

SENATE SUBSTITUTE

FOR

SENATE BILL NO. 224

AN ACT

To amend supreme court rules 56.01, 57.01, 57.03, 57.04, 58.01, 59.01, and 61.01, relating to discovery.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

1 Section A. Supreme court rules 56.01, 57.01, 57.03, 57.04,
2 58.01, 59.01, and 61.01, are amended, to read as follows:

3 56.01. General Provisions Governing Discovery

4 (a) Discovery Methods. Parties may obtain discovery by one
5 or more of the following methods: depositions upon oral
6 examination or written questions; written interrogatories;
7 production of documents, electronically stored information, or
8 things or permission to enter upon land or other property, for
9 inspection and other purposes; physical and mental examinations;
10 and requests for admission.

11 (b) Scope of Discovery. Unless otherwise limited by order
12 of the court in accordance with these rules, the scope of
13 discovery is as follows:

14 (1) In General. Parties may obtain discovery regarding any
15 nonprivileged matter[, not privileged,] that is relevant to the
16 subject matter involved in the pending action, whether it relates
17 to the claim or defense of the party seeking discovery or to the
18 claim or defense of any other party, including the existence,
19 description, nature, custody, condition and location of any

1 books, documents or other tangible things and the identity and
2 location of persons having knowledge of any discoverable matter,
3 provided the discovery is proportional to the needs of the case
4 considering the importance of the issues at stake in the action,
5 the amount in controversy, the parties' relative access to
6 relevant information, the parties' resources, the importance of
7 the discovery in resolving the issues, and whether the burden or
8 expenses of the proposed discovery outweighs its likely benefit.

9 [It is not ground for objection that the information sought
10 will be inadmissible at the trial] Information within the scope
11 of discovery need not be admissible in evidence to be
12 discoverable if the information sought appears reasonably
13 calculated to lead to the discovery of admissible evidence.

14 The party seeking discovery shall bear the burden of
15 establishing relevance.

16 (2) Limitations. Upon the motion of any party or on its
17 own, the court must limit the frequency or extent of discovery if
18 it determines that:

19 (A) The discovery sought is cumulative or duplicative, or
20 can be obtained from some other source that is more convenient,
21 less burdensome, or less expensive;

22 (B) The party seeking discovery has had ample opportunity
23 to obtain the information by discovery in the action;

24 (C) The proposed discovery is outside the scope permitted
25 by subsection (b) (1); or

26 (D) The burden or expense of the proposed discovery
27 outweighs its likely benefit or is not proportional to the claims
28 and defenses at issue considering the needs of the case, the

1 amount in controversy, the parties' resources, the complexity and
2 importance of the issues at stake in the action, and the
3 importance of discovery in resolving the issues.

4 (3) Specific Limitations on Electronically Stored
5 Information.

6 (A) Preservation of electronically stored information.
7 Absent court order demonstrating that the requesting party has a
8 substantial need for discovery of the electronically stored
9 information requested and subject to this subsection (b), a party
10 need not preserve the following categories of electronically
11 stored information:

12 (i) Data that cannot be retrieved without substantial
13 additional programming or without transforming it into another
14 form before search and retrieval can be achieved;

15 (ii) Backup data that are substantially duplicative of data
16 that are more accessible elsewhere;

17 (iii) Legacy data remaining from obsolete systems that are
18 unintelligible on successor systems;

19 (iv) Any other data that are not available to the producing
20 party in the ordinary course of business and that the party
21 identifies as not reasonably accessible because of undue burden
22 or cost; or

23 (v) Data that is routinely deleted or over-written in
24 accordance with an established routine records management
25 information governance or system maintenance practice.

26 (B) Production of electronically stored information. A
27 party is not required to provide discovery of the following
28 categories of electronically stored information absent a showing

1 by the moving party of substantial need and good cause, subject
2 to this subsection (b):

3 (i) Data that cannot be retrieved without substantial
4 additional programming or without transforming it into another
5 form before search and retrieval can be achieved;

6 (ii) Backup data that are substantially duplicative of data
7 that are more accessible elsewhere;

8 (iii) Legacy data remaining from obsolete systems that are
9 unintelligible on successor systems; or

10 (iv) Any other data that are not available to the producing
11 party in the ordinary course of business and that the party
12 identifies as not reasonably accessible because of undue burden
13 or cost. In response to a motion to compel discovery or for a
14 protective order, the party from whom discovery is sought is
15 required to show that the information is not reasonably
16 accessible because of undue burden or cost. If that showing is
17 made, the court may order discovery from such sources only if the
18 requesting party shows good cause, considering the limitations of
19 this subsection (b). The court may specify conditions for the
20 discovery.

21 (4) Insurance Agreements. A party may obtain discovery of
22 the existence and contents, including production of the policy
23 and declaration page, of any insurance agreement under which any
24 person carrying on an insurance business may be liable to satisfy
25 part or all of a judgment that may be entered in the action or to
26 indemnify or reimburse for payments made to satisfy the judgment.
27 Information concerning the insurance agreement is not by reason
28 of disclosure admissible in evidence at trial. For purposes of

1 this Rule ~~[56.01(b)(2)]~~ 56.01(b)(4), an application for insurance
2 shall not be treated as part of an insurance agreement.

