

FIRST REGULAR SESSION

[P E R F E C T E D]

SENATE SUBSTITUTE NO. 4 FOR

SENATE BILL NO. 224

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LUETKEMEYER.

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ADRIANE D. CROUSE, Secretary.

0633S.12P

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.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Supreme court rules 25.02, 25.03, 56.01, 57.01, 57.03, 57.04,

2 58.01, 59.01, and 61.01, are amended, to read as follows:

25.02. Misdemeanors or Felonies-Time for Discovery

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

15 (b) [Disclosure after indictment or filing of information. Except as
16 provided in paragraph (a), upon the filing of an indictment or information

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 discovery may commence. Requests or motions for discovery may be made after
18 the filing of the indictment or information. Requests or motions for discovery
19 shall be made not later than twenty days after arraignment. Requests or motions
20 for discovery shall be answered within fourteen days after service of the
21 request. The court may enlarge or shorten the times specified in this rule]
22 **Objections. Objections, if any, to discovery requests shall be filed and**
23 **served within the time for responding to such requests.**

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

3 (a) Disclosure [upon filing of felony complaint] **after**
4 **arraignment.** Except as otherwise provided in these Rules, the state shall, upon
5 written request of defendant's counsel, disclose to defendant's counsel, **or of**
6 **defendant if counsel has been waived,** the following material and
7 information [in the possession of the prosecutor: any arrest reports, incident
8 reports, investigative reports, written or recorded statements, documents,
9 photographs, video, electronic communications and electronic data that relate to
10 the offense for which defendant is charged.

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

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

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

24 (3) Any written or recorded statements and the substance of any oral
25 statements made by defendant, a co-defendant or a co-actor, a list of all witnesses
26 to the making of the statements and a list of all witnesses to the acknowledgment
27 of the statements including the last known addresses of the witnesses;

28 (4) Those portions of any existing transcript of grand jury proceedings
29 that relate to the offense with which defendant is charged, containing testimony

30 of defendant and testimony of persons whom the state intends to call as witnesses
31 at a hearing or trial;

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

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

37 (7) Any books, papers, documents, photographs, video, electronic
38 communications, electronic data, or objects that the state intends to introduce
39 into evidence at the hearing or trial or that were obtained from or belong to
40 defendant; **provided, that personal identifying information of any person**
41 **named in such materials, other than those obtained from the defendant,**
42 **may be redacted at the discretion of the prosecutor;**

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

45 (9) Any photographic or electronic surveillance (including wiretapping) of
46 defendant or of conversations to which defendant was a party or of defendant's
47 premises, relating to the offense charged. This disclosure shall be in the form of
48 a written statement by counsel for the state briefly setting out the facts
49 pertaining to the time, place, and persons making the photographic or electronic
50 surveillance.

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

54 [(d)] (c) The state may redact from any document it provides to
55 defendant's counsel [the following information: taxpayer identification number,
56 the first five digits of a social security number, driver's license number, financial
57 account number, personal identification code (PIN), electronic password of a
58 victim or witness, or the actual address or mailing address of a participant in an
59 address confidentiality program administered by the Missouri Secretary of State,]
60 **any personal identifying information of witnesses or other persons**
61 **named in any document** but must do so in a manner that makes it clear that
62 the information has been redacted.

63 [(e)] (d) The state may elect to provide a separate copy of a redacted
64 document to defendant's counsel to be delivered to defendant and designated as
65 "Defendant's Copy." If the state provides a redacted document designated as

66 "Defendant's Copy," in addition to the information permitted to be redacted
67 pursuant to Rule 25.03[(d)](c), the state may also redact from "Defendant's Copy"
68 of the document the following information: date of birth, home address, work
69 address, and personal phone number and work phone number of a victim or
70 witness. However, the redaction must be done in a manner that makes it clear
71 the information has been redacted from the document. Defendant's counsel shall
72 be provided a separate document designated as "Lawyer Copy Only – Not for
73 Defendant" that includes the information that has been redacted from the
74 document pursuant to Rule 25.03[(e)](d). If defendant's counsel is provided with
75 a redacted document by the state designated as "Defendant's Copy," only that
76 copy shall be provided to defendant. Defendant's counsel shall not provide to
77 defendant the unredacted document or any information redacted from the
78 document pursuant to this Rule without court approval. For any document
79 designated "Defendant's Copy" or "Lawyer Copy Only – Not for Defendant," every
80 page of the respective document shall be so designated.

