

## NOTICE OF COMMENT PERIOD

The Nebraska Supreme Court Committee on Practice and Procedure proposed amendments to Chapter 6, Article 3, Nebraska Court Rules of Discovery in Civil Cases. Along with the proposed amendments, Professor John P. Lenich, Reporter for Civil Procedure, has provided [A Discussion of the Proposed Court Rules of Discovery in Civil Cases](#) as a resource when reviewing the proposed amendments.

The Nebraska Supreme Court invites interested persons to comment on the proposed rule amendments. Anyone desiring to submit a public comment for the Supreme Court's consideration should do so via email to [erika.schafer@nejudicial.gov](mailto:erika.schafer@nejudicial.gov), with the following text listed in the email subject line: **Chapter 6, Article 3 Discovery Rules**. Comments will be accepted through May 31, 2024.

The full text of the proposed amendments is available below. To obtain a paper copy, please call the Clerk's Office at 402-471-3731.

## CHAPTER 6: TRIAL COURTS

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### Article 3: Nebraska Court Rules of Discovery in Civil Cases

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#### § 6-326. General provisions governing discovery.

##### (a) Discovery Methods and Sequence.

(1) Discovery Methods. Parties may obtain discovery by one or more of the following methods: required disclosures; depositions by upon oral examination or written questions; written interrogatories to parties; requests for producing production of documents, electronically stored information, and tangible or things or permission to enter upon entering onto land or other property for inspection and other purposes; subpoenas commanding nonparties to produce documents, electronically stored information, and tangible things or allowing entry onto land for inspection and other purposes; physical and mental examinations; and requests for admission. Unless the court orders otherwise under subdivision (c) of this rule, the frequency of use of these methods is not limited.

(2) Sequence. Unless the parties stipulate or the court orders otherwise for the parties' and witnesses' convenience and in the interests of justice:

(A) methods of discovery may be used in any sequence; and

(B) discovery by one party does not require any other party to delay its discovery.

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

(1) Scope in In General. Parties may obtain discovery regarding any nonprivileged matter, ~~not privileged, which that~~ is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, ~~including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter.~~ It is not a ground for objection that the information sought will be inadmissible at the trial if the

information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) Insurance Agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which ~~any person carrying on~~ an insurance business may be liable to satisfy all or part or all of a possible judgment ~~which may be entered~~ in the action or to indemnify or reimburse for payments made to satisfy the judgment. A party may also obtain through an interrogatory whether an insurance business is disputing the agreement's coverage of the claim. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this subpart paragraph, an application for insurance ~~is shall~~ not be treated as part of an insurance agreement.

(3) ~~Trial Preparation:~~ Work Product Materials.

(A) Documents and Tangible Things. Subject to the provisions of subdivision (b)(4) of this rule, a party may obtain discovery of Ordinarily, a party may not discover documents and tangible things ~~otherwise discoverable under subdivision (b)(1) of this rule and that~~ are prepared in anticipation of litigation or for trial by or for another party or by or for that other party's its representative (including ~~his or her~~ the other party's attorney, consultant, surety, indemnitor, insurer, or agent). But, subject to Rule 26(c)(4), those materials may be discovered if:

(i) they are otherwise discoverable under Rule 26(b)(1); and

(ii) the party shows that only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his or her to prepare its case and that he or she is unable cannot, without undue hardship, to obtain their the substantial equivalent of the materials by other means.

(B) Protection Against Disclosure. ~~If the court orders In ordering~~ discovery of those such materials when the required showing has been made, the court shall it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party's an attorney or other representative ~~of a party~~ concerning the litigation.

(C) Previous Statement. Any party or other person may, on request and without making the showing required by Rule(b)(3)(A), obtain the person's own previous A party may obtain without the required showing a statement concerning about the action or its subject matter, ~~previously made by that party. Upon request, a person not a party may obtain~~

~~without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order, and The provisions of Rule 37(a)(5)(4) apply applies to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.~~

(i) A previous statement is a person's nonprivileged recounting of what the person did, saw, heard, or knows about a matter and that is (1) recorded by audio, audiovisual, or stenographic means, (2) handwritten by the person, or (3) in a written or electronic form and signed by the person.

(ii) Deposition testimony is not a previous statement for purposes of this subpart.