3 ~~[(3)]~~ (5) Trial Preparation: Materials. Subject to the
4 provisions of Rule ~~[56.01(b)(4)]~~ 56.01(b)(6), a party may obtain
5 discovery of documents and tangible things otherwise discoverable
6 under Rule 56.01(b)(1) and prepared in anticipation of litigation
7 or for trial by or for another party or by or for that other
8 party's representative, including an attorney, consultant,
9 surety, indemnitor, insurer, or agent, only upon a showing that
10 the party seeking discovery has substantial need of the materials
11 in the preparation of the case and that the adverse party is
12 unable without undue hardship to obtain the substantial
13 equivalent of the materials by other means. In ordering
14 discovery of such materials when the required showing has been
15 made, the court shall protect against disclosure of the mental
16 impressions, conclusions, opinions, or legal theories of an
17 attorney or other representative of a party concerning the
18 litigation.

19 A party may obtain without the required showing a statement
20 concerning the action or its subject matter previously made by
21 that party. For purposes of this paragraph, a statement
22 previously made is: (a) a written statement signed or otherwise
23 adopted or approved by the person making it, or (b) a
24 stenographic, mechanical, electrical, audio, video, motion
25 picture or other recording, or a transcription thereof, of the
26 party or of a statement made by the party and contemporaneously
27 recorded.

28 ~~[(4)]~~ (6) Trial Preparation: Experts. Discovery of facts

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

5 (A) A party may through interrogatories require any other
6 party to identify each person whom the other party expects to
7 call as an expert witness at trial by providing such expert's
8 name, address, occupation, place of employment [and
9 qualifications to give an opinion, or if such information is
10 available on the expert's curriculum vitae, such curriculum vitae
11 may be attached to the interrogatory answers as a full response
12 to such interrogatory], and to state the general nature of the
13 subject matter on which the expert is expected to testify, and
14 the expert's hourly deposition fee.

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

20 (C) Any interrogatory identifying a party as an expert
21 witness shall be accompanied by a written report, prepared and
22 signed by the witness, if the witness is one retained or
23 specially employed to provide expert testimony in the case or one
24 whose duties as the party's employee regularly involve giving
25 expert testimony. A party must make this disclosure at the times
26 and in the sequence that the court orders. Absent a stipulation
27 or a court order, the disclosures shall be made at least 90 days
28 before the date set for trial or for the case to be ready for

1 trial, or, if the evidence is intended solely to contradict or
2 rebut evidence on the same subject matter identified by another
3 party, within 30 days after the other party's disclosure. The
4 report must contain:

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

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

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

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

13 (v) a list of all other cases in which, during the previous
14 4 years, the witness testified as an expert at trial or by
15 deposition; and

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

18 Rule 56.01(b) (5) protects drafts of any report or disclosure
19 required under this Rule 56.01(b) (6) (C), regardless of the form
20 in which the draft is recorded.

21 **[(5)] (7)** Trial Preparations: Non-retained Experts. A
22 party, through interrogatories, may require any other party to
23 identify each non-retained expert witness, including a party,
24 whom the other party expects to call at trial who may provide
25 expert witness opinion testimony by providing the expert's name,
26 address, and field of expertise. For the purpose of this Rule
27 **[56.01(b) (5)] 56.01(b) (7)**, an expert witness is a witness
28 qualified as an expert by knowledge, experience, training, or

1 education giving testimony relative to scientific, technical or
2 other specialized knowledge that will assist the trier of fact to
3 understand the evidence. Discovery of the facts known and
4 opinions held by such an expert shall be discoverable in the same
5 manner as for lay witnesses.

6 ~~[(6)]~~ (8) Approved Interrogatories and Request for
7 Production. A circuit court by local court rule may promulgate
8 'approved' interrogatories and requests for production for use in
9 specified types of litigation. Each such approved interrogatory
10 and request for production submitted to a party shall be
11 denominated as having been approved by reference to the local
12 court rule and paragraph number containing the interrogatory or
13 request for production.

14 (9) Claiming privilege or protecting trial preparation
15 materials.

16 (A) Information withheld. When a party withholds
17 information otherwise discoverable by claiming that the
18 information is privileged or subject to protection as trial
19 preparation material, the party must:

20 (i) Expressly make the claim; and

21 (ii) Describe the nature of the documents, electronically
22 stored information, communications, or tangible things not
23 produced or disclosed and do so in a manner that, without
24 revealing information itself privileged or protected, will enable
25 other parties to assess the claim.

26 (B) Information produced.

27 (i) If information produced in discovery is subject to a
28 claim of privilege or of protection as trial preparation

1 material, the party making the claim may notify any party that
2 received the information of the claim and the basis for it.
3 After being notified, a party must promptly return, sequester, or
4 destroy the specified information and any copies it has; must not
5 use or disclose the information until the claim is resolved; must
6 take reasonable steps to retrieve the information if the party
7 disclosed it before being notified; and may promptly present the
8 information to the court under seal for a determination of the
9 claim. The producing party must preserve the information until
10 the claim is resolved.

11 (ii) An attorney who receives information that contains
12 privileged communications involving an adverse or third party and
13 who has reasonable cause to believe that the information was
14 wrongfully obtained shall not read the information or, if he or
15 she has begun to do so, shall stop reading it. The attorney
16 shall promptly notify the attorney whose communications are
17 contained in the information to return the information to the
18 other lawyer and, if in electronic form, delete it and take
19 reasonable measures to assure that the information is
20 inaccessible. An attorney who has been notified about
21 information containing privileged communications has the
22 obligation to preserve the information.

