

SENATE SUBSTITUTE  
FOR  
SENATE BILL NO. 224

AN ACT

To amend supreme court rules 25.02, 25.03, 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 25.02, 25.03, 56.01, 57.01,  
2 57.03, 57.04, 58.01, 59.01, and 61.01, are amended, to read as  
3 follows:

4           25.02. Misdemeanors or Felonies-Time for Discovery

5           (a) Disclosure [on filing of felony complaint. Requests or  
6 motions for discovery of material and information as provided in  
7 Rule 25.03(a) may be made any time after defendant's initial  
8 appearance in court. The state shall, within fourteen days of  
9 service of defendant's request, provide to defendant's counsel  
10 material and information as provided in 25.03(a). The court may  
11 enlarge or shorten the time for the state to respond to the  
12 request] after arraignment. Discovery as provided herein shall  
13 not commence earlier than arraignment of the defendant. Unless  
14 otherwise provided, responses to discovery requests shall be made  
15 within fifteen days of the service of the request or not less  
16 than ten days prior to trial, whichever is earlier. The time for  
17 response may be extended by the court for good cause shown, but  
18 no more than one extension of time shall be granted without prior  
19 notice to the opposing party.

1 (b) [Disclosure after indictment or filing of information.  
2 Except as provided in paragraph (a), upon the filing of an  
3 indictment or information discovery may commence. Requests or  
4 motions for discovery may be made after the filing of the  
5 indictment or information. Requests or motions for discovery  
6 shall be made not later than twenty days after arraignment.  
7 Requests or motions for discovery shall be answered within  
8 fourteen days after service of the request. The court may  
9 enlarge or shorten the times specified in this rule] Objections.  
10 Objections, if any, to discovery requests shall be filed and  
11 served within the time for responding to such requests.

12 25.03. Misdemeanors or Felonies-Disclosure by State to  
13 Defendant Without Court Order

14 (a) Disclosure [upon filing of felony complaint] after  
15 arraignment. Except as otherwise provided in these Rules, the  
16 state shall, upon written request of defendant's counsel,  
17 disclose to defendant's counsel, or of defendant if counsel has  
18 been waived, the following material and information [in the  
19 possession of the prosecutor: any arrest reports, incident  
20 reports, investigative reports, written or recorded statements,  
21 documents, photographs, video, electronic communications and  
22 electronic data that relate to the offense for which defendant is  
23 charged.

24 (b) Disclosure after indictment or filing of information.  
25 Except as otherwise provided in these Rules, the state shall,  
26 upon written request of defendant's counsel, disclose to  
27 defendant's counsel the following material and information]  
28 within its possession or control designated in the request:

1           (1) Any arrest reports, incident reports, investigative  
2 reports, written or recorded statements, documents, photographs,  
3 video, electronic communications and electronic data that relate  
4 to the offense for which defendant is charged; provided, that  
5 personal identifying information of persons named in such  
6 materials may be redacted at the discretion of the prosecutor;

7           (2) The names and last known addresses of persons whom the  
8 state intends to call as witnesses at any hearing or at the  
9 trial, together with their written or recorded statements, and  
10 existing memoranda, reporting or summarizing part or all of their  
11 oral statements;

12           (3) Any written or recorded statements and the substance of  
13 any oral statements made by defendant, a co-defendant or a  
14 co-actor, a list of all witnesses to the making of the statements  
15 and a list of all witnesses to the acknowledgment of the  
16 statements including the last known addresses of the witnesses;

17           (4) Those portions of any existing transcript of grand jury  
18 proceedings that relate to the offense with which defendant is  
19 charged, containing testimony of defendant and testimony of  
20 persons whom the state intends to call as witnesses at a hearing  
21 or trial;

22           (5) Any existing transcript of the preliminary hearing and  
23 of any prior trial held in defendant's case if the state has the  
24 transcript in its possession;