(4) Claiming Privilege or Protection. When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as work product, the party must:

(A) expressly make the claim; and

(B) describe the nature of the documents, communications, or tangible things not produced or disclosed – and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

(5) Waiver of Privileges or Protections. The following apply to documents that are produced in discovery, whether in response to a discovery request or pursuant to a disclosure obligation.

(A) The production of a privileged or protected document does not operate as a waiver of the privilege or protection if the production was inadvertent, the claimant took reasonable steps under the circumstances to prevent the inadvertent disclosure of privileged or protected documents, and the claimant promptly took reasonable steps under the circumstances to rectify the error of producing the document, including, if applicable, following subpart (B) of this rule.

(B) If a document produced in discovery is subject to a claim of privilege or protection, the claimant may notify any recipient party of the claim and the basis for it. After being

notified, a recipient must promptly return, sequester, or destroy the specified document and any copies it has; must not use or disclose the document or its contents until the claim is resolved; must take reasonable steps to retrieve the document if the recipient disclosed it before being notified; and may promptly present the document to the court under seal for a determination of the claim. The claimant must preserve the document until the claim is resolved. Either the claimant or recipient may seek to have the claim resolved by filing a motion pursuant to Rule 26(d) in the court in which the action is pending.

(C) A lawyer who receives a document, including electronically stored information, that the lawyer knows or reasonably should know is subject to a claim of privilege or protection and also knows or reasonably should know was inadvertently produced must promptly notify the party who produced the document.

(c) Discovery From Experts.

~~(4) Trial Preparation: Experts. Discovery of facts known and opinions held by experts otherwise discoverable under the provisions of subdivision (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial may be obtained only as follows:~~

~~(A)(i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.~~

~~(ii) Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivisions (b)(4)(C) of this rule, concerning fees and expenses as the court may deem appropriate.~~

(1) Required Disclosures. A party must disclose to the other parties the identity of any witness it may use at trial to present evidence under Rules 702, 703, or 705 of the Nebraska Evidence Rules. Unless the court orders otherwise, the disclosure must be in writing, signed, and served.

(A) Witnesses Who Must Provide a Written Report. Unless otherwise stipulated or ordered by the court, this disclosure must be accompanied by a written report – prepared and signed by the witness – if the witness is one retained or specially employed to

provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. The report must contain:

(i) a complete statement of all opinions the witness will express and the basis and reasons for them;

(ii) the facts or data considered by the witness in forming them;

(iii) any exhibits that will be used to summarize or support them;

(iv) a list of each publication within the scope of Nebraska Evidence Rule 803(17) on which the witness intends to rely for any opinion;

(v) the witness' qualifications to present evidence under Nebraska Evidence Rules 702, 703, or 705, which may be satisfied by the production of a resume or curriculum vitae and a list of any publications authored by the witness within the last 10 years that are not listed in the resume or curriculum vitae;

(vi) the title, court, and case number of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition, performed an independent medical examination, or otherwise provided evidence as an expert and for each such case, the party who retained the witness; and

(vii) a statement of the compensation to be paid for the witness' work and testimony in the case, which may be satisfied by production of a fee schedule.

(B) Witnesses Who Do Not Provide a Written Report. Unless otherwise stipulated or ordered by the court, if the witness is not required to provide a written report, the disclosure must:

(i) state the subject matter on which the witness is expected to present evidence under Nebraska Evidence Rules 702, 703, or 705;

(ii) provide a summary of the facts and opinions to which the witness is expected to testify;

(iii) state the qualifications of the witness to present evidence under Nebraska Evidence Rules 702, 703, or 705, which may be satisfied by the production of a resume or

curriculum vitae and a list of any publications authored by the witness within the last 10 years that are not listed in the resume or curriculum vitae; and

(iv) state the compensation to be paid to the witness for providing testimony at a deposition or trial, which may be satisfied by production of a fee schedule.

(C) Report Requirements for Treating Physicians. A treating physician who is retained or specially employed to provide expert testimony in the case, or whose duties as the party's employee regularly involve giving expert testimony on behalf of the party, must provide a written report under Rule 26(c)(1)(A). Otherwise, a treating physician who is properly disclosed under Rule 26(c)(1) may be deposed or called to testify without providing a written report.