23 (C) The production of privileged or work-product protected
24 documents, electronically stored information or other
25 information, whether inadvertent or otherwise, is not a waiver of
26 the privilege or protection from discovery in the proceeding.

27 (c) Protective Orders. Upon motion by a party or by the
28 person from whom discovery is sought, and for good cause shown,

1 the court may make any order which justice requires to protect a
2 party or person from annoyance, embarrassment, oppression, or
3 undue burden or expense, including one or more of the following:

4 (1) that the discovery not be had;

5 (2) that the discovery may be had only on specified terms
6 and conditions, including a designation of the time or place or
7 the allocation of expenses;

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

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

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

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

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

20 (8) that the parties simultaneously file specified
21 documents or information enclosed in sealed envelopes to be
22 opened as directed by the court.

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

28 (d) Sequence and Timing of Discovery. Unless the parties

1 stipulate or the court upon motion, for the convenience of
2 parties and witnesses and in the interests of justice, orders
3 otherwise, methods of discovery may be used in any sequence and
4 the fact that a party is conducting discovery, whether by
5 deposition or otherwise, shall not operate to delay any other
6 party's discovery.

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

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

21 (g) Signing Disclosures and Discovery Requests, Responses,
22 and Objections.

23 (1) Signature Required; Effect of Signature. Every
24 disclosure under these Rules and every discovery request,
25 response, or objection must be signed by at least one attorney of
26 record in the attorney's own name-or by the party personally, if
27 unrepresented-and must state the signer's address, e-mail
28 address, and telephone number. By signing, an attorney or party

1 certifies that to the best of the person's knowledge,
2 information, and belief formed after a reasonable inquiry:

3 (A) With respect to a disclosure, it is complete and
4 correct as of the time it is made; and

5 (B) With respect to a discovery request, response, or
6 objection, it is:

7 (i) Consistent with these rules and warranted by existing
8 law or by a nonfrivolous argument for extending, modifying, or
9 reversing existing law, or for establishing new law;

10 (ii) Not interposed for any improper purpose, such as to
11 harass, cause unnecessary delay, or needlessly increase the cost
12 of litigation; and

13 (iii) Neither unreasonable nor unduly burdensome or
14 expensive, considering the needs of the case, prior discovery in
15 the case, the amount in controversy, and the importance of the
16 issues at stake in the action.

17 (2) Failure to Sign. Other parties have no duty to act on
18 an unsigned disclosure, request, response, or objection until it
19 is signed, and the court must strike it unless a signature is
20 promptly supplied after the omission is called to the attorney's
21 or party's attention.

22 (3) Sanction for Improper Certification. If a
23 certification violates this Rule 56.01(g) without substantial
24 justification, the court, on motion or on its own, must impose an
25 appropriate sanction on the signer, the party on whose behalf the
26 signer was acting, or both. The sanction may include an order to
27 pay the reasonable expenses, including attorney's fees, caused by
28 the violation.

1 57.01. Interrogatories to Parties

2 (a) Scope. Unless otherwise stipulated or ordered by the
3 court, any party may serve upon any other party no more than 25
4 written interrogatories, including all discrete subparts.

5 Interrogatories may relate to any matter that can be inquired
6 into under Rule 56.01. An interrogatory otherwise proper is not
7 necessarily objectionable merely because an answer to the
8 interrogatory involves an opinion or contention that relates to
9 fact or the application of law to fact, but the court may order
10 that such an interrogatory need not be answered until after
11 designated discovery has been completed or until a pretrial
12 conference or other later time.

13 (b) Issuance.

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

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

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

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

23 (3) Service. Copies of the interrogatories shall be served
24 on all parties not in default. The party issuing the
25 interrogatories shall also provide each answering party an
26 electronic copy, in a commonly used medium such as a diskette,
27 CD-ROM or as an e-mail attachment, in a format that can be read
28 by most commonly used word processing programs, such as Word for

1 Windows or WordPerfect 5.x or higher. In addition to the
2 information normally in a certificate of service, the certificate
3 of service shall also state:

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

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

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

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

12 (c) Response. The interrogatories shall be answered by
13 each party to whom they are directed. If they are directed to a
14 public or private corporation, limited liability company,
15 partnership, association or governmental agency, they shall be
16 answered by an officer or agent. The party answering the
17 interrogatories shall furnish such information as is available to
18 the party.

19 (1) When the Response is Due. Responses shall be served
20 within 30 days after the service of the interrogatories. A
21 defendant, however, shall not be required to respond to
22 interrogatories before the expiration of 45 days after the
23 earlier of:

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

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

26 The court may allow a shorter or longer time.

27 (2) Form. The title of the response shall identify the
28 responding party and the number of the set of interrogatories.

1 The response to the interrogatories shall quote each
2 interrogatory, including its original paragraph number, and
3 immediately thereunder state the answer or all reasons for not
4 completely answering the interrogatory, including privileges, the
5 work product doctrine and objections.

6 (3) Objections and Privileges. If information is withheld
7 because of an objection, then each reason for the objection shall
8 be stated. If a privilege or the work product doctrine is
9 asserted as a reason for withholding information, then without
10 revealing the protected information, the objecting party shall
11 state information that will permit others to assess the
12 applicability of the privilege or work product doctrine.