81 [(f)] (e) Defendant is not entitled to the information redacted from a
82 document as provided in Rule 25.03(c) or (d) [or (e)] unless the court determines
83 after a showing of good cause that the disclosure of the information is necessary
84 for the defense of the case.

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

91 [(h)] (g) If material or information would be discoverable under
92 subsections [(b)] (a) and [(g)] (f) of this Rule if in the possession or control of the
93 state, but is in possession or control of other governmental personnel, the state
94 shall use diligence and make good faith efforts to make the material or
95 information available to defendant. If the state's efforts are unsuccessful and the
96 material or information or other governmental personnel are subject to the
97 jurisdiction of the court, the court, upon request, shall issue subpoenas or orders
98 to cause the material or information to be made available to the state for
99 disclosure to the defense.

56.01. General Provisions Governing Discovery

2 (a) Discovery Methods. Parties may obtain discovery by one or more of

3 the following methods: depositions upon oral examination or written questions;
4 written interrogatories; production of documents, **electronically stored**
5 **information**, or things or permission to enter upon land or other property, for
6 inspection and other purposes; physical and mental examinations; and requests
7 for admission.

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

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

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

27 The party seeking discovery shall bear the burden of establishing
28 relevance.

29 (2) **Limitations. Upon the motion of any party or on its own, the**
30 **court must limit the frequency or extent of discovery if it determines**
31 **that:**

32 (A) **The discovery sought is cumulative or duplicative, or can be**
33 **obtained from some other source that is more convenient, less**
34 **burdensome, or less expensive;**

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

37 (C) **The proposed discovery is outside the scope permitted by**
38 **this Rule 56.01(b)(1).**

39 **(3) Specific Limitations on Electronically Stored Information.** A
40 party need not provide discovery of electronically stored information
41 from sources that the party identifies as not reasonably accessible
42 because of undue burden or cost. On motion to compel discovery or for
43 a protective order, the party from whom discovery is sought must show
44 that the information is not reasonably accessible because of undue
45 burden or cost. If that showing is made, the court may nonetheless
46 order discovery from such sources if the requesting party shows good
47 cause, considering the limitations of Rule 56.01(b)(2). The court may
48 specify conditions for the discovery.

49 **(4) Insurance Agreements.** A party may obtain discovery of the existence
50 and contents, including production of the policy and declaration page, of any
51 insurance agreement under which any person carrying on an insurance business
52 may be liable to satisfy part or all of a judgment that may be entered in the
53 action or to indemnify or reimburse for payments made to satisfy the
54 judgment. Information concerning the insurance agreement is not by reason of
55 disclosure admissible in evidence at trial. For purposes of this Rule [56.01(b)(2)]
56 **56.01(b)(4)**, an application for insurance shall not be treated as part of an
57 insurance agreement.

58 **[(3)] (5) Trial Preparation: Materials.** Subject to the provisions of Rule
59 [56.01(b)(4)] **56.01(b)(6)**, a party may obtain discovery of documents and tangible
60 things otherwise discoverable under Rule 56.01(b)(1) and prepared in anticipation
61 of litigation or for trial by or for another party or by or for that other party's
62 representative, including an attorney, consultant, surety, indemnitor, insurer, or
63 agent, only upon a showing that the party seeking discovery has substantial need
64 of the materials in the preparation of the case and that the adverse party is
65 unable without undue hardship to obtain the substantial equivalent of the
66 materials by other means. In ordering discovery of such materials when the
67 required showing has been made, the court shall protect against disclosure of the
68 mental impressions, conclusions, opinions, or legal theories of an attorney or
69 other representative of a party concerning the litigation.

70 A party may obtain without the required showing a statement concerning
71 the action or its subject matter previously made by that party. For purposes of
72 this paragraph, a statement previously made is: (a) a written statement signed
73 or otherwise adopted or approved by the person making it, or (b) a stenographic,
74 mechanical, electrical, audio, video, motion picture or other recording, or a

75 transcription thereof, of the party or of a statement made by the party and
76 contemporaneously recorded.

