

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.

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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 matter, not privileged, that is relevant to the subject matter  
16 involved in the pending action, whether it relates to the claim  
17 or defense of the party seeking discovery or to the claim or  
18 defense of any other party, including the existence, description,  
19 nature, custody, condition and location of any books, documents

1 or other tangible things and the identity and location of persons  
2 having knowledge of any discoverable matter, provided the  
3 discovery is proportional to the needs of the case considering  
4 the importance of the issues at stake in the action, the amount  
5 in controversy, the parties' relative access to relevant  
6 information, the parties' resources, the importance of the  
7 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[. The request shall];

19 (B) Specify a reasonable time, place and manner of making  
20 the inspection and performing the related acts; and

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

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

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

28 (A) A plaintiff after commencement of the action; and

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

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

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

13 (B) Number of the set of requests;

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

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

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

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

25 (A) The date the defendant enters an appearance; or

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

27 The court may allow a shorter or longer time.

28 (2) Form. The title of the response shall identify the

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

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

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

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

28 (6) Service. The party to whom the requests were directed

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

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

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

#### 22 59.01. Request for and Effect of Admissions

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

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

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

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

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

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

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

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



1 (c) Issuance.

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

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

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

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

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

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

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

27 (B) Number of the set of requests,

28 (C) Format of the electronic copy and the medium used to

1 transmit the electronic copy to the responding party.

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

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

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

12 (A) Entering an appearance, or

13 (B) Being served with process.

14 The court may allow a shorter or longer time.

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

20 (A) Admit the matter; or

21 (B) Deny the matter; or

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

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

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

28 When good faith requires that a party qualify an answer or

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

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

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

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

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

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

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

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

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

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

20           61.01. Failure to Make Discovery: Sanctions

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

27           For the purpose of this Rule 61, an evasive or incomplete  
28 answer is to be treated as a failure to answer.

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

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

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

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

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

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

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

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

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

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

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

26 (2) Enter an order striking pleadings or parts thereof or  
27 staying further proceedings until the order is obeyed or  
28 dismissing the action or proceeding or any part thereof or render

1 a judgment by default against the disobedient party;

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

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

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

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

1 authorized under paragraphs (1), (2), (3) and (4) of subdivision  
2 (d) of this Rule.

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

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

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

26 If the motion is granted in part and denied in part, the  
27 court may apportion the reasonable expenses incurred in relation  
28 to the motion among the parties and persons in a just manner.



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

7           (h) Failure to Preserve Electronically Stored Information.

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

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

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

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

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

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

23           (i) Objections to Approved Discovery. If objections to  
24 Rule [56.01(b)(6)] 56.01(b)(8) approved interrogatories or  
25 requests for production are overruled, the court may assess  
26 against such objecting party, attorney, or attorney's law firm,  
27 or all of them, the attorney's fees reasonably incurred in having  
28 such objection overruled. If such fees are not paid within sixty

1 days, the court may enter such other appropriate orders against  
2 the disobedient party, including an order striking pleadings,  
3 dismissing the action, or entering a judgment by default.