(i) A treating physician is not required to provide a written report under Rule 26(c)(1)(A) solely because the physician's testimony may discuss ancillary treatment, or the diagnosis, prognosis, or causation of the patient's injuries, that is not contained within the physician's medical chart, as long as the content of such testimony is properly disclosed under Rule 26(c)(1)(B)(i)-(iv).

(ii) A treating physician will be deemed a retained or specially employed expert witness subject to the written report requirement of Rule 26(c)(1)(A) if the party is asking the treating physician to provide opinions outside the course and scope of the treatment provided to the patient.

(iii) The disclosure regarding a non-retained or specially employed treating physician must include the information identified in Rule 26(c)(1)(B), to the extent practicable. If the treating physician will testify in accordance with the party's medical chart, it is sufficient to state that the physician will do so even if some of the records contained therein were prepared by another healthcare provider.

(2) Time to Disclose Expert Testimony. A party must make these disclosures at the times and in the sequence that the court orders. Absent a stipulation or a court order, the disclosures must be made:

(A) within 180 days after the first responsive pleading was served; or

(B) if the evidence is intended solely to contradict or rebut evidence on the same subject matter by another party under Rule 26(c)(1), within 45 days after the other party's disclosure.

(3) Supplementing the Disclosure. The parties must supplement these disclosures when required under Rule 26(e).

(4) Work Product Protection.

(A) Draft Reports or Disclosures. Rule 26(b)(3)(A) and (B) protect drafts of any report or disclosure required under Rule 26(c)(1), regardless of the form in which the draft is recorded.

(B) Communications Between a Party's Attorney and Expert Witnesses. Rules 26(b)(3)(A) and (B) protect communications between the party's attorney and any witness required to provide a report under Rule 26(c)(1), regardless of the form of the communications, except to the extent that the communications:

(i) relate to compensation for the expert's study or testimony;

(ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or

(iii) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

(5) Deposition of an Expert Witness. A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If Rule 26(c)(1)(A) requires a report from the expert, the deposition may be conducted only after the report is provided.

~~(B)~~ (6) Discovery from a Consulting Expert. Ordinarily, a party may not discover the identity of facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare preparation for trial and who is not expected to be called as a witness at trial except, only as provided in Rule 35(b). But a party may discover the identity of such an expert on a showing of good cause and may discover facts known or opinions held by such an expert on or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

~~(C)~~ (7) Payment. Unless manifest injustice would result, (±) the court must shall require that the party seeking discovery;



~~(A) pay the expert a reasonable fee for time spent in responding to discovery under Rule 26(c)(5) or (6), which does not include time spent preparing for a deposition subdivisions (b)(4)(A)(ii) and (b)(4)(B) of his rule of this rule; and~~

~~(ii) (B) with respect to for discovery under Rule 26(c)(6), obtained under subdivision (b)(4)(A)(ii) of this rule the court may require, and with respect to discovery obtained under subdivision (b)(4)(B) of this rule the court shall require, the party seeking discovery to also pay the other party a fair portion of the fees and expenses it reasonably incurred by the latter party in obtaining the expert's facts and opinions from the expert.~~

~~(e) (d) Protective Orders.~~

~~(1) In General. Upon motion by a A party or by the other person from whom discovery is sought, and for good cause shown, may move for a protective order in the court in which the action is pending, or alternatively, on matters relating to a deposition, the district court in the district where the deposition is to be taken, The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:~~

~~(1) that (A) forbidding the disclosure or discovery not be had;~~

~~(2) that the discovery may be had only on specified (B) specifying terms and conditions, including a designation of the time or place or the allocation of expenses, for the disclosure or discovery;~~

~~(3) that the discovery may be had only by (C) prescribing a discovery method of discovery other than the one that selected by the party seeking discovery;~~

~~(4) that (D) forbidding inquiry into certain matters not be inquired into, or limiting that the scope of disclosure or the discovery be limited to certain matters;~~

~~(5) that discovery be conducted with no one present except (E) designating the persons who may be present while the discovery is conducted designated by the court;~~

~~(6) (F) requiring that a deposition after being sealed be and opened only on court by order of the court;~~

~~(7) (G) requiring that a trade secret or other confidential research, development, or commercial information not be disclosed revealed or be revealed disclosed only in a specified designated way; and~~

~~(8) (H) requiring that the parties simultaneously file, serve, or deliver specified documents or information in a specified way, to be revealed or accessed only as under seal with access only as directed by the court directs.~~

(2) Denying or Limiting Discovery. The court may issue a protective order denying or limiting discovery if the court determines that:

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

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

(C) the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

(3) Ordering Discovery. If the a motion for a protective order is denied in whole or in part, the court may, on just such terms and conditions as are just, order that any party or person provide or permit discovery.