77 **[(4)] (6) Trial Preparation: Experts.** Discovery of facts known and
78 opinions held by experts, otherwise discoverable under the provisions of Rule
79 56.01(b)(1) and acquired or developed in anticipation of litigation or for trial, may
80 be obtained only as follows:

81 (A) A party may through interrogatories require any other party to
82 identify each person whom the other party expects to call as an expert witness at
83 trial by providing such expert's name, address, occupation, place of employment
84 and qualifications to give an opinion, or if such information is available on the
85 expert's curriculum vitae, such curriculum vitae may be attached to the
86 interrogatory answers as a full response to such interrogatory, and to state the
87 general nature of the subject matter on which the expert is expected to testify,
88 and the expert's hourly deposition fee.

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

93 **[(5)] (7) Trial Preparations: Non-retained Experts.** A party, through
94 interrogatories, may require any other party to identify each non-retained expert
95 witness, including a party, whom the other party expects to call at trial who may
96 provide expert witness opinion testimony by providing the expert's name, address,
97 and field of expertise. For the purpose of this Rule **[56.01(b)(5)] 56.01(b)(7)**, an
98 expert witness is a witness qualified as an expert by knowledge, experience,
99 training, or education giving testimony relative to scientific, technical or other
100 specialized knowledge that will assist the trier of fact to understand the
101 evidence. Discovery of the facts known and opinions held by such an expert shall
102 be discoverable in the same manner as for lay witnesses.

103 **[(6)] (8) Approved Interrogatories and Request for Production.** A circuit
104 court by local court rule may promulgate "approved" interrogatories and requests
105 for production for use in specified types of litigation. Each such approved
106 interrogatory and request for production submitted to a party shall be
107 denominated as having been approved by reference to the local court rule and
108 paragraph number containing the interrogatory or request for production.

109 **(9) Claiming Privilege or Protecting Trial Preparation Materials.**

110 **(A) Information produced.**

111 (i) If information produced in discovery is subject to a claim of
112 privilege or of protection as trial preparation material, the party
113 making the claim may notify any party that received the information
114 of the claim and the basis for it. After being notified, a party must
115 promptly return, sequester, or destroy the specified information and
116 any copies it has; must not use or disclose the information until the
117 claim is resolved; must take reasonable steps to retrieve the
118 information if the party disclosed it before being notified; and may
119 promptly present the information to the court under seal for a
120 determination of the claim. The producing party must preserve the
121 information until the claim is resolved.

122 (ii) An attorney who receives information that contains
123 privileged communications involving an adverse or third party and who
124 has reasonable cause to believe that the information was wrongfully
125 obtained shall not read the information or, if he or she has begun to do
126 so, shall stop reading it. The attorney shall promptly notify the
127 attorney whose communications are contained in the information to
128 return the information to the other lawyer and, if in electronic form,
129 delete it and take reasonable measures to assure that the information
130 is inaccessible. An attorney who has been notified about information
131 containing privileged communications has the obligation to preserve
132 the information.

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

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

- 142 (1) that the discovery not be had;
- 143 (2) that the discovery may be had only on specified terms and conditions,
144 including a designation of the time or place **or the allocation of expenses**;
- 145 (3) that the discovery may be had only by a method of discovery other
146 than that selected by the party seeking discovery;
- 147 (4) that certain matters not be inquired into, or that the scope of the

148 discovery be limited to certain matters;

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

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

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

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

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

161 (d) Sequence and Timing of Discovery. Unless **the parties stipulate or**
162 the court upon motion, for the convenience of parties and witnesses and in the
163 interests of justice, orders otherwise, methods of discovery may be used in any
164 sequence and the fact that a party is conducting discovery, whether by deposition
165 or otherwise, shall not operate to delay any other party's discovery.

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

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

57.01. Interrogatories to Parties

2 (a) Scope. **Unless otherwise stipulated or ordered by the court,**
3 any party may serve upon any other party **no more than 25** written
4 interrogatories, **including all discrete subparts.** Interrogatories may relate
5 to any matter that can be inquired into under Rule 56.01. An interrogatory
6 otherwise proper is not necessarily objectionable merely because an answer to the

7 interrogatory involves an opinion or contention that relates to fact or the
8 application of law to fact, but the court may order that such an interrogatory need
9 not be answered until after designated discovery has been completed or until a
10 pretrial conference or other later time.

11 (b) Issuance.

