

Civil Form 2, Discovery Plan

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Plaintiff(s)

v.

Civil No. Case #/Judge Initials

Defendant(s)

DISCOVERY PLAN
Fed. R. Civ. P. 26(f)

DATE/PLACE OF CONFERENCE:

COUNSEL PRESENT/REPRESENTING:

CASE SUMMARY

THEORY OF LIABILITY:

THEORY OF DEFENSE:

DAMAGES:

DEMAND: *due date [NOTE: need not be filed with the court.]*

OFFER: *due date [NOTE: need not be filed with the court.]*

JURISDICTIONAL QUESTIONS:

QUESTIONS OF LAW:

TYPE OF TRIAL: *jury or bench*

SCHEDULE

TRACK ASSIGNMENT: *EXPEDITED – 6 MONTHS*
 STANDARD – 12 MONTHS
 COMPLEX – 24 MONTHS

TRIAL DATE: *The parties shall set out an agreed trial date — adhering to time periods as mandated by the chosen track assignment — using a preset jury selection day as provided on the court’s web site (www.nhd.uscourts.gov). If the parties cannot agree on a date, they shall set out their respective proposed dates.*

DISCLOSURE OF CLAIMS AGAINST UNNAMED PARTIES: *If defendant(s) claim that unnamed parties are at fault on a state law claim (see DeBenedetto v. CLD Consulting Engineers, Inc., 153 N.H. 793 (2006)), defendant(s) shall disclose the identity of every such party and the basis of the allegation of fault [no later than 30 days before the Joinder of Additional Parties deadline and 45 days before the Plaintiff's Expert Disclosure deadline].*

Plaintiff shall then have 30 days from the date of disclosure to amend the complaint.

AMENDMENT OF PLEADINGS:

Plaintiff: *due date* Defendant: *due date*

JOINDER OF ADDITIONAL PARTIES:

Plaintiff: *due date* Defendant: *due date*

THIRD-PARTY ACTIONS: *due date*

MOTIONS TO DISMISS: *due date [NOTE: no later than 90 days after preliminary pretrial conference.]*

DATES OF DISCLOSURE OF EXPERTS AND EXPERTS' WRITTEN REPORTS AND SUPPLEMENTATIONS:

Plaintiff: *due date* Defendant: *due date*

Supplementations under Rule 26(e) due: *time(s) or interval(s).*

[Advise the court whether the parties have stipulated to a different form of expert report than that specified in Fed. R. Civ. P. 26(a)(2).]

COMPLETION OF DISCOVERY:

- (1) *Date all discovery complete [NOTE: no later than 60 days prior to trial date.]*
- (2) *Date for completion of discovery on issues for early discovery, if any.*

MOTIONS FOR SUMMARY JUDGMENT: *due date [NOTE: no later than 120 days prior to trial date. The fact that the discovery deadline may postdate the summary judgment deadline is not a sufficient basis to request a continuance of the summary judgment deadline.]*

CHALLENGES TO EXPERT TESTIMONY: *due date [NOTE: no later than 45 days prior to trial date.]*

DISCOVERY

DISCOVERY NEEDED:

Give a brief description of subjects on which discovery will be needed.

MANDATORY DISCLOSURES (Fed. R. Civ. P. 26(a)(1)):

Advise the court whether the parties have stipulated to a different method of disclosure from that required by Fed. R. Civ. P. 26(a)(1) or have agreed not to require any Rule 26(a)(1)

disclosures, and if so, in cases where ESI discovery is anticipated, advise how the parties will exchange information regarding the custodian(s) and location(s) of ESI in the absence of mandatory disclosures.

INTERROGATORIES: *A maximum of (number) [PRESUMPTIVE LIMIT 25] interrogatories by each party to any other party. Responses due 30 days after service unless otherwise agreed to pursuant to Fed. R. Civ. P. 29.*

REQUESTS FOR ADMISSION:

A maximum of (number) requests for admission by each party to any other party. Responses due 30 days after service unless otherwise agreed to pursuant to Fed. R. Civ. P. 29.

