

LBR 7026.1
DISCOVERY

(a) Application. This rule applies to adversary proceedings, and contested matters as prescribed by Fed. R. Bankr. P. 9014 and when the court orders. Fed. R. Civ. P. 26(a) and (f), and the corresponding sections of this rule, do not apply to contested matters unless the presiding judge specifically orders otherwise.

(b) Completion Time. The parties should complete discovery within four months from the later of the date the case becomes at issue or the date a scheduling order is issued pursuant to Fed. R. Bankr. P. 7016. Ordinarily, the parties should have completed discovery before the pretrial conference. For good cause, the court may establish longer or shorter periods for the completion of discovery.

(c) Notice of Depositions Permitted by Fed. R. Bankr. P. 7030. The reasonable notice for taking a deposition is 7 days. For good cause, the court may enlarge or shorten the time.

(d) Motions for Protective Order.

(1) *Stay of Discovery.* Except as provided in paragraph (2), a motion for protective order filed pursuant to Fed. R. Bankr. P. 7026(c) or 7030(d), or a motion to quash or modify a deposition subpoena filed pursuant to Fed. R. Bankr. P. 9016, stays the particular discovery or deposition pending court order.

(2) *Stay of Properly Noticed Deposition.* A motion filed under this rule will not stay a properly noticed deposition unless filed and served on the attorneys or parties within 14 days after service of the deposition notice and at least 48 hours in advance of the deposition.

(3) *No Appearance at Deposition Required.* No party, witness, or attorney is required to appear at a deposition stayed by a motion under this rule until the court decides the motion or it is otherwise resolved.

(e) Additional Interrogatories to Those Permitted by Fed. R. Bankr. P. 7033(a). A party must file a motion to seek leave to serve interrogatories in excess of the number permitted by Fed. R. Bankr. P. 7033(a). The motion must (1) submit the proposed additional interrogatories; and (2) state good cause for those interrogatories. Additional interrogatories served under this rule are subject to subsection (1) of this rule.

(f) Format for Interrogatories. Sufficient space for the insertion of an answer must be provided after each interrogatory. Each answer must directly follow the interrogatory being answered.

(g) Motions Relating to Discovery. Motions under Fed. R. Bankr. P. 7026(c) or 7037(a) directed at depositions, interrogatories, requests for production of documents, or requests for admissions under Fed. R. Bankr. P. 7030, 7033, 7034 or 7036, or at the responses, must be accompanied by copies of the portions of the interrogatories, requests or responses in dispute. Motions under Fed. R. Bankr. P. 9016 directed at subpoenas must be accompanied by a copy of the disputed subpoena.

(h) Depositions. Deposition transcripts may not be filed unless the court orders otherwise. The originals of all

stenographically-reported depositions must be delivered to the party noticing the deposition:

- (1) after signature by the deponent if he or she has requested to review the transcript and to make changes;
- (2) on completion, if the deponent has not requested to review the transcript; or
- (3) on certification by the stenographer that following reasonable notice to the deponent and deponent's attorney of the availability of the transcript for signature, the deponent has failed or refused to sign it.

(i) Retention of Originals. The party to whom it is delivered must retain the original of the deposition to be available for appropriate use by any party in a hearing or trial of the case.

(j) Disclosures and Discovery Not to be Filed.

(1) The following must be served on other attorneys and unrepresented parties, but not filed:

- (A) disclosures required under Fed. R. Bankr. P. 7026(a)(1) and (2);
- (B) interrogatories under Fed. R. Bankr. P. 7033;
- (C) requests for production or inspection under Fed. R. Bankr. P. 7034;
- (D) requests for admission under Fed. R. Bankr. P. 7036; and
- (E) the responses.

(2) At the same time disclosures, discovery, or responses are served, the serving party must file a certificate of service stating the type of disclosure, discovery or response served, the date and type of service, and the party served.

(k) Use of Discovery at Trial. A party must file with the clerk at the beginning of trial, or earlier if required by court order, the portions of any deposition transcript, interrogatories, requests for production or inspection, admissions, or any responses the party reasonably anticipates using.

(l) Duty to Confer Concerning Discovery Disputes. In addition to the duties required by Fed. R. Bankr. P. 7026 through 7037, unless the court orders otherwise, the court will not entertain any motion to quash or modify a subpoena pursuant to Fed. R. Bankr. P. 9016, or any motion under Fed. R. Civ. P. 26(c) or 37(a), unless the attorney for the moving party confers or has made reasonable effort to confer with opposing attorneys concerning the matter in dispute prior to the filing of the motion. Every certification required by Fed. R. Bankr. P. 7026(c) and 7037 and this rule related to attempts to resolve discovery or disclosure disputes must describe the steps taken by all attorneys to resolve the disputed issues.

- (1) *Definition of "reasonable effort to confer."*
"Reason-able effort to confer" means more than mailing or faxing a letter to the opposing party. It requires that

the parties in good faith converse, confer, compare views, consult, and deliberate, or in good faith attempt to do so.

(m) Trial Preparation After Close of Discovery.

(1) Parties should ordinarily take the deposition of a material witness not subject to subpoena during the discovery period. Parties may depose a material witness who agrees to appear at trial, but later becomes unable or refuses to attend, at any time prior to trial.

(2) The court may order the physical or mental examination of a party pursuant to Fed. R. Bankr. P. 7035 at any time prior to trial.

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As amended 3/17/11, 3/17/10, 10/17/05.