25           (6) Any reports or statements of experts made in connection  
26 with the particular case, including results of physical or mental  
27 examinations and of scientific tests, experiments, or  
28 comparisons;

1           (7) Any books, papers, documents, photographs, video,  
2 electronic communications, electronic data, or objects that the  
3 state intends to introduce into evidence at the hearing or trial  
4 or that were obtained from or belong to defendant; provided, that  
5 personal identifying information of any person named in such  
6 materials, other than those obtained from the defendant, may be  
7 redacted at the discretion of the prosecutor;

8           (8) Any record of prior criminal convictions of persons the  
9 state intends to call as witnesses at a hearing or the trial; and

10          (9) Any photographic or electronic surveillance (including  
11 wiretapping) of defendant or of conversations to which defendant  
12 was a party or of defendant's premises, relating to the offense  
13 charged. This disclosure shall be in the form of a written  
14 statement by counsel for the state briefly setting out the facts  
15 pertaining to the time, place, and persons making the  
16 photographic or electronic surveillance.

17          [(c)] (b) The request provided for by this Rule shall be  
18 made by filing the request in the court where the case is pending  
19 and serving a copy of the request upon counsel for the state.

20          [(d)] (c) The state may redact from any document it  
21 provides to defendant's counsel [the following information:  
22 taxpayer identification number, the first five digits of a social  
23 security number, driver's license number, financial account  
24 number, personal identification code (PIN), electronic password  
25 of a victim or witness, or the actual address or mailing address  
26 of a participant in an address confidentiality program  
27 administered by the Missouri Secretary of State,] any personal  
28 identifying information of witnesses or other persons named in

1 any document but must do so in a manner that makes it clear that  
2 the information has been redacted.

3 [(e)] (d) The state may elect to provide a separate copy of  
4 a redacted document to defendant's counsel to be delivered to  
5 defendant and designated as "Defendant's Copy." If the state  
6 provides a redacted document designated as "Defendant's Copy," in  
7 addition to the information permitted to be redacted pursuant to  
8 Rule 25.03[(d)](c), the state may also redact from "Defendant's  
9 Copy" of the document the following information: date of birth,  
10 home address, work address, and personal phone number and work  
11 phone number of a victim or witness. However, the redaction must  
12 be done in a manner that makes it clear the information has been  
13 redacted from the document. Defendant's counsel shall be  
14 provided a separate document designated as "Lawyer Copy Only -  
15 Not for Defendant" that includes the information that has been  
16 redacted from the document pursuant to Rule 25.03[(e)](d). If  
17 defendant's counsel is provided with a redacted document by the  
18 state designated as "Defendant's Copy," only that copy shall be  
19 provided to defendant. Defendant's counsel shall not provide to  
20 defendant the unredacted document or any information redacted  
21 from the document pursuant to this Rule without court approval.  
22 For any document designated "Defendant's Copy" or "Lawyer Copy  
23 Only - Not for Defendant," every page of the respective document  
24 shall be so designated.

25 [(f)] (e) Defendant is not entitled to the information  
26 redacted from a document as provided in Rule 25.03(c) or (d) [or  
27 (e)] unless the court determines after a showing of good cause  
28 that the disclosure of the information is necessary for the

1 defense of the case.

2 [(g)] (f) The state shall, without written request,  
3 disclose to defendant any material or information that tends to  
4 negate the guilt of defendant for the charged offense, mitigate  
5 the degree of the offense charged, reduce the punishment of the  
6 offense charged, and any additional material or information that  
7 would be required to be disclosed to comply with Brady v.  
8 Maryland, 373 U.S. 83 (1963), Giglio v. United States, 405 U.S.  
9 150 (1972) and their progeny.

