

FIRST REGULAR SESSION

# SENATE BILL NO. 224

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LUETKEMEYER.

Pre-filed January 7, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0633S.05I

## AN ACT

To amend supreme court rules 56.01, 57.01, 57.03, 57.04, and 59.01, for the purposes of making certain rules relating to discovery more consistent with the Federal Rules of Civil Procedure.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Supreme court rules 56.01, 57.01, 57.03, 57.04, and 59.01, are amended, to read as follows:

### 56.01. General Provisions Governing Discovery

(a) Discovery Methods. Parties may obtain discovery by one 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) Scope of Discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter, **provided the discovery is proportional to the needs of the case considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in**

**EXPLANATION**—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 **resolving the issues, and whether the burden or expenses of the**  
20 **proposed discovery outweighs its likely benefit.**

21 It is not ground for objection that the information sought will be  
22 inadmissible at the trial if the information sought appears reasonably calculated  
23 to lead to the discovery of admissible evidence.

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

26 (2) Insurance Agreements. A party may obtain discovery of the existence  
27 and contents, including production of the policy and declaration page, of any  
28 insurance agreement under which any person carrying on an insurance business  
29 may be liable to satisfy part or all of a judgment that may be entered in the  
30 action or to indemnify or reimburse for payments made to satisfy the  
31 judgment. Information concerning the insurance agreement is not by reason of  
32 disclosure admissible in evidence at trial. For purposes of this Rule 56.01(b)(2),  
33 an application for insurance shall not be treated as part of an insurance  
34 agreement.

35 (3) Trial Preparation: Materials. Subject to the provisions of Rule  
36 56.01(b)(4), a party may obtain discovery of documents and tangible things  
37 otherwise discoverable under Rule 56.01(b)(1) and prepared in anticipation of  
38 litigation or for trial by or for another party or by or for that other party's  
39 representative, including an attorney, consultant, surety, indemnitor, insurer, or  
40 agent, only upon a showing that the party seeking discovery has substantial need  
41 of the materials in the preparation of the case and that the adverse party is  
42 unable without undue hardship to obtain the substantial equivalent of the  
43 materials by other means. In ordering discovery of such materials when the  
44 required showing has been made, the court shall protect against disclosure of the  
45 mental impressions, conclusions, opinions, or legal theories of an attorney or  
46 other representative of a party concerning the litigation.

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

54 (4) Trial Preparation: Experts. Discovery of facts known and opinions

55 held by experts, otherwise discoverable under the provisions of Rule 56.01(b)(1)  
56 and acquired or developed in anticipation of litigation or for trial, may be  
57 obtained [only] as follows:

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

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

70 **(C) Any interrogatory identifying a party as an expert witness**  
71 **shall be accompanied by a written report, prepared and signed by the**  
72 **witness, if the witness is one retained or specially employed to provide**  
73 **expert testimony in the case or one whose duties as the party's**  
74 **employee regularly involve giving expert testimony. A party must make**  
75 **this disclosure at the times and in the sequence that the court**  
76 **orders. Absent a stipulation or a court order, the disclosures shall be**  
77 **made at least 90 days before the date set for trial or for the case to be**  
78 **ready for trial, or, if the evidence is intended solely to contradict or**  
79 **rebut evidence on the same subject matter identified by another party,**  
80 **within 30 days after the other party's disclosure. The report must**  
81 **contain:**

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

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

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

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

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

90 (vi) a statement of the compensation to be paid for

91 **the study and testimony in the case.**

92 (5) Trial Preparations: Non-retained Experts. A party, through  
93 interrogatories, may require any other party to identify each non-retained expert  
94 witness, including a party, whom the other party expects to call at trial who may  
95 provide expert witness opinion testimony by providing the expert's name, address,  
96 and field of expertise. For the purpose of this Rule 56.01(b)(5), an expert witness  
97 is a witness qualified as an expert by knowledge, experience, training, or  
98 education giving testimony relative to scientific, technical or other specialized  
99 knowledge that will assist the trier of fact to understand the evidence. Discovery  
100 of the facts known and opinions held by such an expert shall be discoverable in  
101 the same manner as for lay witnesses.