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

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

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

19 (C) A compilation, abstract or summary based thereon,
20 and the burden of deriving or ascertaining the answer is
21 substantially the same for the party serving the interrogatory as
22 for the party served, it is a sufficient answer to such
23 interrogatory to specify the records from which the answer may be
24 derived or ascertained and to afford to the party serving the
25 interrogatory reasonable opportunity to examine, audit or inspect
26 such records and to make copies, compilations, abstracts or
27 summaries.

28 (5) Signing. Answers shall be signed under oath by the

1 person making them. Objections shall be signed by the attorney
2 making them or by the self-represented party.

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

9 At the time of service, a certificate of service, but not
10 the response, shall be filed with the court as provided in Rule
11 57.01(d).

12 (d) Filing. Interrogatories and answers under this Rule
13 57.01 shall not be filed with the court except upon court order
14 or contemporaneously with a motion placing the interrogatories in
15 issue. However, both when the interrogatories and answers are
16 served, the party serving them shall file with the court a
17 certificate of service.

18 The certificate shall show the caption of the case, the name
19 of the party served, the date and manner of service, the
20 designation of the document, e.g., first interrogatories or
21 answers to second interrogatories, and the signature of the
22 serving party or attorney. The answers bearing the original
23 signature of the party answering the interrogatories shall be
24 served on the party submitting the interrogatories, who shall be
25 the custodian thereof until the entire case is finally disposed.

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

28 (e) Enforcement. The party submitting the interrogatory

1 may move for an order under Rule 61.01(b) with respect to any
2 objection to or other failure to answer an interrogatory.

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

5 57.03. Depositions Upon Oral Examination

6 (a) When Depositions May Be Taken.

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

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

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

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

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

27 (iii) the plaintiff seeks to take a deposition prior to the
28 expiration of 30 days after service of the summons and petition

1 upon any defendant, except that leave is not required if a
2 defendant has served a notice of taking deposition or otherwise
3 sought discovery; or

4 (B) the deponent is confined in prison.

5 (b) Notice of Examination: General Requirements; Special
6 Notice; Production of Documents and Things; Deposition of
7 Organization.

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

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

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

21 A party may attend a deposition by telephone.

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

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

28 (4) A party may in the notice and in a subpoena name as the

1 deponent a public or private corporation or a partnership or
2 association or governmental agency and describe with reasonable
3 particularity the matters on which examination is requested. In
4 that event, the organization so named shall designate one or more
5 officers, directors, or managing agents, or other persons who
6 consent to testify on its behalf and may set forth, for each
7 person designated, the matters on which the person will testify.
8 A subpoena shall advise a nonparty organization of its duty to
9 make such a designation. The persons so designated shall testify
10 as to matters known or reasonably available to the organization.
11 This Rule 57.03(b) (4) does not preclude taking a deposition by
12 any other procedure authorized in these rules.

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

19 (B) Sanction. The court may impose an appropriate
20 sanction, including the reasonable expenses and attorney's fees
21 incurred by any party, on a person who impedes, delays, or
22 frustrates the fair examination of the deponent.

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

28 (1) If the deposition is to be recorded by video tape,

1 every notice or subpoena for the taking of the deposition shall
2 state that it is to be video taped and shall state the name,
3 address and employer of the recording technician. If a party
4 upon whom notice for the taking of a deposition has been served
5 desires to have the testimony additionally recorded by other than
6 stenographic means, that party shall serve notice on the opposing
7 party and the witness that the proceedings are to be video taped.
8 Such notice must be served not less than three days prior to the
9 date designated in the original notice for the taking of the
10 depositions and shall state the name, address and employer of the
11 recording technician.

12 (2) Where the deposition has been recorded only by video
13 tape and if the witness and parties do not waive signature, a
14 written transcription of the audio shall be prepared to be
15 submitted to the witness for signature as provided in Rule
16 57.03(f).

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

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

21 (5) The attorney for the party requesting the video taping
22 of the deposition shall take custody of and be responsible for
23 the safeguarding of the video tape and shall, upon request,
24 permit the viewing thereof by the opposing party and if
25 requested, shall provide a copy of the video tape at the cost of
26 the requesting party.

27 (6) Unless otherwise stipulated to by the parties, the
28 expense of video taping is to be borne by the party utilizing it

1 and shall not be taxed as costs.

2 (d) Record of Examination; Oath; Objections. The officer
3 before whom the deposition is to be taken shall put the witness
4 on oath or affirmation and shall personally, or by someone acting
5 under the officer's direction and in the officer's presence,
6 record the testimony of the witness. The testimony shall be
7 taken stenographically or recorded by any other means ordered in
8 accordance with Rule 57.03(c). If requested by one of the
9 parties, the testimony shall be transcribed.

10 All objections made at the time of the examination to the
11 qualifications of the officer taking the deposition, to the
12 manner of taking it, to the evidence presented, to the conduct of
13 any party, or any other objection to the proceedings shall be
14 noted by the officer upon the deposition. Evidence objected to
15 shall be taken subject to the objections. In lieu of
16 participating in the oral examination, parties may serve written
17 questions in a sealed envelope on the party taking the
18 deposition, and that party shall transmit them to the officer
19 before whom the deposition is to be taken, who shall propound
20 them to the witness, and the questions and answers thereto shall
21 be recorded.