10 [(h)] (g) If material or information would be discoverable  
11 under subsections [(b)] (a) and [(g)] (f) of this Rule if in the  
12 possession or control of the state, but is in possession or  
13 control of other governmental personnel, the state shall use  
14 diligence and make good faith efforts to make the material or  
15 information available to defendant. If the state's efforts are  
16 unsuccessful and the material or information or other  
17 governmental personnel are subject to the jurisdiction of the  
18 court, the court, upon request, shall issue subpoenas or orders  
19 to cause the material or information to be made available to the  
20 state for disclosure to the defense.

21 56.01. General Provisions Governing Discovery

22 (a) Discovery Methods. Parties may obtain discovery by one  
23 or more of the following methods: depositions upon oral  
24 examination or written questions; written interrogatories;  
25 production of documents, electronically stored information, or  
26 things or permission to enter upon land or other property, for  
27 inspection and other purposes; physical and mental examinations;  
28 and requests for admission.

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

4 (1) In General. Parties may obtain discovery regarding any  
5 matter, not privileged, that is relevant to the subject matter  
6 involved in the pending action, whether it relates to the claim  
7 or defense of the party seeking discovery or to the claim or  
8 defense of any other party, including the existence, description,  
9 nature, custody, condition and location of any books, documents  
10 or other tangible things and the identity and location of persons  
11 having knowledge of any discoverable matter, provided the  
12 discovery is proportional to the needs of the case considering  
13 the totality of the circumstances, including but not limited to,  
14 the importance of the issues at stake in the action, the amount  
15 in controversy, the parties' relative access to relevant  
16 information, the parties' resources, the importance of the  
17 discovery in resolving the issues, and whether the burden or  
18 expenses of the proposed discovery outweighs its likely benefit.

19 [It is not ground for objection that the information sought  
20 will be inadmissible at the trial] Information within the scope  
21 of discovery need not be admissible in evidence to be  
22 discoverable if the information sought appears reasonably  
23 calculated to lead to the discovery of admissible evidence.

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

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

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

4       (B) The party seeking discovery has had ample opportunity  
5 to obtain the information by discovery in the action; or

6       (C) The proposed discovery is outside the scope permitted  
7 by this Rule 56.01(b) (1).

8       (3) Specific Limitations on Electronically Stored  
9 Information. A party need not provide discovery of  
10 electronically stored information from sources that the party  
11 identifies as not reasonably accessible because of undue burden  
12 or cost. On motion to compel discovery or for a protective  
13 order, the party from whom discovery is sought must show that the  
14 information is not reasonably accessible because of undue burden  
15 or cost. If that showing is made, the court may nonetheless  
16 order discovery from such sources if the requesting party shows  
17 good cause, considering the limitations of Rule 56.01(b) (2). The  
18 court may specify conditions for the discovery.

19       (4) Insurance Agreements. A party may obtain discovery of  
20 the existence and contents, including production of the policy  
21 and declaration page, of any insurance agreement under which any  
22 person carrying on an insurance business may be liable to satisfy  
23 part or all of a judgment that may be entered in the action or to  
24 indemnify or reimburse for payments made to satisfy the judgment.  
25 Information concerning the insurance agreement is not by reason  
26 of disclosure admissible in evidence at trial. For purposes of  
27 this Rule [56.01(b) (2)] 56.01(b) (4), an application for insurance  
28 shall not be treated as part of an insurance agreement.

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

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

26            [(4)] (6) Trial Preparation: Experts. Discovery of facts  
27 known and opinions held by experts, otherwise discoverable under  
28 the provisions of Rule 56.01(b)(1) and acquired or developed in

1 anticipation of litigation or for trial, may be obtained only as  
2 follows:

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

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

18 [(5)] (7) Trial Preparations: Non-retained Experts. A  
19 party, through interrogatories, may require any other party to  
20 identify each non-retained expert witness, including a party,  
21 whom the other party expects to call at trial who may provide  
22 expert witness opinion testimony by providing the expert's name,  
23 address, and field of expertise. For the purpose of this Rule  
24 [56.01(b)(5)] 56.01(b)(7), an expert witness is a witness  
25 qualified as an expert by knowledge, experience, training, or  
26 education giving testimony relative to scientific, technical or  
27 other specialized knowledge that will assist the trier of fact to  
28 understand the evidence. Discovery of the facts known and

1 opinions held by such an expert shall be discoverable in the same  
2 manner as for lay witnesses.