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

108 (c) Protective Orders. Upon motion by a party or by the person from  
109 whom discovery is sought, and for good cause shown, the court may make any  
110 order which justice requires to protect a party or person from annoyance,  
111 embarrassment, oppression, or undue burden or expense, including one or more  
112 of the following:

113 (1) that the discovery not be had;

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

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

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

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

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

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

126 (8) that the parties simultaneously file specified documents or information

127 enclosed in sealed envelopes to be opened as directed by the court.

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

132           (d) Sequence and Timing of Discovery. Unless the court upon motion, for  
133 the convenience of parties and witnesses and in the interests of justice, orders  
134 otherwise, methods of discovery may be used in any sequence and the fact that  
135 a party is conducting discovery, whether by deposition or otherwise, shall not  
136 operate to delay any other party's discovery.

137           (e) Supplementation of Responses. A party is under a duty seasonably to  
138 amend a prior response to an interrogatory, request for production, or request for  
139 admission if the party learns that the response is in some material respect  
140 incomplete or incorrect and if the additional or corrective information has not  
141 otherwise been made known to the other parties during the discovery process or  
142 in writing.

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

#### 57.01. Interrogatories to Parties

2           (a) Scope. **Unless otherwise stipulated or ordered by the court,**  
3 any party may serve upon any other party **no more than 30** written  
4 interrogatories, **including all discrete subparts.** Interrogatories may relate  
5 to any matter that can be inquired into under Rule 56.01. An interrogatory  
6 otherwise proper is not necessarily objectionable merely because an answer to the  
7 interrogatory involves an opinion or contention that relates to fact or the  
8 application of law to fact, but the court may order that such an interrogatory need  
9 not be answered until after designated discovery has been completed or until a  
10 pretrial conference or other later time.

11           (b) Issuance.

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

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

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

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

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

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

28 (B) The number of the set of interrogatories,

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

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

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

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

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

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

44 The court may allow a shorter or longer time.

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

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

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

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

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

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

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

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

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

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

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

84 The certificate shall show the caption of the case, the name of the party  
85 served, the date and manner of service, the designation of the document, e.g., first  
86 interrogatories or answers to second interrogatories, and the signature of the

87 serving party or attorney. The answers bearing the original signature of the  
88 party answering the interrogatories shall be served on the party submitting the  
89 interrogatories, who shall be the custodian thereof until the entire case is finally  
90 disposed.

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

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

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

### 57.03. Depositions Upon Oral Examination

2 (a) When Depositions May Be Taken.

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

8 **(2) Leave of court, granted with or without notice, must be obtained only**  
9 **if [the plaintiff seeks to take a deposition prior to the expiration of 30 days after**  
10 **service of the summons and petition upon any defendant, except that leave is not**  
11 **required if a defendant has served a notice of taking deposition or otherwise**  
12 **sought discovery. The attendance of witnesses may be compelled by subpoena as**  
13 **provided in Rule 57.09. The attendance of a party is compelled by notice as**  
14 **provided in subdivision (b) of this Rule. The deposition of a person confined in**  
15 **prison may be taken only by leave of court on such terms as the court describes]:**

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

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

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

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

25 **(B) the deponent is confined in prison.**



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

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

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

35 If a subpoena duces tecum is to be served on the person to be examined,  
36 the designation of the materials to be produced as set forth in the subpoena shall  
37 be attached to or included in the notice.

38 A party may attend a deposition by telephone.

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

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

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

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

61 **(B) Sanction. The court may impose an appropriate sanction,**

62 **including the reasonable expenses and attorney's fees incurred by any**  
63 **party, on a person who impedes, delays, or frustrates the fair**  
64 **examination of the deponent.**

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

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

79 (2) Where the deposition has been recorded only by video tape and if the  
80 witness and parties do not waive signature, a written transcription of the audio  
81 shall be prepared to be submitted to the witness for signature as provided in Rule  
82 57.03(f).