22 (e) Motion to Terminate or Limit Examination. At any time
23 during the taking of the deposition, on motion of a party or of
24 the deponent and upon a showing that the examination is being
25 conducted in bad faith or in such manner as unreasonably to
26 annoy, embarrass, or oppress the deponent or party, the court in
27 which the action is pending or a court having general
28 jurisdiction in the place where the deposition is being taken may

1 order the officer conducting the examination to cease forthwith
2 from taking the deposition, or may limit the scope and manner of
3 the taking of the deposition as provided in Rule 56.01(c). If
4 the order made terminates the examination, it shall be resumed
5 thereafter only upon the order of the court in which the action
6 is pending. Upon demand of the objecting party or deponent, the
7 taking of the deposition shall be suspended for the time
8 necessary to make a motion for an order. The provisions of Rule
9 61.01(g) apply to the award of expenses incurred in relation to
10 the motion.

11 (f) Submission to Witness; Changes; Signing. When the
12 testimony is fully transcribed, the officer shall make the
13 deposition available to the witness for examination, reading and
14 signing, unless such examination, reading, and signing are waived
15 by the witness or by the parties. Any changes in form or
16 substance that the witness desires to make shall be entered upon
17 an errata sheet provided to the witness with a statement of the
18 reasons given for making such changes. The answers or responses
19 as originally given, together with the changes made and reasons
20 given therefor, shall be considered as a part of the deposition.
21 The deposition shall then be signed by the witness before a
22 notary public unless the witness is ill, cannot be found, is
23 dead, or refuses to sign. If the deposition is not signed by the
24 time of trial, it may be used as if signed, unless, on a motion
25 to suppress, the court holds that the reasons given for the
26 refusal to sign requires rejection of the deposition in whole or
27 in part.

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

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

7 (2) Filing

8 (a) By the Officer. Upon delivery of a deposition, the
9 officer shall file with the court a certificate showing the
10 caption of the case, the name of the deponent, the date the
11 deposition was taken, the name and address of the person having
12 custody of the original deposition, and whether the charges have
13 been paid. The officer shall not file a copy of the deposition
14 with the court except upon court order.

15 (b) By a Party. A party shall not file a deposition with
16 the court except upon specific court order or contemporaneously
17 with a motion placing the deposition or a part thereof in issue.
18 The court may enact local court rules requiring a party who
19 intends to use a deposition at a hearing or trial to file that
20 deposition with the court on or prior to the date of the hearing
21 or trial.

22 (c) Return of Deposition. At the conclusion of the hearing
23 or trial the deposition that has been filed or delivered to the
24 court shall be returned to the party that filed or delivered the
25 deposition.

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

28 (3) Exhibits. Documents and things produced for inspection

1 during the examination of the witness shall, upon the request of
2 a party, be marked for identification and annexed to and returned
3 with the deposition and may be inspected and copied by any party,
4 except that (A) the person producing the materials may substitute
5 copies to be marked for identification if the person affords to
6 all parties fair opportunity to verify the copies by comparison
7 with the originals and (B) if the person producing the materials
8 requests their return, the officer shall mark them, give each
9 party an opportunity to inspect and copy them, and return them to
10 the person producing them, and the materials may then be used in
11 the same manner as if annexed to and returned with the
12 deposition. Any party may move for an order that the original be
13 annexed to and returned with the deposition to the court pending
14 final disposition of the civil action.

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

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

19 (1) If the party giving the notice of the taking of a
20 deposition fails to attend and proceed therewith and another
21 party attends in person or by attorney pursuant to the notice,
22 the court may order the party giving notice to pay to such other
23 party the reasonable expenses incurred by that other party and
24 that other party's attorney in attending, including reasonable
25 attorney's fees.

26 (2) If a witness fails to appear for a deposition and the
27 party giving the notice of the taking of the deposition has not
28 complied with these rules to compel the attendance of the

1 witness, the court may order the party giving the notice to pay
2 to any party attending in person or by attorney the reasonable
3 expenses incurred by that other party and that other party's
4 attorney in attending, including reasonable attorney's fees.

5 57.04. Depositions Upon Written Questions

6 (a) Serving Questions; Notice.

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

15 (2) Leave of court, granted with or without notice, must be
16 obtained only if:

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

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

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

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

27 (B) the deponent is confined in prison.

28 (3) A party desiring to take a deposition upon written

1 questions shall serve them upon every other party with a notice
2 stating: [(1)] (A) the name and address of the person who is to
3 answer them, if known, and if the name is not known, a general
4 description sufficient to identify the person or the particular
5 class or group to which the person belongs and [(2)] (B) the name
6 or descriptive title and address of the officer before whom the
7 deposition is to be taken. A deposition upon written questions
8 may be taken of a public or private corporation or a partnership
9 or association or governmental agency in accordance with the
10 provisions of Rule 57.03(b) (4).

11 (4) Within thirty days after the notice and written
12 questions are served, a party may serve cross questions upon all
13 other parties. Within ten days after being served with cross
14 questions, a party may serve redirect questions upon all other
15 parties. Within ten days after being served with redirect
16 questions, a party may serve recross questions upon all other
17 parties. The court may for cause shown enlarge or shorten the
18 time.

19 (b) Officer to Take Responses and Prepare Record. A copy
20 of the notice and copies of all questions served shall be
21 delivered by the party taking the deposition to the officer
22 designated in the notice, who shall proceed promptly, in the
23 manner provided by Rule 57.03(d), (f), and (g), to take the
24 testimony of the witness in response to the questions and to
25 prepare, certify, and deliver the deposition, attaching thereto
26 the copy of the notice and the questions.