3 [(6)] (8) Approved Interrogatories and Request for  
4 Production. A circuit court by local court rule may promulgate  
5 "approved" interrogatories and requests for production for use in  
6 specified types of litigation. Each such approved interrogatory  
7 and request for production submitted to a party shall be  
8 denominated as having been approved by reference to the local  
9 court rule and paragraph number containing the interrogatory or  
10 request for production.

11 (9) Claiming Privilege or Protecting Trial Preparation  
12 Materials.

13 (A) Information produced.

14 (i) If information produced in discovery is subject to a  
15 claim of privilege or of protection as trial preparation  
16 material, the party making the claim may notify any party that  
17 received the information of the claim and the basis for it.  
18 After being notified, a party must promptly return, sequester, or  
19 destroy the specified information and any copies it has; must not  
20 use or disclose the information until the claim is resolved; must  
21 take reasonable steps to retrieve the information if the party  
22 disclosed it before being notified; and may promptly present the  
23 information to the court under seal for a determination of the  
24 claim. The producing party must preserve the information until  
25 the claim is resolved.

26 (ii) An attorney who receives information that contains  
27 privileged communications involving an adverse or third party and  
28 who has reasonable cause to believe that the information was

1 wrongfully obtained shall not read the information or, if he or  
2 she has begun to do so, shall stop reading it. The attorney  
3 shall promptly notify the attorney whose communications are  
4 contained in the information to return the information to the  
5 other lawyer and, if in electronic form, delete it and take  
6 reasonable measures to assure that the information is  
7 inaccessible. An attorney who has been notified about  
8 information containing privileged communications has the  
9 obligation to preserve the information.

10 (B) The production of privileged or work-product protected  
11 documents, electronically stored information or other  
12 information, whether inadvertent or otherwise, is not a waiver of  
13 the privilege or protection from discovery in the proceeding.

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

19 (1) that the discovery not be had;

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

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

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

28 (5) that discovery be conducted with no one present except

1 persons designated by the court;

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

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

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

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

15 (d) Sequence and Timing of Discovery. Unless the parties  
16 stipulate or the court upon motion, for the convenience of  
17 parties and witnesses and in the interests of justice, orders  
18 otherwise, methods of discovery may be used in any sequence and  
19 the fact that a party is conducting discovery, whether by  
20 deposition or otherwise, shall not operate to delay any other  
21 party's discovery.

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

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

8 57.01. Interrogatories to Parties

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

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

20 (b) Issuance.

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

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

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

28 (B) Any other party with or after the party was served with

1 process, entered an appearance, or filed a pleading.

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

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

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

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

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

19 (c) Response. The interrogatories shall be answered by  
20 each party to whom they are directed. If they are directed to a  
21 public or private corporation, limited liability company,  
22 partnership, association or governmental agency, they shall be  
23 answered by an officer or agent. The party answering the  
24 interrogatories shall furnish such information as is available to  
25 the party.

26 (1) When the Response is Due. Responses shall be served  
27 within 30 days after the service of the interrogatories. A  
28 defendant, however, shall not be required to respond to

1 interrogatories before the expiration of 45 days after the  
2 earlier of:

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

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

5 The court may allow a shorter or longer time.

6 (2) Form. The title of the response shall identify the  
7 responding party and the number of the set of interrogatories.  
8 The response to the interrogatories shall quote each  
9 interrogatory, including its original paragraph number, and  
10 immediately thereunder state the answer or all reasons for not  
11 completely answering the interrogatory, including privileges, the  
12 work product doctrine and objections.