(4) Awarding Expenses. The provisions of Rule 37(a)(4)(5) applies apply to the award of expenses incurred in relation to the motion.

~~(d) Sequence and Timing of Discovery. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery. [Note: stylistic changes made and content moved to Rule 26(a)(2)].~~

~~(e) Supplemental or Supplementing Disclosures and Responses.~~

(1) In General. A party who has made a disclosure under Rule 26(c) – or who has responded to an interrogatory, request for production, or a request for admission – discovery with a response that was complete when made is under no duty to must supplement his or her or correct its disclosure or response to include information thereafter acquired, except as follows:

(A) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or

(B) as ordered by the court.

(2) Expert Witness. For an expert whose report must be disclosed under Rule 26(c)(1)(A), the party's duty to supplement in a timely manner extends both to information included in the report and to information given during the expert's deposition.

~~(1) A party is under a duty seasonably to supplement his or her response with respect to any question directly addressed to~~

~~(A) the identity and location of persons having knowledge of discoverable matters, and~~

~~(B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which he or she is expected to testify, and the substance of his or her testimony.~~

~~(2) A party is under a duty seasonably to amend a prior response if he or she obtains information upon the basis of which~~

~~(A) he or she knows that the response was incorrect when made, or~~

~~(B) he or she knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.~~

~~(3) A duty to supplement responses may be imposed by order of the court or by agreement of the parties.~~

(f) Filing and Service of Discovery Materials-~~Documents~~. Rule § 6-1105 governs the filing and service of discovery materials. ~~Except as otherwise ordered by the court, every discovery document and every motion relating to discovery and response thereto required to be served upon a party shall be served upon each of the parties not in default for failure to appear.~~

(g) Access to Deposition for Use at Hearing ~~Filing of Discovery Materials~~. ~~Discovery materials that do not require action by the court shall not be filed with the court. All such materials, including notices of deposition, depositions, certificates of filing a deposition, interrogatories, answers and objections to interrogatories, requests for documents or to permit entry upon land and responses or objections to such requests, requests for admissions and responses or objections to such requests, subpoenas for depositions or other discovery and returns of service of subpoenas, and related notices shall be maintained by the parties.~~

~~Discovery materials shall be filed with the court only when ordered by the court or when required by law. If the original of a deposition is not in the possession of a party who intends to offer it in as evidence at a hearing, that party may give notice to the party in possession of it that the deposition will be needed at the hearing. Upon On receiving such notice, the party in possession of the deposition shall must either make it available to the party who intends to offer it or produce it at the hearing.~~

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**§ 6-327. Depositions to perpetuate testimony before action or pending appeal.**

(a) Before an Action Is Filed.

(1) Petition. A person who wants ~~desires~~ to perpetuate ~~his or her own~~ testimony ~~or that of another person regarding~~ about any matter that may be cognizable in a any court of this state may file a verified petition ~~verified by affidavit of the petitioner or his or her attorney in the district court of the county where in the district of the residence of any expected adverse party resides.~~ The petition must ask for an order authorizing the petitioner to depose the named persons in order to perpetuate their testimony. The petition must shall be titled entitled in the petitioner's name of the petitioner and must shall show:

(A) ~~(i) that the~~ The petitioner expects to be a party to an action cognizable in a court of this state but is cannot presently ~~unable to~~ bring it or cause it to be brought;

(B) ~~(ii)~~ the subject matter of the expected action and the petitioner's ~~his or her~~ interest in the action therein;

(C) ~~(iii)~~ the facts that the petitioner wants ~~which he or she desires~~ to establish by the proposed testimony and the ~~his or her~~ reasons ~~for desiring~~ to perpetuate it;