27 (c) Notice of Delivery. When the deposition is delivered,
28 the party taking it promptly shall give notice thereof to all

1 other parties.

2 58.01. Production of Documents and Things and Entry Upon
3 Land for Inspection and Other Purposes.

4 (a) Scope. Any party may serve on any other party a
5 request to:

6 (1) Produce and permit the requesting party [making the
7 request, or someone acting on the requesting party's behalf,] or
8 its representative to inspect, [and] copy, test or sample the
9 following items in the responding party's possession, custody, or
10 control:

11 (A) Any designated documents or electronically stored
12 information [(including writings, drawings, graphs, charts,
13 photographs, [phonograph records,] sound recordings, images,
14 electronic records, and other data or compilations from which
15 information can be obtained[, translated, if necessary, by the
16 requesting party through detection devices] either directly or
17 indirectly or, if necessary, after translation by the responding
18 party into a reasonably usable form[]]; or [to inspect and copy,
19 test, or sample any tangible things that constitute or contain
20 matters within the scope of Rule 56.01(b) and that are in the
21 possession, custody or control of the party upon whom the request
22 is served]

23 (B) Any designated tangible things; or

24 (2) Permit entry upon designated land or other property in
25 the possession or control of the party upon whom the request is
26 served for the purpose of inspection and measuring, surveying,
27 and photographing, testing, or sampling the property or any
28 designated object or operation thereon, within the scope of Rule

1 56.01(b).

2 This Rule 58.01 does not preclude an independent action
3 against a person not a party for production of documents and
4 things and permission to enter upon land.

5 (3) Reasonable time period. A request shall be limited,
6 unless otherwise stipulated or ordered by the court in a manner
7 consistent with Rule 56.01(b), to a reasonable time period
8 number, not to exceed 5 years prior to the accrual of the cause
9 of action. The limitation in this paragraph does not apply to
10 requests for patient health records, vocational records,
11 educational records, or any other similar records.

12 (b) Issuance.

13 (1) Form. In consecutively numbered paragraphs the request
14 shall:

15 (A) Set forth [the items to be inspected, either by
16 individual item or by category, and describe each item and
17 category] with reasonable particularity each item or category of
18 items to be inspected.

19 (B) **[The request shall]** Specify a reasonable time, place
20 and manner of making the inspection and performing the related
21 acts; and

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

24 The title shall identify the party to whom the requests are
25 directed and state the number of the set of requests directed to
26 that party.

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

- 1 (A) A plaintiff after commencement of the action; and
2 (B) Any other party with or after the party was served with
3 process, entered an appearance, or filed a pleading.

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

- 13 (A) Name of each party who is to respond to the requests;
14 (B) Number of the set of requests;
15 (C) Format of the electronic copy and the medium used to
16 transmit the electronic copy to the responding party.

17 At the time of service, a certificate of service, but not
18 the requests, shall be filed with the court as provided in Rule
19 58.01(d).

20 (c) Response. The requests shall be answered by each party
21 to whom they are directed.

22 (1) When Response is Due. Responses shall be served within
23 30 days after the service of the request. A defendant, however,
24 shall not be required to respond to the request before the
25 expiration of 45 days after the earlier of:

- 26 (A) The date the defendant enters an appearance; or
27 (B) The date the defendant is served with process.

28 The court may allow a shorter or longer time.

1 (2) Form. The title of the response shall identify the
2 responding party and the number of the set of the requests. For
3 each item or category, the response must either state that
4 inspection and related activities will be permitted as requested
5 or state with specificity the grounds for objecting to the
6 request, including the reasons. The responding party may state
7 that it will produce copies of documents or of electronically
8 stored information instead of permitting inspection. The
9 response shall quote each request, including its original
10 paragraph number, and immediately thereunder state that the
11 requested items will be produced or the inspection and related
12 activities will be permitted as requested, unless the request is
13 objected to, in which event each reason for objection shall be
14 stated [in detail].

15 (3) Objections and Privileges. If information is withheld
16 because of an objection, then each reason for the objection shall
17 be stated. An objection to part of a request must specify the
18 part and permit inspection of the rest. If a privilege or the
19 work product doctrine is asserted as a reason for the objection,
20 then without revealing the protected information, the objecting
21 party shall state information that will permit others to assess
22 the applicability of the privilege or work product doctrine.

23 (4) Method of Production. A party who produces documents
24 for inspection shall produce them as they are kept in the usual
25 course of business or shall organize and label them to correspond
26 with the categories in the request.

27 (5) Signing. The response shall be signed by the attorney
28 or by the party if the party is not represented by an attorney.

1 (6) Service. The party to whom the requests were directed
2 shall serve a signed original of the response and objections, if
3 any, on the party that issued the requests and a copy upon all
4 parties not in default. The certificate of service shall state
5 the name of the party who issued the requests and the number of
6 the set of requests. At the time of service, a certificate of
7 service, but not the response, shall be filed with the court as
8 provided in Rule 58.01(d).

9 (d) Filing. The request and responses thereto shall not be
10 filed with the court except upon court order or contemporaneously
11 with a motion placing the request in issue. However, both when
12 the request and responses are served, the party serving them
13 shall file with the court a certificate of service. The
14 certificate shall show the caption of the case, the name of the
15 party served, the date and manner of service, and the signature
16 of the serving party or attorney. Each party filing a
17 certificate shall maintain a copy of the document that is the
18 subject of the certificate until the case is finally disposed.