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

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

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

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

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

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

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

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

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

33 (c) Response. The interrogatories shall be answered by each party to
34 whom they are directed. If they are directed to a public or private corporation,
35 limited liability company, partnership, association or governmental agency, they
36 shall be answered by an officer or agent. The party answering the interrogatories
37 shall furnish such information as is available to the party.

38 (1) When the Response is Due. Responses shall be served within 30 days
39 after the service of the interrogatories. A defendant, however, shall not be
40 required to respond to interrogatories before the expiration of 45 days after the
41 earlier of:

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

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

44 The court may allow a shorter or longer time.

45 (2) Form. The title of the response shall identify the responding party
46 and the number of the set of interrogatories. The response to the interrogatories
47 shall quote each interrogatory, including its original paragraph number, and
48 immediately thereunder state the answer or all reasons for not completely
49 answering the interrogatory, including privileges, the work product doctrine and
50 objections.

51 (3) Objections and Privileges. If information is withheld because of an
52 objection, then each reason for the objection shall be stated. If a privilege or the
53 work product doctrine is asserted as a reason for withholding information, then
54 without revealing the protected information, the objecting party shall state
55 information that will permit others to assess the applicability of the privilege or
56 work product doctrine.

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

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

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

62 (C) A compilation, abstract or summary based thereon, and the burden of
63 deriving or ascertaining the answer is substantially the same for the party
64 serving the interrogatory as for the party served, it is a sufficient answer to such
65 interrogatory to specify the records from which the answer may be derived or
66 ascertained and to afford to the party serving the interrogatory reasonable
67 opportunity to examine, audit or inspect such records and to make copies,
68 compilations, abstracts or summaries.

69 (5) Signing. Answers shall be signed under oath by the person making
70 them. Objections shall be signed by the attorney making them or by the
71 self-represented party.

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

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

79 (d) Filing. Interrogatories and answers under this Rule 57.01 shall not
80 be filed with the court except upon court order or contemporaneously with a
81 motion placing the interrogatories in issue. However, both when the
82 interrogatories and answers are served, the party serving them shall file with the
83 court a certificate of service.

84 The certificate shall show the caption of the case, the name of the party
85 served, the date and manner of service, the designation of the document, e.g., first
86 interrogatories or answers to second interrogatories, and the signature of the
87 serving party or attorney. The answers bearing the original signature of the
88 party answering the interrogatories shall be served on the party submitting the
89 interrogatories, who shall be the custodian thereof until the entire case is finally
90 disposed.

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

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

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

57.03. Depositions Upon Oral Examination

2 (a) When Depositions May Be Taken.

3 **(1) After commencement of the action, any party may take the testimony**
4 **of any person, including a party, by deposition upon oral examination** **without**
5 **leave of court, except as specified in paragraph (2) of this**
6 **subdivision. The attendance of witnesses may be compelled by**
7 **subpoena as provided in Rule 57.09.**

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

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

17 **(i) the deposition would result in more than 10 depositions being**

18 taken under this rule or Rule 57.04 by the plaintiffs, or by the
19 defendants, or by the third-party defendants;

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

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

25 (B) the deponent is confined in prison.

26 (b) Notice of Examination: General Requirements; Special Notice;
27 Production of Documents and Things; Deposition of Organization.

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

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

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

38 A party may attend a deposition by telephone.

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

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

45 (4) A party may in the notice and in a subpoena name as the deponent a
46 public or private corporation or a partnership or association or governmental
47 agency and describe with reasonable particularity the matters on which
48 examination is requested. In that event, the organization so named shall
49 designate one or more officers, directors, or managing agents, or other persons
50 who consent to testify on its behalf and may set forth, for each person designated,
51 the matters on which the person will testify. A subpoena shall advise a nonparty
52 organization of its duty to make such a designation. The persons so designated
53 shall testify as to matters known or reasonably available to the

54 organization. This Rule 57.03(b)(4) does not preclude taking a deposition by any
55 other procedure authorized in these rules.

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

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

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

70 (1) If the deposition is to be recorded by video tape, every notice or
71 subpoena for the taking of the deposition shall state that it is to be video taped
72 and shall state the name, address and employer of the recording technician. If
73 a party upon whom notice for the taking of a deposition has been served desires
74 to have the testimony additionally recorded by other than stenographic means,
75 that party shall serve notice on the opposing party and the witness that the
76 proceedings are to be video taped. Such notice must be served not less than three
77 days prior to the date designated in the original notice for the taking of the
78 depositions and shall state the name, address and employer of the recording
79 technician.