(D) ~~(iv)~~ the names or a description of the persons whom the petitioner ~~he or she~~ expects to ~~will~~ be adverse parties and their addresses, so far as known; and

(E) ~~(v)~~ the name, address, and expected ~~names and addresses of the persons to be examined and the substance of the testimony of each deponent which he or she expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.~~

(2) Notice and Service. At least 21 days before the hearing date, the ~~The~~ petitioner must ~~shall thereafter~~ serve a notice upon each person named in the petition as an each expected adverse party, ~~together~~ with a copy of the petition and a notice, stating ~~that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least twenty days before the date of the hearing. The~~ the notice may ~~shall~~ be served in the manner provided for service of a summons. ~~If; but if such service cannot be made with due reasonable diligence be made upon on an expected adverse party named in the petition, the court may shall order service be made by publication in the manner provided in Rule 30(b)(3) Rule 30(b)(1)(D).~~

(3) Appointment of Attorney or Guardian. ~~The court must and shall appoint, for persons not served in the manner provided for service of summons, an attorney who shall to represent them, and, in case they are not otherwise represented, shall~~ an expected adverse party and to cross-examine the deponent if the expected adverse party is served in the manner provided in Rule 30(b)(3) and is not otherwise represented. The court must appoint a guardian ad litem for ~~If~~ any expected adverse party who is a minor or incompetent ~~the provisions of Neb. Rev. Stat. § 25-309 shall apply.~~

(4) ~~(3)~~ Order and Examination. ~~If the court is satisfied that perpetuating the perpetuation of the testimony may prevent a failure or delay of justice, the court must issue it shall make~~ an order that designates or describes ~~designating or describing~~ the

persons whose depositions may be taken, ~~specifies and specifying~~ the subject matter of the ~~examinations, examination~~ and ~~states~~ whether the depositions ~~shall will~~ be taken ~~upon~~ ~~by~~ oral examination or ~~by~~ written questions. The depositions may then be taken ~~under in~~ ~~accordance with~~ these rules,<sup>5</sup> and the court may ~~issue make~~ orders ~~like those authorized~~ of the character provided for by Rules 34 and 35. ~~For the purpose of applying these rules to depositions for perpetuating testimony, each A reference in these rules therein to the court where an in which the action is pending means, for purposes of this rule, shall be deemed to refer to the court where in which the petition for the such deposition was filed.~~

~~(5) (4) Use of Deposition. If a A deposition to perpetuate testimony is taken under these rules or if, although not so taken, it would be admissible in evidence in the courts of the state in which it is taken, it may be used under Rule 32(a) in any later-filed action in this state involving the same subject matter if the deposition either was taken under these rules or, if not so taken, would be admissible in evidence in the federal or state court that authorized it to be taken subsequently brought in a district court in this state, in accordance with the provisions of Rule 32(a)~~

(b) Pending Appeal.

~~(1) In General. If an appeal has been taken from a judgment, a party may file a motion in the appellate court for leave to depose witnesses to perpetuate their testimony for use in the event the action is remanded for further proceedings after an appeal. of a district court, the appellate court, upon motion filed therein and notice and service thereof as if the action was pending in the district court, may remand the motion to the district court for consideration and ruling, may itself overrule the motion, or, if the appellate court finds that the perpetuation of the testimony is proper to avoid failure or delay of justice, may itself enter an order allowing the depositions to be taken and may make orders of the character provided for by Rules 34 and 35, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in the district court.~~

~~(2) Motion. The motion must shall~~ show:

~~(A) (1) the name, address, names and addresses of persons to be examined and the expected substance of the testimony of each deponent which he or she expects to elicit from each; and~~

~~(B) (2) the reasons for perpetuating their the testimony.~~

(3) Court Order. The appellate court may itself rule on the motion or, while retaining jurisdiction of the appeal, remand the motion for a ruling by the court that rendered the judgment. If the court ruling on the motion finds that perpetuating the testimony may prevent a failure or delay of justice, the court must permit the depositions to be taken and may issue orders like those authorized by Rules 34 and 35. The depositions may be taken under Rule 30 or 31 and used under Rule 32, just like other depositions in a pending action.

(c) Perpetuation by an Action. This rule does not limit a court's ~~the power of a court~~ to entertain an action to perpetuate testimony.