19 (e) Enforcement. The party submitting the request may move
20 for an order under Rule 61.01(d) with respect to any objection or
21 other failure to respond to the request or any part thereof or
22 any failure to permit inspection as requested.

23 59.01. Request for and Effect of Admissions

24 (a) Scope. After commencement of an action, a party may
25 serve upon any other party [a] no more than 25 written [request]
26 requests for the admission without leave of court, for purposes
27 of the pending action only, of the truth of any matters within
28 the scope of Rule 56.01(b) set forth in the request that relate

1 to statements or opinions of fact or of the application of law to
2 fact, including the genuineness of any documents described in the
3 request. However, the limitation on the number of requests for
4 admission specified by this Rule 59.01 shall not apply to
5 requests for admission regarding the genuineness of documents.

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

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

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

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

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

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

1 party in any other proceeding.

2 (c) Issuance.

3 (1) Form. In consecutively numbered paragraphs, the
4 request shall set forth each matter for which an admission is
5 requested. Copies of documents about which admissions are
6 requested shall be served with the request unless copies have
7 already been furnished. The title shall identify the party to
8 whom the request for admissions are directed and state the number
9 of the set of requests directed to that party.

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

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

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

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

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

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

28 (B) Number of the set of requests,

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

3 At the time of service, a certificate of service, but not
4 the requests, shall be filed with the court as provided in Rule
5 59.01(d).

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

8 (1) When Response is Due. Responses shall be served within
9 30 days after the service of the requests for admissions. A
10 defendant or respondent, however, shall not be required to
11 respond to requests for admissions before the expiration of 60
12 days after the earlier of the defendant:

13 (A) Entering an appearance, or

14 (B) Being served with process.

15 The court may allow a shorter or longer time.

16 (2) Form. The title of the response shall identify the
17 responding party and the number of the set of the requests for
18 admissions. The response shall quote each request, including its
19 original paragraph number, and immediately thereunder
20 specifically:

21 (A) Admit the matter; or

22 (B) Deny the matter; or

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

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

27 A denial shall fairly meet the substance of the requested
28 admission.

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

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

10 A party who considers that a matter of which an admission
11 has been requested presents a genuine issue for trial may not, on
12 that ground alone, object to the request; such party may deny the
13 matter, subject to the provisions of Rule 61.01(c), or set forth
14 reasons why the party cannot admit or deny it.

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

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

24 (5) Service. The party to whom the requests were directed
25 shall serve a signed original of the response and objections, if
26 any, on the party that issued the requests and a copy upon all
27 parties not in default. The certificate of service shall state
28 the name of the party who issued the requests and the number of

1 the set of requests.

2 At the time of service, a certificate of service, but not
3 the response, shall be filed with the court as provided in Rule
4 59.01(d).

5 (e) Filing Request and Responses. The request and response
6 thereto shall not be filed with the court except upon court order
7 or contemporaneously with a motion placing the request in issue.
8 However, both when the request and the response are served the
9 party serving them shall file with the court a certificate of
10 service. Each party filing a certificate shall maintain a copy
11 of the document that is the subject of the certificate until the
12 case is finally disposed.

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

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

21 61.01. Failure to Make Discovery: Sanctions

22 (a) Failure to Act--Evasive or Incomplete Answers. Any
23 failure to act described in this Rule 61 may not be excused on
24 the ground that the discovery sought is objectionable unless the
25 party failing to act has served timely objections to the
26 discovery request or has applied for a protective order as
27 provided by Rule 56.01(c).

28 For the purpose of this Rule 61, an evasive or incomplete

1 answer is to be treated as a failure to answer.

2 (b) Failure to Answer Interrogatories. If a party fails to
3 answer interrogatories or serve objections thereto within the
4 time provided by law, or if objections are served thereto that
5 are thereafter overruled and the interrogatories are not timely
6 answered, the court may, upon motion and reasonable notice to
7 other parties, take such action in regard to the failure as are
8 just and among others the following:

9 (1) Enter an order striking pleadings or parts thereof or
10 dismissing the action or proceeding or any part thereof or render
11 a judgment by default against the disobedient party;

12 (2) Upon the showing of reasonable excuse, grant the party
13 failing to answer the interrogatories additional time to serve
14 answers, but such order shall provide that if the party fails to
15 answer the interrogatories within the additional time allowed,
16 the pleadings of such party shall be stricken or the action shall
17 dismissed or a default judgment shall be rendered against the
18 disobedient party.

19 (c) Failure to Answer Request for Admissions. If a party,
20 after being served with a request to admit the genuineness of any
21 relevant documents or the truth of any relevant and material
22 matters of fact, fails to serve answers or objections thereto, as
23 required by Rule 59.01, the genuineness of any relevant documents
24 or the truth of any relevant and material matters of fact
25 contained in the request for admissions shall be taken as
26 admitted. If a party fails to admit the genuineness of any
27 document or the truth of any matter as requested under Rule
28 59.01, and if the party requesting the admissions thereafter

1 proves the genuineness of the document or the truth of the
2 matter, the party requesting the admissions may apply to the
3 court for an order requiring the other party to pay the
4 reasonable expenses incurred in making that proof, including
5 reasonable attorney fees. The court shall make the order unless
6 it finds that:

7 (1) The request was held objectionable pursuant to Rule
8 59.01;

9 (2) The admission sought was of no substantial importance;

10 (3) The party failing to admit had reasonable grounds to
11 believe that such party might prevail on the matter; or

12 (4) There was other good reason for the failure to admit.