80 (2) Where the deposition has been recorded only by video tape and if the
81 witness and parties do not waive signature, a written transcription of the audio
82 shall be prepared to be submitted to the witness for signature as provided in Rule
83 57.03(f).

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

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

88 (5) The attorney for the party requesting the video taping of the
89 deposition shall take custody of and be responsible for the safeguarding of the

90 video tape and shall, upon request, permit the viewing thereof by the opposing
91 party and if requested, shall provide a copy of the video tape at the cost of the
92 requesting party.

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

95 (d) Record of Examination; Oath; Objections. The officer before whom the
96 deposition is to be taken shall put the witness on oath or affirmation and shall
97 personally, or by someone acting under the officer's direction and in the officer's
98 presence, record the testimony of the witness. The testimony shall be taken
99 stenographically or recorded by any other means ordered in accordance with Rule
100 57.03(c). If requested by one of the parties, the testimony shall be transcribed.

101 All objections made at the time of the examination to the qualifications of
102 the officer taking the deposition, to the manner of taking it, to the evidence
103 presented, to the conduct of any party, or any other objection to the proceedings
104 shall be noted by the officer upon the deposition. Evidence objected to shall be
105 taken subject to the objections. In lieu of participating in the oral examination,
106 parties may serve written questions in a sealed envelope on the party taking the
107 deposition, and that party shall transmit them to the officer before whom the
108 deposition is to be taken, who shall propound them to the witness, and the
109 questions and answers thereto shall be recorded.

110 (e) Motion to Terminate or Limit Examination. At any time during the
111 taking of the deposition, on motion of a party or of the deponent and upon a
112 showing that the examination is being conducted in bad faith or in such manner
113 as unreasonably to annoy, embarrass, or oppress the deponent or party, the court
114 in which the action is pending or a court having general jurisdiction in the place
115 where the deposition is being taken may order the officer conducting the
116 examination to cease forthwith from taking the deposition, or may limit the scope
117 and manner of the taking of the deposition as provided in Rule 56.01(c). If the
118 order made terminates the examination, it shall be resumed thereafter only upon
119 the order of the court in which the action is pending. Upon demand of the
120 objecting party or deponent, the taking of the deposition shall be suspended for
121 the time necessary to make a motion for an order. The provisions of Rule 61.01(g)
122 apply to the award of expenses incurred in relation to the motion.

123 (f) Submission to Witness; Changes; Signing. When the testimony is fully
124 transcribed, the officer shall make the deposition available to the witness for
125 examination, reading and signing, unless such examination, reading, and signing

126 are waived by the witness or by the parties. Any changes in form or substance
127 that the witness desires to make shall be entered upon an errata sheet provided
128 to the witness with a statement of the reasons given for making such
129 changes. The answers or responses as originally given, together with the changes
130 made and reasons given therefor, shall be considered as a part of the
131 deposition. The deposition shall then be signed by the witness before a notary
132 public unless the witness is ill, cannot be found, is dead, or refuses to sign. If the
133 deposition is not signed by the time of trial, it may be used as if signed, unless,
134 on a motion to suppress, the court holds that the reasons given for the refusal to
135 sign requires rejection of the deposition in whole or in part.

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

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

142 (2) Filing.

143 (a) By the Officer. Upon delivery of a deposition, the officer shall file with
144 the court a certificate showing the caption of the case, the name of the deponent,
145 the date the deposition was taken, the name and address of the person having
146 custody of the original deposition, and whether the charges have been paid. The
147 officer shall not file a copy of the deposition with the court except upon court
148 order.

149 (b) By a Party. A party shall not file a deposition with the court except
150 upon specific court order or contemporaneously with a motion placing the
151 deposition or a part thereof in issue. The court may enact local court rules
152 requiring a party who intends to use a deposition at a hearing or trial to file that
153 deposition with the court on or prior to the date of the hearing or trial.

154 (c) Return of Deposition. At the conclusion of the hearing or trial the
155 deposition that has been filed or delivered to the court shall be returned to the
156 party that filed or delivered the deposition.