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**§ 6-328. Persons before whom depositions may be taken.**

(a) Within the United States.

(1) Within this State. Within this State, a deposition must ~~depositions may~~ be taken before an officer authorized ~~a judge or clerk of the Supreme Court or district court, a county judge, clerk magistrate, notary public, or any person appointed by the court in which the action is pending. A person so appointed has power to administer oaths by the law of this state and take testimony.~~

(2) (b) Elsewhere Within the United States. Within other states of the United States or within a territory or insular possession subject to the jurisdiction of the United States, a deposition must ~~depositions may~~ be taken before:

(A) an officer authorized to administer oaths either by federal law ~~the laws of the United States or by the law in~~ of the place of ~~where the examination is held, or before~~

(B) a person appointed by the court in which the action is pending. ~~A person so appointed has power to administer oaths and take testimony.~~

(3) Definition of Officer. The term "officer" in Rules 30, 31, and 32 includes a person appointed by the court under this rule or designated by the parties under Rule 29(a).

(b) (e) In a Foreign Country ~~Countries.~~

(1) In General. A deposition in a foreign country, depositions may be taken in a foreign country:

(A) under an applicable treaty or convention;

(B) under a letter of request, whether or not captioned a “letter rogatory”;

(C) ~~(1)~~ on notice, before a person authorized to administer oaths either by federal law or by the law in the place in which the examination is held, either by the law thereof or by the law of the United States; or

(D) ~~(2)~~ before a person commissioned by the court, and a person so commissioned shall have the power by virtue of his or her commission to administer any necessary oath and take testimony; or

~~(3) pursuant to a letter rogatory.~~

(2) Issuing a Letter of Request or a Commission. A ~~commission or a letter of request, a commission, or both may~~ rogatory shall be issued:

(A) on application and notice appropriate terms after an application and notice of it; and

(B) without a showing that taking the deposition in another that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases.

(3) Form of a Request, Notice, or Commission. When a letter of request or any other device is used according to a treaty or convention, it must be captioned in the form prescribed by that treaty or convention. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter of request rogatory may be addressed “To the Appropriate Authority in [here name the country].” A deposition notice or a commission must designate by name or descriptive title the person before whom the deposition is to be taken.

(4) Letter of Request – Admitting Evidence. Evidence obtained in response to a letter of request rogatory need not be excluded merely because for the reason that it is not a verbatim transcript, because or that the testimony was not taken under oath, or because of



~~or for~~ any similar departure from the requirements for depositions taken within the United States ~~under these rules.~~

~~(d)~~ (c) Disqualification for Interest. ~~The officer before whom the A deposition is must not be taken and the before a person recording the testimony shall not be a who is any party's relative, employee, or attorney; who is related to or employed by any party's of any of the parties, nor a relative or employee of such attorney;; or is nor financially interested in the action.~~

~~(e) Depositions for Use in Other Jurisdictions. Rule 30A applies when the deposition of any person is to be taken in this state for use in proceedings in another state. When the deposition of any other person is to be taken in this state for use in proceedings in another country, witnesses may be compelled to appear and testify in the same manner and by the same process and proceedings as may be employed for the purpose of taking testimony in proceedings pending in this state. The district court for the county where the deponent is found may make such orders as could be made if the deposition were intended for use in this jurisdiction, having due regard for the laws and rules of the other country.~~

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**§ 6-329. Stipulations ~~regarding~~ about discovery procedure.**

Unless the court orders otherwise, the parties may stipulate, by a written or otherwise recorded stipulation, that:

~~(a) (1) Provide that depositions~~ a deposition may be taken before any person, at any time or place, ~~upon~~ on any notice, and in any manner specified – in which event it and when so taken may be used in the same way as any other deposition; like other depositions; and

~~(b) (2) Modify the procedures provided by these rules for other methods of discovery~~ other procedures governing or limiting discovery be modified – but a stipulation extending the time for any form of discovery must have court approval if it would interfere with the time set for completing discovery, for hearing a motion, or for trial.

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**§ 6-330. Depositions by ~~upon~~ oral examination.**

(a) When and How Depositions May Be Taken.