DEPOSITIONS:

A maximum of (number) [PRESUMPTIVE LIMIT 10] depositions by plaintiff(s) and (number) [PRESUMPTIVE LIMIT 10] by defendant(s). Each deposition (other than of /name\) limited to a maximum of (number) [PRESUMPTIVE LIMIT 7] hours unless extended by agreement of the parties.

ELECTRONIC INFORMATION DISCLOSURES (Fed. R. Civ. P. 26(f)):

If the parties do not anticipate discovery of electronically stored information (“ESI”), they should provide an explanation here. Otherwise, the parties must provide (a) a brief description of the parties’ proposals regarding the disclosure or discovery of electronically stored information (“ESI”) and/or attach a proposed order and/or (b) identify any disputes regarding the same. For further guidance, parties should refer to the ESI checklist provided on the court’s website.

*The potential issues the parties should consider include, **but are not limited to:***

- (1) Preservation. Counsel should attempt to agree on steps the parties will take to segregate and preserve ESI in order to avoid accusations of spoliation;*
- (2) Location and Systems. Counsel should attempt to identify systems from which discovery will be prioritized (e.g. email, finance, HR systems, backup/archival systems), including the description, location and media of those systems;*
- (3) Scope of Search, Proportionality and Costs. Counsel should attempt to identify and agree on the scope of ESI discovery, the search method(s), including specific words or phrases or other methodology that will be used to identify discoverable ESI, the amount and nature of the claims being made and who will bear the cost of obtaining the data;*
- (4) Format and Mode of Transmittal. Counsel should attempt to agree on the format and mode of transmittal to be used in the production of ESI, and whether production of some or all ESI in paper form is agreeable in lieu of production in electronic format;*
- (5) Phasing. Whether it is appropriate to conduct discovery of ESI in phases;*
- (6) Privileged or Trial Preparation Materials. Counsel also should attempt to reach agreement regarding what will happen in the event privileged or trial preparation materials are inadvertently disclosed. See Fed. R. Evid. 502.*

STIPULATION REGARDING CLAIMS OF PRIVILEGE/PROTECTION OF TRIAL PREPARATION MATERIALS (Fed. R. Civ. P. 26(f)):

Provide a brief description of the provisions of any proposed order governing claims of privilege or of protection as trial preparation material after production (and/or attach a proposed order).

OTHER ITEMS

SETTLEMENT POSSIBILITIES:

- (1) *is likely*
- (2) *is unlikely*
- (3) *cannot be evaluated prior to (date)*
- (4) *may be enhanced by ADR:*
 - (a) *request to the court*
 - (b) *outside source*

JOINT STATEMENT RE: MEDIATION: *The parties shall meet and confer regarding mediation, and shall include a statement in the proposed discovery plan addressing the following issues: 1) whether the parties plan to pursue mediation; 2) if so, whether they anticipate mediating before or after pursuing discovery and/or filing summary judgment motions; and 3) whether the parties will request mediation with a Magistrate Judge/District Judge or with a private mediator. The parties shall also propose a date by which they will update the court on the status of mediation; the clerk's office shall schedule a mediation status conference following that deadline. The obligation to meet and confer, and to file a joint mediation statement, shall not apply when one of the parties is incarcerated and unrepresented.*

TRIAL ESTIMATE: *number of days*

WITNESSES AND EXHIBITS: *[NOTE: no dates necessary. Due dates are as follows, and will be set by the clerk's notice of trial assignment.]*

- *Witness and exhibit lists, included in final pretrial statements, are due 10 days before final pretrial conference but not less than 30 days before trial.*
- *Objections are due 14 days after filing of final pretrial statements.*

PRELIMINARY PRETRIAL CONFERENCE: *The parties (request) (do not request) a preliminary pretrial conference with the court before entry of the scheduling order.*

[NOTE: THE PARTIES SHOULD PLAN TO ATTEND THE PRELIMINARY PRETRIAL CONFERENCE AS SCHEDULED UNLESS OTHERWISE NOTIFIED BY THE COURT.]

OTHER MATTERS: *The parties should list here their positions on any other matters which should be brought to the court's attention including other orders that should be entered under Fed. R. Civ. P. 26(c) or 16(b) and (c).*