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

159 (3) Exhibits. Documents and things produced for inspection during the
160 examination of the witness shall, upon the request of a party, be marked for
161 identification and annexed to and returned with the deposition and may be

162 inspected and copied by any party, except that (A) the person producing the
163 materials may substitute copies to be marked for identification if the person
164 affords to all parties fair opportunity to verify the copies by comparison with the
165 originals and (B) if the person producing the materials requests their return, the
166 officer shall mark them, give each party an opportunity to inspect and copy them,
167 and return them to the person producing them, and the materials may then be
168 used in the same manner as if annexed to and returned with the deposition. Any
169 party may move for an order that the original be annexed to and returned with
170 the deposition to the court pending final disposition of the civil action.

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

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

174 (1) If the party giving the notice of the taking of a deposition fails to
175 attend and proceed therewith and another party attends in person or by attorney
176 pursuant to the notice, the court may order the party giving notice to pay to such
177 other party the reasonable expenses incurred by that other party and that other
178 party's attorney in attending, including reasonable attorney's fees.

179 (2) If a witness fails to appear for a deposition and the party giving the
180 notice of the taking of the deposition has not complied with these rules to compel
181 the attendance of the witness, the court may order the party giving the notice to
182 pay to any party attending in person or by attorney the reasonable expenses
183 incurred by that other party and that other party's attorney in attending,
184 including reasonable attorney's fees.

57.04. Depositions Upon Written Questions

2 (a) Serving Questions; Notice.

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

9 (2) **Leave of court, granted with or without notice, must be**
10 **obtained only if:**

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

12 (i) **the deposition would result in more than 10 depositions being**
13 **taken under this rule or Rule 57.03 by the plaintiffs, or by the**

14 **defendants, or by the third-party defendants;**

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

16 **(iii) the plaintiff seeks to take a deposition prior to the**
17 **expiration of 30 days after service of the summons and petition upon**
18 **any defendant, except that leave is not required if a defendant has**
19 **served a notice of taking deposition or otherwise sought discovery; or**
20 **(B) the deponent is confined in prison.**

21 **(3)** A party desiring to take a deposition upon written questions shall
22 serve them upon every other party with a notice stating: [(1)] **(A)** the name and
23 address of the person who is to answer them, if known, and if the name is not
24 known, a general description sufficient to identify the person or the particular
25 class or group to which the person belongs and [(2)] **(B)** the name or descriptive
26 title and address of the officer before whom the deposition is to be taken. A
27 deposition upon written questions may be taken of a public or private corporation
28 or a partnership or association or governmental agency in accordance with the
29 provisions of Rule 57.03(b)(4).

30 **(4)** Within thirty days after the notice and written questions are served,
31 a party may serve cross questions upon all other parties. Within ten days after
32 being served with cross questions, a party may serve redirect questions upon all
33 other parties. Within ten days after being served with redirect questions, a party
34 may serve recross questions upon all other parties. The court may for cause
35 shown enlarge or shorten the time.

36 (b) Officer to Take Responses and Prepare Record. A copy of the notice
37 and copies of all questions served shall be delivered by the party taking the
38 deposition to the officer designated in the notice, who shall proceed promptly, in
39 the manner provided by Rule 57.03(d), (f), and (g), to take the testimony of the
40 witness in response to the questions and to prepare, certify, and deliver the
41 deposition, attaching thereto the copy of the notice and the questions.

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

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

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

4 (1) Produce and permit the **requesting** party [making the request, or
5 someone acting on the requesting party's behalf,] **or its representative** to
6 inspect, [and] copy, **test or sample the following items in the responding**

7 **party's possession, custody, or control:**

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

18 (B) **Any designated tangible things;** or

19 (2) Permit entry upon designated land or other property in the possession
20 or control of the party upon whom the request is served for the purpose of
21 inspection and measuring, surveying, and photographing, testing, or sampling the
22 property or any designated object or operation thereon, within the scope of Rule
23 56.01(b).

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

27 (b) Issuance.

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

29 (A) Set forth [the items to be inspected, either by individual item or by
30 category, and describe each item and category] with reasonable
31 particularity[. The request shall] **each item or category of items to be**
32 **inspected;**

33 (B) Specify a reasonable time, place and manner of making the inspection
34 and performing the related acts; **and**

35 (C) **May specify that electronically stored information be**
36 **produced in native format.**

37 The title shall identify the party to whom the requests are directed and
38 state the number of the set of requests directed to that party.