~~(1) Without Leave. After commencement of the action, a any party may, by oral questions, depose any person, take the testimony of any person, including a party, by deposition upon oral examination without leave of court except as provided in Rule 30(a)(2). The deponent's attendance may be compelled by subpoena. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of thirty days after service of summons, except that leave is not required:~~

~~(1) If a defendant has served a notice of taking a deposition or otherwise sought discovery, or~~

~~(2) If special notice is given as provided in subdivision (b)(2) of this rule.~~

~~The attendance of witnesses may be compelled by subpoena. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.~~

~~(2) With Leave. Leave of court is required if:~~

~~(A) the plaintiff seeks to take the deposition within 30 days after service of the summons, unless~~

~~(i) the parties stipulate that the deposition may be taken,~~

~~(ii) the defendant has served a deposition notice in the action, or~~

~~(iii) the plaintiff certifies in the notice, with supporting facts, that the deponent is expected to leave the State of Nebraska and be unavailable for examination in the State after that time;~~

~~(B) the deponent has already been deposed in the action and the deponent and the other parties do not stipulate that the deponent may be deposed again; or~~

~~(C) the deponent is confined in prison.~~

~~(3) How Taken. Unless the court orders otherwise, a deposition may be taken in person, by videoconferencing, by telephone, or by a combination of these methods. The parties~~

may stipulate or the court may on motion order that a deposition be taken by other methods that provide contemporaneous verbal or verbal-and-visual interaction among the participants and ensure preservation of an accurate record.

(4) Attendance by Different Method. Any party may notify the other parties, including the party taking the deposition, that the party will attend the deposition through a different method than the one stated in the notice. The party must notify the other parties within a reasonable time of the date of the deposition. The court may enter an order pursuant to Rule 26(d) specifying the method by which parties may attend a deposition.

(b) Notice of the Deposition; Other Formal Requirements. Examination: General Requirements; Special Notice; Recording; Interpreters; Production of Documents and Things; Deposition of Organization; Officer's Duties.

(1)(A) In General. A party who intends to depose a desiring to take the deposition of any person upon by oral questions must examination shall give reasonable written notice in writing to every other party to the action.

(A) The notice must shall state the time and place for taking the deposition and the deponent's name and address of each person to be examined, if known, ; and if If the name is unknown not known, the notice must provide a general description sufficient to identify the person him or her or the particular class or group to which the person he or she belongs.

(B) The notice must state the date and time of the deposition and how it will be taken. If the deposition will be taken in person, the notice must state the place of the deposition. If the deposition will be taken by videoconferencing, the notice must state the name of the software and either include a link for the deposition or state that a link will be provided to the deponent and to every other party within a reasonable time before the deposition.

(C) The notice shall also must state the name, address, telephone number, and email address (if any) of the party taking the deposition or if the party is represented, the party's attorney.

(D) If it is known that an interpreter will be used, the notice shall must state that an interpreter will be used and must also shall state the language that will be interpreted or the type of interpretation (e.g., sign language). If it is unknown whether an interpreter may be necessary, the notice shall must include the following advisory statement: "If you are a person who is deaf, hard of hearing, or unable to communicate in the English

language, you should contact as soon as possible the attorney or the party whose name is stated in this notice or subpoena and let that attorney or party know that you will need the help of an interpreter to understand and answer questions during the deposition.”

~~(B)~~(E) If a subpoena is to be served on the deponent ~~person to be examined~~, the subpoena ~~shall~~ must contain the same information required by ~~subdivision (A) of this rule. The Rule 30(b)(1)(D), except that the advisory statement required by subdivision (A)~~ may be omitted from the notice if it is included in the subpoena.

(2) Producing Documents.

~~(C)~~(1) (A) The notice to a party deponent may be accompanied by a request under Rule 34 to produce documents and tangible things at the deposition. If a subpoena duces tecum is to be served on the deponent pursuant to Neb. Rev. Stat. § 25-1224 and Rule 34A(a)(3), person to be examined, the designation of the materials designated for production, as set out in to be produced pursuant to the subpoena, shall must be listed attached to or included in the notice or in an attachment. If the subpoena is served on a party deponent, the time for compliance may not be shorter than the time specified in Rule 34(2)(A).

(B) If any of the materials are in a language other than English, the deponent must person on whom the subpoena duces tecum is served shall promptly notify the party serving the subpoena of the language(s). The party serving the subpoena must shall then promptly notify every other party ~~to the action~~ of the language(s).