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

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

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

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

26 (C) A compilation, abstract or summary based thereon,  
27 and the burden of deriving or ascertaining the answer is  
28 substantially the same for the party serving the interrogatory as

1 for the party served, it is a sufficient answer to such  
2 interrogatory to specify the records from which the answer may be  
3 derived or ascertained and to afford to the party serving the  
4 interrogatory reasonable opportunity to examine, audit or inspect  
5 such records and to make copies, compilations, abstracts or  
6 summaries.

7 (5) Signing. Answers shall be signed under oath by the  
8 person making them. Objections shall be signed by the attorney  
9 making them or by the self-represented party.

10 (6) Service. The party to whom the interrogatories were  
11 directed shall serve a signed original of the answers and  
12 objections, if any, on the party that issued the interrogatories  
13 and a copy on all parties not in default. The certificate of  
14 service shall state the name of the party who issued the  
15 interrogatories and the number of the set of interrogatories.

16 At the time of service, a certificate of service, but not  
17 the response, shall be filed with the court as provided in Rule  
18 57.01(d).

19 (d) Filing. Interrogatories and answers under this Rule  
20 57.01 shall not be filed with the court except upon court order  
21 or contemporaneously with a motion placing the interrogatories in  
22 issue. However, both when the interrogatories and answers are  
23 served, the party serving them shall file with the court a  
24 certificate of service.

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

1 serving party or attorney. The answers bearing the original  
2 signature of the party answering the interrogatories shall be  
3 served on the party submitting the interrogatories, who shall be  
4 the custodian thereof until the entire case is finally disposed.

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

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

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

#### 12 57.03. Depositions Upon Oral Examination

13 (a) When Depositions May Be Taken.

14 (1) After commencement of the action, any party may take  
15 the testimony of any person, including a party, by deposition  
16 upon oral examination without leave of court, except as specified  
17 in paragraph (2) of this subdivision. The attendance of  
18 witnesses may be compelled by subpoena as provided in Rule 57.09.

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

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

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

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

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

11          (B) the deponent is confined in prison.

12          (b) Notice of Examination: General Requirements; Special  
13 Notice; Production of Documents and Things; Deposition of  
14 Organization.

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

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

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

28          A party may attend a deposition by telephone.

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

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

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

20           (5) [Repealed effective Jan. 1, 2007.] (A) Duration.  
21 Unless otherwise stipulated or ordered by the court, a deposition  
22 shall be limited to 1 day of 7 hours. The court may allow  
23 additional time consistent with Rule 56.01 if needed to fairly  
24 examine the deponent or if the deponent, another person, or any  
25 other circumstance impedes or delays the examination.

26           (B) Sanction. The court may impose an appropriate  
27 sanction, including the reasonable expenses and attorney's fees  
28 incurred by any party, on a person who impedes, delays, or

1 frustrates the fair examination of the deponent.

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

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

19 (2) Where the deposition has been recorded only by video  
20 tape and if the witness and parties do not waive signature, a  
21 written transcription of the audio shall be prepared to be  
22 submitted to the witness for signature as provided in Rule  
23 57.03(f).

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

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

28 (5) The attorney for the party requesting the video taping

1 of the deposition shall take custody of and be responsible for  
2 the safeguarding of the video tape and shall, upon request,  
3 permit the viewing thereof by the opposing party and if  
4 requested, shall provide a copy of the video tape at the cost of  
5 the requesting party.

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

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

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

1           (e) Motion to Terminate or Limit Examination. At any time  
2 during the taking of the deposition, on motion of a party or of  
3 the deponent and upon a showing that the examination is being  
4 conducted in bad faith or in such manner as unreasonably to  
5 annoy, embarrass, or oppress the deponent or party, the court in  
6 which the action is pending or a court having general  
7 jurisdiction in the place where the deposition is being taken may  
8 order the officer conducting the examination to cease forthwith  
9 from taking the deposition, or may limit the scope and manner of  
10 the taking of the deposition as provided in Rule 56.01(c). If  
11 the order made terminates the examination, it shall be resumed  
12 thereafter only upon the order of the court in which the action  
13 is pending. Upon demand of the objecting party or deponent, the  
14 taking of the deposition shall be suspended for the time  
15 necessary to make a motion for an order. The provisions of Rule  
16 61.01(g) apply to the award of expenses incurred in relation to  
17 the motion.

