, the court shall 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 allocation 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.

Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a pretrial conference authorized by Rule 16.

(Amended effective July 1, 2007; amended effective July 1, 2013.)

Advisory Committee Comment - 2007 Amendment

Rule 26.06 is amended to add to the required provisions in a motion for a discovery conference. These changes require the party seeking a discovery conference to address electronic discovery issues, but do not dictate any particular resolution or conference agenda for them. Many cases will not involve electronic discovery issues, and there is no need to give substantial attention to them in a request for a conference under this rule.

[For text of 26.07, see M.S. 2012, Volume 15]

Rule 37. Failure to Make Disclosures or to Cooperate in Discovery: Sanctions

37.01 Motion for Order Compelling Disclosure or Discovery

(a) Appropriate Court. An application for an order to a party shall be made to the court in which the action is pending. An application for an order to a person who is not a party shall be made to the court in the county where the discovery is being, or is to be, taken.

(b) Specific Motions.

(1) *To Compel Disclosure.* If a party fails to make a disclosure required by Rule 26.01, any other party may move to compel disclosure and for appropriate sanctions.

(2) *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:

(A) a deponent fails to answer a question propounded or submitted under Rules 30 or 31;

(B) a corporation or other entity fails to make a designation under Rule 30.02(f) or 31.01(c);

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

(D) if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested.

The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on

oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

(c) Evasive or Incomplete Answer, or Response. For purposes of this subdivision an evasive or incomplete disclosure, answer, or response is to be treated as a failure to disclose, answer, or respond.

(d) Expenses and Sanctions.

(1) If the motion is granted, or if the requested discovery is provided after the motion was filed, the court shall, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including attorney fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the discovery without court action, or that the opposing party's nondisclosure, response, or objection was substantially justified or that other circumstances make an award of expenses unjust.

(2) If the motion is denied, the court may enter any protective order authorized under Rule 26.03 and shall, after affording an opportunity to be heard, require the moving party or the attorney filing the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

(3) If the motion is granted in part and denied in part, the court may enter any protective order authorized under Rule 26.03 and may, after affording an opportunity to be heard, apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(Amended effective January 1, 1997; amended effective July 1, 2013.)

Advisory Committee Comment - 1996 Amendment

This change conforms the rule to its federal counterpart, consistent with the ongoing differences between the two rules.

[For text of 37.02, see M.S. 2012, Volume 15}

37.03 Failure to Disclose, to Supplement an Earlier Response, or to Admit

(a) Failure to Disclose or Supplement. If a party fails to provide information or identify a witness as required by Rule 26.01 or 26.05, the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the court, on motion and after giving an opportunity to be heard:

(1) may order payment of the reasonable expenses, including attorney's fees, caused by the failure;

(2) may inform the jury of the party's failure; and

(3) may impose other appropriate sanctions, including any of the orders listed in Rule 37.02.

(b) Failure to Admit. If a party fails to admit the genuineness of any documents or the truth of any matter as requested pursuant to Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of any such matter, the requesting party may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney fees. The court shall make the order unless it finds that (1) the request was held objectionable pursuant to Rule 36.01, or (2) the admission sought was of no substantial importance, or

(3) the party failing to admit had reasonable ground to believe that the party might prevail on the matter, or (4) there was other good reason for the failure to admit.

(Amended effective July 1, 2013.)

[For text of 37.04 and 37.05, see M.S. 2012, Volume 15]

37.06 Failure to Participate in Framing a Discovery Plan

If a party or its attorney fails to participate in good faith in developing and submitting a proposed discovery plan as required by Rule 26.06, the court may, after giving an opportunity to be heard, require that party or attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure.

(Added effective July 1, 2013.)