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

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

42 (B) Any other party with or after the party was served with process,

43 entered an appearance, or filed a pleading.

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

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

52 (B) Number of the set of requests;

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

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

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

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

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

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

64 The court may allow a shorter or longer time.

65 (2) Form. The title of the response shall identify the responding party
66 and the number of the set of the requests. The response shall quote each request,
67 including its original paragraph number, and immediately thereunder state that
68 the requested items will be produced or the inspection and related activities will
69 be permitted as requested, unless the request is objected to, in which event each
70 reason for objection shall be stated in detail.

71 (3) Objections and Privileges. If information is withheld because of an
72 objection, then each reason for the objection shall be stated. **An objection to**
73 **part of a request must specify the part and permit inspection of the**
74 **rest.** If a privilege or the work product doctrine is asserted as a reason for the
75 objection, then without revealing the protected information, the objecting party
76 shall state information that will permit others to assess the applicability of the
77 privilege or work product doctrine.

78 (4) Method of Production. A party who produces documents for inspection

79 shall produce them as they are kept in the usual course of business or shall
80 organize and label them to correspond with the categories in the request.

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

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

89 (d) Filing. The request and responses thereto shall not be filed with the
90 court except upon court order or contemporaneously with a motion placing the
91 request in issue. However, both when the request and responses are served, the
92 party serving them shall file with the court a certificate of service. The certificate
93 shall show the caption of the case, the name of the party served, the date and
94 manner of service, and the signature of the serving party or attorney. Each party
95 filing a certificate shall maintain a copy of the document that is the subject of the
96 certificate until the case is finally disposed.

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

59.01. Request for and Effect of Admissions

2 (a) Scope. After commencement of an action, a party may serve upon any
3 other party **[a] no more than 25** written **[request] requests** for the admission
4 **without leave of court or stipulation of the parties**, for purposes of the
5 pending action only, of the truth of any matters within the scope of Rule 56.01(b)
6 set forth in the request that relate to statements or opinions of fact or of the
7 application of law to fact, including the genuineness of any documents described
8 in the request. **However, the limitation on the number of requests for**
9 **admission specified by this Rule 59.01 shall not apply to requests for**
10 **admission regarding the genuineness of documents.**

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

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

16 in the request:

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

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

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

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

31 (c) Issuance.

32 (1) Form. In consecutively numbered paragraphs, the request shall set
33 forth each matter for which an admission is requested. Copies of documents
34 about which admissions are requested shall be served with the request unless
35 copies have already been furnished. The title shall identify the party to whom
36 the request for admissions are directed and state the number of the set of
37 requests directed to that party.

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

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

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

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

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

52 certificate of service shall also state the:

- 53 (A) Name of each party who is to respond to the requests;
- 54 (B) Number of the set of requests,
- 55 (C) Format of the electronic copy and the medium used to transmit the
- 56 electronic copy to the responding party.

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

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

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

- 65 (A) Entering an appearance, or
- 66 (B) Being served with process.

67 The court may allow a shorter or longer time.

68 (2) Form. The title of the response shall identify the responding party
69 and the number of the set of the requests for admissions. The response shall
70 quote each request, including its original paragraph number, and immediately
71 thereunder specifically:

- 72 (A) Admit the matter; or
- 73 (B) Deny the matter; or
- 74 (C) Object to the matter and state each reason for the objection; or
- 75 (D) Set forth in detail the reasons why the responding party cannot
- 76 truthfully admit or deny the matter.

77 A denial shall fairly meet the substance of the requested admission.

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

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

85 A party who considers that a matter of which an admission has been
86 requested presents a genuine issue for trial may not, on that ground alone, object
87 to the request; such party may deny the matter, subject to the provisions of Rule

88 61.01(c), or set forth reasons why the party cannot admit or deny it.

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

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

96 (5) Service. The party to whom the requests were directed shall serve a
97 signed original of the response and objections, if any, on the party that issued the
98 requests and a copy upon all parties not in default. The certificate of service
99 shall state the name of the party who issued the requests and the number of the
100 set of requests.

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

103 (e) Filing Request and Responses. The request and response thereto shall
104 not be filed with the court except upon court order or contemporaneously with a
105 motion placing the request in issue. However, both when the request and the
106 response are served the party serving them shall file with the court a certificate
107 of service. Each party filing a certificate shall maintain a copy of the document
108 that is the subject of the certificate until the case is finally disposed.