18           (f) Submission to Witness; Changes; Signing. When the  
19 testimony is fully transcribed, the officer shall make the  
20 deposition available to the witness for examination, reading and  
21 signing, unless such examination, reading, and signing are waived  
22 by the witness or by the parties. Any changes in form or  
23 substance that the witness desires to make shall be entered upon  
24 an errata sheet provided to the witness with a statement of the  
25 reasons given for making such changes. The answers or responses  
26 as originally given, together with the changes made and reasons  
27 given therefor, shall be considered as a part of the deposition.  
28 The deposition shall then be signed by the witness before a

1 notary public unless the witness is ill, cannot be found, is  
2 dead, or refuses to sign. If the deposition is not signed by the  
3 time of trial, it may be used as if signed, unless, on a motion  
4 to suppress, the court holds that the reasons given for the  
5 refusal to sign requires rejection of the deposition in whole or  
6 in part.

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

8 (1) Certification and Delivery. The officer shall certify  
9 on the deposition that the witness was duly sworn by the officer  
10 and that the deposition is a true record of the testimony given  
11 by the witness. Upon payment of reasonable charges therefor, the  
12 officer shall deliver the deposition to the party who requested  
13 that the testimony be transcribed.

14 (2) Filing.

15 (a) By the Officer. Upon delivery of a deposition, the  
16 officer shall file with the court a certificate showing the  
17 caption of the case, the name of the deponent, the date the  
18 deposition was taken, the name and address of the person having  
19 custody of the original deposition, and whether the charges have  
20 been paid. The officer shall not file a copy of the deposition  
21 with the court except upon court order.

22 (b) By a Party. A party shall not file a deposition with  
23 the court except upon specific court order or contemporaneously  
24 with a motion placing the deposition or a part thereof in issue.  
25 The court may enact local court rules requiring a party who  
26 intends to use a deposition at a hearing or trial to file that  
27 deposition with the court on or prior to the date of the hearing  
28 or trial.

1 (c) Return of Deposition. At the conclusion of the hearing  
2 or trial the deposition that has been filed or delivered to the  
3 court shall be returned to the party that filed or delivered the  
4 deposition.

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

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

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

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

26 (1) If the party giving the notice of the taking of a  
27 deposition fails to attend and proceed therewith and another  
28 party attends in person or by attorney pursuant to the notice,

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

5 (2) If a witness fails to appear for a deposition and the  
6 party giving the notice of the taking of the deposition has not  
7 complied with these rules to compel the attendance of the  
8 witness, the court may order the party giving the notice to pay  
9 to any party attending in person or by attorney the reasonable  
10 expenses incurred by that other party and that other party's  
11 attorney in attending, including reasonable attorney's fees.

12 57.04. Depositions Upon Written Questions

13 (a) Serving Questions; Notice.

14 (1) After commencement of the action, any party may take  
15 the testimony of any person, including a party, by deposition  
16 upon written questions, without leave of court, except as  
17 specified in paragraph (2) of this subdivision. The attendance  
18 of witnesses may be compelled by the use of subpoena as provided  
19 in Rule 57.09. [The deposition of a person confined in prison  
20 may be taken only by leave of court on such terms as the court  
21 prescribes.]

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

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

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

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

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

6        (B) the deponent is confined in prison.

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

18        (4) Within thirty days after the notice and written  
19 questions are served, a party may serve cross questions upon all  
20 other parties. Within ten days after being served with cross  
21 questions, a party may serve redirect questions upon all other  
22 parties. Within ten days after being served with redirect  
23 questions, a party may serve recross questions upon all other  
24 parties. The court may for cause shown enlarge or shorten the  
25 time.