13 (d) Failure to Produce Documents and Things or to Permit
14 Inspection. If a party fails to respond that inspection will be
15 permitted as requested, fails to permit inspection, or fails to
16 produce documents and tangible things as requested under Rule
17 58.01, or timely serves objections thereto that are thereafter
18 overruled and the documents and things are not timely produced or
19 inspection thereafter is not timely permitted, the court may,
20 upon motion and reasonable notice to other parties, take such
21 action in regard to the failure as are just and among others the
22 following:

23 (1) Enter an order refusing to allow the disobedient party
24 to support or oppose designated claims or defenses or prohibiting
25 the disobedient party from introducing designated matters in
26 evidence;

27 (2) Enter an order striking pleadings or parts thereof or
28 staying further proceedings until the order is obeyed or

1 dismissing the action or proceeding or any part thereof or render
2 a judgment by default against the disobedient party;

3 (3) Enter an order treating as a contempt of court the
4 failure to obey; or

5 (4) Enter an order requiring the party failing to obey the
6 order or the attorney advising the party or both to pay the
7 reasonable expenses, including attorney fees, caused by the
8 failure unless the court finds that the failure was substantially
9 justified or that other circumstances make an award of expenses
10 unjust.

11 (e) Failure to Appear for Physical Examination. If a party
12 fails to obey an order directing a physical or mental or blood
13 examination under Rule 60.01, the court may, upon motion and
14 reasonable notice to the other parties and all persons affected
15 thereby, make such orders in regard to the failure as are just,
16 and among others, it may take any action authorized under Rules
17 61.01(d) (1), (2), and (4). Where a party has failed to comply
18 with an order requiring the production of another for
19 examination, the court may enter such orders as are authorized by
20 this Rule 61.01, unless the party failing to comply shows an
21 inability to produce such person for examination.

22 (f) Failure to Attend Own Deposition. If a party or an
23 officer, director or managing agent of a party or a person
24 designated under Rules 57.03(b) (4) and 57.04(a), to testify on
25 behalf of a party, fails to appear before the officer who is to
26 take his deposition, after being served with notice, the court
27 may, upon motion and reasonable notice to the other parties and
28 all persons affected thereby, make such orders in regard to the

1 failure as are just and among others, it may take any action
2 authorized under paragraphs (1), (2), (3) and (4) of subdivision
3 (d) of this Rule.

4 (g) Failure to Answer Questions on Deposition. If a
5 witness fails or refuses to testify in response to questions
6 propounded on deposition, the proponent of the question may move
7 for an order compelling an answer. The proponent of the question
8 may complete or adjourn the deposition examination before
9 applying for an order. In ruling upon the motion, the court may
10 make such protective order as it would have been empowered to
11 make on a motion pursuant to Rule 56.01(c).

12 If the motion is granted, the court, after opportunity for
13 hearing, shall require the party or deponent whose conduct
14 necessitated the motion or the party or attorney advising such
15 conduct or both of them to pay to the moving party the reasonable
16 expenses incurred in obtaining the order, including attorney's
17 fees, unless the court finds that the opposition to the motion
18 was substantially justified or that other circumstances make an
19 award of expenses unjust.

20 If the motion is denied, the court, after opportunity for
21 hearing, shall require the moving party or the attorney advising
22 the motion or both of them to pay to the party or deponent who
23 opposed the motion the reasonable expenses incurred in opposing
24 the motion, including attorney's fees, unless the court finds
25 that the making of the motion was substantially justified or that
26 other circumstances make an award of expenses unjust.

27 If the motion is granted in part and denied in part, the
28 court may apportion the reasonable expenses incurred in relation

1 to the motion among the parties and persons in a just manner.

2 If the motion is granted and if the persons ordered to
3 respond fail to comply with the court's order, the court, upon
4 motion and reasonable notice to the other parties and all persons
5 affected thereby, may make such orders in regard to the failure
6 as are just, and among others, it may take any action authorized
7 under Rule 61.01(d).

8 (h) Failure to Preserve Electronically Stored Information.

9 If electronically stored information that should have been
10 preserved in the anticipation or conduct of litigation is lost
11 because a party failed to take reasonable steps to preserve it,
12 and it cannot be restored or replaced through additional
13 discovery, the court:

14 (1) Upon finding prejudice to another party from loss of
15 the information, may order measures no greater than necessary to
16 cure the prejudice; or

17 (2) Only upon finding that a party acted with the intent to
18 deprive another party of the information's use in litigation may:

19 (A) Presume that the lost information was unfavorable to
20 the party;

21 (B) Instruct the jury that it may or must presume the
22 information was unfavorable to the party; or

23 (C) Dismiss the action or enter a default judgment.

24 (i) Objections to Approved Discovery. If objections to
25 Rule [56.01(b)(6)] 56.01(b)(8) approved interrogatories or
26 requests for production are overruled, the court may assess
27 against such objecting party, attorney, or attorney's law firm,
28 or all of them, the attorney's fees reasonably incurred in having

1 such objection overruled. If such fees are not paid within sixty
2 days, the court may enter such other appropriate orders against
3 the disobedient party, including an order striking pleadings,
4 dismissing the action, or entering a judgment by default.