



United States District Court
DISTRICT OF MINNESOTA

LR 26.3 DISCLOSURE AND DISCOVERY OF EXPERT TESTIMONY [Abrogated]

[Adopted effective November 1, 1996; abrogated July 23, 2012]

2012 Advisory Committee's Note to LR 26.3

In 2012, LR 16.2, LR 26.1, and Forms 3 and 4 were amended. In light of those amendments, LR 26.3 became superfluous. Accordingly, LR 26.3 was abrogated.

1996 Advisory Committee's Note to LR 26.3

The new national rules relating to expert discovery were vigorously debated among the committee members. Those who supported new Federal Rule of Civil Procedure 26(a)(2) suggested that the timely exchange of detailed reports, as required by the new rule, would discourage parties from "bluffing" about their claims or defenses until the eleventh hour. The requirement that detailed expert reports be timely exchanged would encourage more prompt settlements of lawsuits. Supporters of the new national rules also observed that new Rule 26(b)(4), which permits depositions of experts without a Court order, simply conforms the rule to actual practice in Minnesota, where expert depositions have become fairly routine.

Opponents of the new rules expressed concern that they would significantly and needlessly increase the cost of discovery for a substantial proportion of lawsuits venued in federal court by requiring both a detailed report and a subsequent expert depositions. Opponents also argued that the new rule makes it more difficult to find persons willing to serve as experts, because many are reluctant to invest the time needed to prepare a report that conforms to the requirements of the new rule. Opponents argued that the old practice of giving summary descriptions of expert opinions in interrogatory answers drafted by lawyers functioned well (and continues to function well in state court) and therefore should not be modified.

The committee attempted to accommodate the concerns of both the proponents and opponents of the new national rules. The parties may agree to, and the Court may order, any form of expert disclosure and discovery, including but not limited to discovery in the manner it was conducted prior to the 1993 Amendments, discovery as specified in the National Rules as they now stand, or any other set of procedures that will advance the goals of the Federal Rules of Civil Procedure. These Local Rules create no preference or presumption for any particular form of expert disclosure and discovery. LR 26.3(a) as now drafted recognizes the power of the parties to fashion a disclosure and discovery plan designed to meet the needs of the individual case. For example, if the expense associated with the preparation of detailed reports would unduly increase the cost of the case, the parties can agree to or the Court may order, a less expensive approach to expert discovery. Moreover, expert depositions are not "required" if the parties choose not to take them or the Court determines that they should be allowed only upon a showing of good cause. This approach is also consistent with the 1993 Advisory Committee Notes to the National Rules, which expressly recognize the ability of the parties to waive the requirement of a written report or to impose the requirement on additional persons who will provide opinion testimony under Fed. R. Evid. 702. If the parties are unable to agree upon an approach to expert discovery, as with other aspects of the discovery plan, LR 26.3(b) contemplates that the parties will set forth their respective proposals in the Rule 26(f) report. The Court will then decide which process will be employed to govern the discovery of the experts' opinions. In the absence of any stipulation, or case specific Court order, LR 26.3(c) provides that new Federal Rule of Civil Procedure 26(a)(2) and 26(b)(4) will govern.