26        (b) Officer to Take Responses and Prepare Record. A copy  
27 of the notice and copies of all questions served shall be  
28 delivered by the party taking the deposition to the officer

1 designated in the notice, who shall proceed promptly, in the  
2 manner provided by Rule 57.03(d), (f), and (g), to take the  
3 testimony of the witness in response to the questions and to  
4 prepare, certify, and deliver the deposition, attaching thereto  
5 the copy of the notice and the questions.

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

9 58.01. Production of Documents and Things and Entry Upon  
10 Land for Inspection and Other Purposes

11 (a) Scope. Any party may serve on any other party a  
12 request to:

13 (1) Produce and permit the requesting party [making the  
14 request, or someone acting on the requesting party's behalf,] or  
15 its representative to inspect, [and] copy, test or sample the  
16 following items in the responding party's possession, custody, or  
17 control:

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

1 is served]

2 (B) Any designated tangible things; or

3 (2) Permit entry upon designated land or other property in  
4 the possession or control of the party upon whom the request is  
5 served for the purpose of inspection and measuring, surveying,  
6 and photographing, testing, or sampling the property or any  
7 designated object or operation thereon, within the scope of Rule  
8 56.01(b).

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

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 that electronically stored information be  
22 produced in native format.

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. The  
2 response shall quote each request, including its original  
3 paragraph number, and immediately thereunder state that the  
4 requested items will be produced or the inspection and related  
5 activities will be permitted as requested, unless the request is  
6 objected to, in which event each reason for objection shall be  
7 stated in detail.

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

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

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

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

1 provided in Rule 58.01(d).

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

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

16 59.01. Request for and Effect of Admissions

17 (a) Scope. After commencement of an action, a party may  
18 serve upon any other party [a] no more than 25 written [request]  
19 requests for the admission without leave of court or stipulation  
20 of the parties, for purposes of the pending action only, of the  
21 truth of any matters within the scope of Rule 56.01(b) set forth  
22 in the request that relate to statements or opinions of fact or  
23 of the application of law to fact, including the genuineness of  
24 any documents described in the request. However, the limitation  
25 on the number of requests for admission specified by this Rule  
26 59.01 shall not apply to requests for admission regarding the  
27 genuineness of documents.

28 A failure to timely respond to requests for admissions in

1 compliance with this Rule 59.01 shall result in each matter being  
2 admitted.

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

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

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

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

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

24 (c) Issuance.

25 (1) Form. In consecutively numbered paragraphs, the  
26 request shall set forth each matter for which an admission is  
27 requested. Copies of documents about which admissions are  
28 requested shall be served with the request unless copies have

1 already been furnished. The title shall identify the party to  
2 whom the request for admissions are directed and state the number  
3 of the set of requests directed to that party.

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

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

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

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

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

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

22 (B) Number of the set of requests,

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

25 At the time of service, a certificate of service, but not  
26 the requests, shall be filed with the court as provided in Rule  
27 59.01(d).

28 (d) Response. The requests shall be answered by each party

1 to whom they are directed.

2 (1) When Response is Due. Responses shall be served within  
3 30 days after the service of the requests for admissions. A  
4 defendant or respondent, however, shall not be required to  
5 respond to requests for admissions before the expiration of 60  
6 days after the earlier of the defendant:

7 (A) Entering an appearance, or

8 (B) Being served with process.

9 The court may allow a shorter or longer time.

10 (2) Form. The title of the response shall identify the  
11 responding party and the number of the set of the requests for  
12 admissions. The response shall quote each request, including its  
13 original paragraph number, and immediately thereunder  
14 specifically:

15 (A) Admit the matter; or

16 (B) Deny the matter; or

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

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

21 A denial shall fairly meet the substance of the requested  
22 admission.

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

27 A responding party may give lack of information or knowledge  
28 as a reason for failure to admit or deny if such party states

1 that the party has made reasonable inquiry and the information  
2 known or readily obtainable by the party is insufficient to  
3 enable the party to admit or deny.

