

**Summaries of the Federal Rules
Changes Effective December 1, 1993**

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Highlights of the changes to F.R.C.P. 26 effective 12/1/93

1. Discovery through interrogatories, request for production, request for admissions, request for inspection, and depositions is now denominated as **formal discovery**.
2. **Formal discovery** cannot commence until after the parties have completed a **discovery meeting**.
3. The **discovery meeting** is to be held as soon as is practicable and no later than 14 days before a Rule 16 scheduling conference is held or a Rule 16 scheduling order issued. Rule 16(b) requires a scheduling order to be entered within 120 days after the first defendant is served with process.
4. Within ten days after the **discovery meeting** the parties are each required to make the following **initial disclosures** without request for disclosure.
 - a. The identity of each person with relevant factual information.
 - b. Copies of relevant documents and identity of relevant tangible things.
 - c. Computation of damages and copies of supporting documents.
 - d. Relevant insurance agreements.
5. In addition to the **initial disclosures**, there are **other required disclosures**, but these others (experts in particular) will ordinarily be governed by the Rule 16 scheduling order as to timing and sequence, although substantial deviation in the scheduling order from Rule 26 as to **other required disclosures** will need justification.
6. At the **discovery meeting** the parties must:
 - a. discuss settlement possibilities.
 - b. arrange for exchange of **initial disclosure** information.
 - c. agree (or as nearly so as possible) on a proposed discovery plan.

7. Within ten days after the **discovery meeting** the parties must submit their **proposed discovery plan**, which must address:
 - a. when **initial disclosure** exchange has been or will be made;
 - b. when **other required disclosure** will be completed; and
 - c. other discovery matters the parties believe ought be included in the Rule 16 scheduling order.
8. Scheduling the **discovery meeting** and preparing the **proposed discovery plan** are the responsibilities of all parties.
9. An expert witnesses' deposition may be taken, but not until after the expert witness' report has been provided, and a written report must be provided by each expert.

Caveat: the forgoing is a synopsis meant for quick reference. It is not intended for use as a substitute for the text of Rule 26.

Federal Rule Changes at a Glance

- Rule 16:** **Pretrial Conferences**
- (c)(4) Imposes restrictions and/or limitations on the use of expert testimony under Rule 702 of the Federal Rules of Evidence (addresses scientific, technical or other specialized knowledge) and allows such restrictions to be entered at pretrial conference.
 - (c)(15) Allows orders limiting the time to present evidence during pretrial conference.
- Rule 26:** **Discovery**
- (a)(1) All witnesses must be voluntarily identified and the subject matter of their testimony must be voluntarily presented to opposing counsel; all relevant documents must be identified; and damage calculations must be presented.
 - (a)(2) Disclosure of expert testimony is required.
 - (a)(3) Disclosure of all exhibits and witnesses is required. Must designate which witnesses live and which by deposition.
 - (a)(5) All former discovery devices, such as depositions and interrogatories, are preserved by the new Rules.
 - (b)(4) Allows expert depositions only after experts file reports. Also allows for discovery of non-testifying expert's opinion only under exceptional circumstances.
 - (b)(5) Maintains privilege for consulting and non-testifying experts.
 - (c) Allows for protective orders if discovery is embarrassing, oppressive or unduly burdensome.
 - (e) Discovery must be supplemented or corrected as new information is learned.
- Rule 30:** **Depositions Upon Oral Exam**
- (b)(1) Reasonable notice is required for all depositions. Video depositions may be noticed without court order.
 - (2) The court may limit how many times a deposition may be taken and may sanction parties for undo delay caused during depositions.
 - (b)(7) Allows for phone depositions.
 - (e) Experts have the right to read and sign their depositions.

Rule 31: Written Depositions

Depositions may be taken by written interrogatories.

Rule 33: Interrogatories To Parties

Interrogatories to a party regarding what a witness may say at trial are permissible.

Rule 37: Non-cooperation in Discovery

Allows sanctions against a party, witness or counsel who fails to follow the Rules of Civil Procedure, with regard to discovery.

Rule 53: Special Masters

The court may appoint special masters, which can include expert witnesses. Special masters, who act as advisers, are only involved in complicated cases with exceptional conditions.