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

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

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

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

94 (d) Record of Examination; Oath; Objections. The officer before whom the  
95 deposition is to be taken shall put the witness on oath or affirmation and shall  
96 personally, or by someone acting under the officer's direction and in the officer's  
97 presence, record the testimony of the witness. The testimony shall be taken

98 stenographically or recorded by any other means ordered in accordance with Rule  
99 57.03(c). If requested by one of the parties, the testimony shall be transcribed.

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

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

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

134 sign requires rejection of the deposition in whole or in part.

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

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

141 (2) Filing

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

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

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

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

158 (3) Exhibits. Documents and things produced for inspection during the  
159 examination of the witness shall, upon the request of a party, be marked for  
160 identification and annexed to and returned with the deposition and may be  
161 inspected and copied by any party, except that (A) the person producing the  
162 materials may substitute copies to be marked for identification if the person  
163 affords to all parties fair opportunity to verify the copies by comparison with the  
164 originals and (B) if the person producing the materials requests their return, the  
165 officer shall mark them, give each party an opportunity to inspect and copy them,  
166 and return them to the person producing them, and the materials may then be  
167 used in the same manner as if annexed to and returned with the deposition. Any  
168 party may move for an order that the original be annexed to and returned with  
169 the deposition to the court pending final disposition of the civil action.

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

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

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

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

#### 57.04. Depositions Upon Written Questions

2 (a) Serving Questions; Notice.

3 (1) After commencement of the action, any party may take the testimony  
4 of any person, including a party, by deposition upon written questions, **without**  
5 **leave of court, except as specified in subdivision (2) of this**  
6 **subsection.** The attendance of witnesses may be compelled by the use of  
7 subpoena as provided in Rule 57.09. [The deposition of a person confined in  
8 prison may be taken only by leave of court on such terms as the court prescribes.]

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

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

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

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

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

20 (B) **the deponent is confined in prison.**

21 (3) A party desiring to take a deposition upon written questions shall  
22 serve them upon every other party with a notice stating: [(1)] (A) the name and

23 address of the person who is to answer them, if known, and if the name is not  
24 known, a general description sufficient to identify the person or the particular  
25 class or group to which the person belongs and [(2)] **(B)** the name or descriptive  
26 title and address of the officer before whom the deposition is to be taken. A  
27 deposition upon written questions may be taken of a public or private corporation  
28 or a partnership or association or governmental agency in accordance with the  
29 provisions of Rule 57.03(b)(4).

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

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

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

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

2 **(a)** Scope. After commencement of an action, a party may serve upon any  
3 other party **[a] no more than 30** written **[request] requests** for the admission  
4 **without leave of court**, for purposes of the pending action only, of the truth of  
5 any matters within the scope of Rule 56.01(b) set forth in the request that relate  
6 to statements or opinions of fact or of the application of law to fact, including the  
7 genuineness of any documents described in the request. **However, the**  
8 **limitation on the number of requests for admission specified by this**  
9 **Rule 59.01 shall not apply to requests for admission regarding the**  
10 **genuineness of documents.**

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

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

16 in the request:

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

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

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

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

31 (c) Issuance.

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

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

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

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

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

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

52 certificate of service shall also state the:

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

54 (B) Number of the set of requests,

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

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

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

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

65 (A) Entering an appearance, or

66 (B) Being served with process.

67 The court may allow a shorter or longer time.

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

72 (A) Admit the matter; or

73 (B) Deny the matter; or

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

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

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

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

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

85 A party who considers that a matter of which an admission has been  
86 requested presents a genuine issue for trial may not, on that ground alone, object  
87 to the request; such party may deny the matter, subject to the provisions of Rule



88 61.01(c), or set forth reasons why the party cannot admit or deny it.

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

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

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

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

103 (e) Filing Request and Responses. The request and response thereto shall  
104 not be filed with the court except upon court order or contemporaneously with a  
105 motion placing the request in issue. However, both when the request and the  
106 response are served the party serving them shall file with the court a certificate  
107 of service. Each party filing a certificate shall maintain a copy of the document  
108 that is the subject of the certificate until the case is finally disposed.

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

- 114 (1) The matter is admitted, or  
115 (2) An amended answer be served.

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