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

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

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

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

24 At the time of service, a certificate of service, but not  
25 the response, shall be filed with the court as provided in Rule  
26 59.01(d).

27 (e) Filing Request and Responses. The request and response  
28 thereto shall not be filed with the court except upon court order

1 or contemporaneously with a motion placing the request in issue.  
2 However, both when the request and the response are served the  
3 party serving them shall file with the court a certificate of  
4 service. Each party filing a certificate shall maintain a copy  
5 of the document that is the subject of the certificate until the  
6 case is finally disposed.

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

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

15 The provisions of Rule 61.01(c) apply to the award of  
16 expenses incurred in relation to the motion.

17 61.01. Failure to Make Discovery: Sanctions

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

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

26 (b) Failure to Answer Interrogatories. If a party fails to  
27 answer interrogatories or serve objections thereto within the  
28 time provided by law, or if objections are served thereto that

1 are thereafter overruled and the interrogatories are not timely  
2 answered, the court may, upon motion and reasonable notice to  
3 other parties, take such action in regard to the failure as are  
4 just and among others the following:

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

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

15 (c) Failure to Answer Request for Admissions. If a party,  
16 after being served with a request to admit the genuineness of any  
17 relevant documents or the truth of any relevant and material  
18 matters of fact, fails to serve answers or objections thereto, as  
19 required by Rule 59.01, the genuineness of any relevant documents  
20 or the truth of any relevant and material matters of fact  
21 contained in the request for admissions shall be taken as  
22 admitted. If a party fails to admit the genuineness of any  
23 document or the truth of any matter as requested under Rule  
24 59.01, and if the party requesting the admissions thereafter  
25 proves the genuineness of the document or the truth of the  
26 matter, the party requesting the admissions may apply to the  
27 court for an order requiring the other party to pay the  
28 reasonable expenses incurred in making that proof, including

1 reasonable attorney fees. The court shall make the order unless  
2 it finds that:

3 (1) The request was held objectionable pursuant to Rule  
4 59.01;

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

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

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

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

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

23 (2) Enter an order striking pleadings or parts thereof or  
24 staying further proceedings until the order is obeyed or  
25 dismissing the action or proceeding or any part thereof or render  
26 a judgment by default against the disobedient party;

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

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

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

18           (f) Failure to Attend Own Deposition. If a party or an  
19 officer, director or managing agent of a party or a person  
20 designated under Rules 57.03(b) (4) and 57.04(a), to testify on  
21 behalf of a party, fails to appear before the officer who is to  
22 take his deposition, after being served with notice, the court  
23 may, upon motion and reasonable notice to the other parties and  
24 all persons affected thereby, make such orders in regard to the  
25 failure as are just and among others, it may take any action  
26 authorized under paragraphs (1), (2), (3) and (4) of subdivision  
27 (d) of this Rule.

28           (g) Failure to Answer Questions on Deposition. If a

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

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

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

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

26 If the motion is granted and if the persons ordered to  
27 respond fail to comply with the court's order, the court, upon  
28 motion and reasonable notice to the other parties and all persons

1 affected thereby, may make such orders in regard to the failure  
2 as are just, and among others, it may take any action authorized  
3 under Rule 61.01(d).

4 (h) Objections to Approved Discovery. If objections to  
5 Rule ~~56.01(b)(6)~~ 56.01(b)(8) approved interrogatories or  
6 requests for production are overruled, the court may assess  
7 against such objecting party, attorney, or attorney's law firm,  
8 or all of them, the attorney's fees reasonably incurred in having  
9 such objection overruled. If such fees are not paid within sixty  
10 days, the court may enter such other appropriate orders against  
11 the disobedient party, including an order striking pleadings,  
12 dismissing the action, or entering a judgment by default.