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

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

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

61.01. Failure to Make Discovery: Sanctions

2 (a) Failure to Act - Evasive or Incomplete Answers. Any failure to act
3 described in this Rule 61 may not be excused on the ground that the discovery
4 sought is objectionable unless the party failing to act has served timely objections
5 to the discovery request or has applied for a protective order as provided by Rule
6 56.01(c).

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

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

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

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

23 (c) Failure to Answer Request for Admissions. If a party, after being
24 served with a request to admit the genuineness of any relevant documents or the
25 truth of any relevant and material matters of fact, fails to serve answers or
26 objections thereto, as required by Rule 59.01, the genuineness of any relevant
27 documents or the truth of any relevant and material matters of fact contained in
28 the request for admissions shall be taken as admitted. If a party fails to admit
29 the genuineness of any document or the truth of any matter as requested under
30 Rule 59.01, and if the party requesting the admissions thereafter proves the
31 genuineness of the document or the truth of the matter, the party requesting the
32 admissions may apply to the court for an order requiring the other party to pay
33 the reasonable expenses incurred in making that proof, including reasonable
34 attorney fees. The court shall make the order unless it finds that:

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

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

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

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

40 (d) Failure to Produce Documents and Things or to Permit Inspection. If
41 a party fails to respond that inspection will be permitted as requested, fails to
42 permit inspection, or fails to produce documents and tangible things as requested

43 under Rule 58.01, or timely serves objections thereto that are thereafter overruled
44 and the documents and things are not timely produced or inspection thereafter
45 is not timely permitted, the court may, upon motion and reasonable notice to
46 other parties, take such action in regard to the failure as are just and among
47 others the following:

48 (1) Enter an order refusing to allow the disobedient party to support or
49 oppose designated claims or defenses or prohibiting the disobedient party from
50 introducing designated matters in evidence;

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

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

55 (4) Enter an order requiring the party failing to obey the order or the
56 attorney advising the party or both to pay the reasonable expenses, including
57 attorney fees, caused by the failure unless the court finds that the failure was
58 substantially justified or that other circumstances make an award of expenses
59 unjust.

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

69 (f) Failure to Attend Own Deposition. If a party or an officer, director or
70 managing agent of a party or a person designated under Rules 57.03(b)(4) and
71 57.04(a), to testify on behalf of a party, fails to appear before the officer who is
72 to take his deposition, after being served with notice, the court may, upon motion
73 and reasonable notice to the other parties and all persons affected thereby, make
74 such orders in regard to the failure as are just and among others, it may take any
75 action authorized under paragraphs (1), (2), (3) and (4) of subdivision (d) of this
76 Rule.

77 (g) Failure to Answer Questions on Deposition. If a witness fails or
78 refuses to testify in response to questions propounded on deposition, the

79 proponent of the question may move for an order compelling an answer. The
80 proponent of the question may complete or adjourn the deposition examination
81 before applying for an order. In ruling upon the motion, the court may make such
82 protective order as it would have been empowered to make on a motion pursuant
83 to Rule 56.01(c).

84 If the motion is granted, the court, after opportunity for hearing, shall
85 require the party or deponent whose conduct necessitated the motion or the party
86 or attorney advising such conduct or both of them to pay to the moving party the
87 reasonable expenses incurred in obtaining the order, including attorney's fees,
88 unless the court finds that the opposition to the motion was substantially
89 justified or that other circumstances make an award of expenses unjust.

90 If the motion is denied, the court, after opportunity for hearing, shall
91 require the moving party or the attorney advising the motion or both of them to
92 pay to the party or deponent who opposed the motion the reasonable expenses
93 incurred in opposing the motion, including attorney's fees, unless the court finds
94 that the making of the motion was substantially justified or that other
95 circumstances make an award of expenses unjust.

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

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

104 (h) Objections to Approved Discovery. If objections to Rule [56.01(b)(6)]
105 **56.01(b)(8)** approved interrogatories or requests for production are overruled, the
106 court may assess against such objecting party, attorney, or attorney's law firm,
107 or all of them, the attorney's fees reasonably incurred in having such objection
108 overruled. If such fees are not paid within sixty days, the court may enter such
109 other appropriate orders against the disobedient party, including an order
110 striking pleadings, dismissing the action, or entering a judgment by default.

✓