~~(2) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.~~

~~(D)~~ (3) Unknown Parties. When the party against whom the deposition is to be used is unknown or is one whose whereabouts cannot be ascertained, the party he or she may be notified of ~~the taking of the deposition~~ by publication or by any manner ~~that is~~ approved by the court and reasonably calculated under the circumstances to provide the party with actual notice. The publication must be made once in some newspaper printed in the county where the action is pending, or if there is no such newspaper, then if there be any printed in such county, and if not, in some newspaper that is printed in the State of Nebraska and has this state of general circulation in that county. The publication must contain all the information that is required in a written notice and must be made at least 10 days prior to the deposition. Publication may be ~~proved in~~ proven in the manner

prescribed in Neb. Rev. Stat. § 25-520. Before publication, a copy of the written notice ~~shall~~ must be filed with the court in which the action is pending.

~~(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice:~~

~~(A) States that the person to be examined is about to go out of the State of Nebraska and will be unavailable for examination in the State of Nebraska unless his or her deposition is taken before expiration of the thirty day period, and~~

~~(B) Sets forth facts to support the statement.~~

~~The plaintiff's attorney shall sign the notice, and his or her signature constitutes a certification by him or her that to the best of his or her knowledge, information, and belief the statement and supporting facts are true.~~

~~If a party shows that when he or she was served with notice under subdivision (b)(2) he or she was unable through the exercise of diligence to obtain counsel to represent him or her at the taking of the deposition the deposition may not be used against him or her.~~

~~(3) The court may for good cause shown enlarge or shorten the time for taking the deposition.~~

(4) Method of Recording.

(A) Method Stated in the Notice. The notice ~~required by subdivision (1) shall~~ must state the method for recording the testimony, ~~means by which the testimony will be recorded and preserved. The court may make any order necessary to assure that the record of the testimony will be accurate and trustworthy~~ ~~(A)~~ Unless the court orders otherwise, testimony may be recorded by audio, audiovisual, or stenographic means, or any combination of those means. The noticing party bears the cost of the recording ~~means~~ methods specified in the notice.

(B) Additional Method. With prior notice to the deponent and other parties, any party or the deponent may designate another method ~~means~~ of recording the testimony in addition to the method ~~means~~ specified in the original notice. The additional recording must ~~shall~~ be made by the officer personally or by someone acting in the presence of and under the direction of the officer. The party or deponent who designates another method ~~means~~ bears the cost of the additional record or transcript unless the court orders

otherwise. Absent a stipulation of the parties, no other recordings of the testimony may be made.

(5) Interpreter Required; Payment; Certification. If the deponent is a person who is deaf, hard of hearing, or unable to communicate the English language as defined in Neb. Rev. Stat. § 25-2402, an interpreter must be used to interpret the questions and answers. Unless the parties stipulate or the court ~~upon~~ for good cause ~~shown~~ orders otherwise, the noticing party ~~shall~~ must arrange and pay for the interpreter. Unless the parties stipulate or the court for ~~upon~~ good cause shown orders otherwise, the interpreter must be a certified or provisionally certified interpreter; however, if the noticing party has made reasonably diligent efforts to obtain a certified or provisionally certified interpreter and none are available, the interpreter may be a registered interpreter. A certified interpreter, a provisionally certified interpreter, and a registered interpreter is one who, pursuant to Neb. Ct. R. § 6-702(A)-(C), is listed as such in the statewide register of interpreters published and maintained by the State Court Administrator.

(6) Notice or Subpoena Directed to an Organization. In its notice or subpoena, a ~~A~~ party may ~~in his or her notice and in a subpoena~~ name as the deponent a public or private corporation, ~~or~~ a partnership, ~~an~~ ~~or~~ association, ~~a~~ ~~or~~ governmental agency, or other entity and must describe with reasonable particularity the matters ~~for on which~~ examination is requested. ~~In that event, the~~ The named organization ~~so named shall~~ must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; ~~and it may set out forth, for each person designated,~~ the matters on which ~~he or she~~ each person designated will testify. Before or promptly after the notice or subpoena is served, the serving party and the organization must confer in good faith about the matters for examination. A subpoena ~~shall~~ must advise a nonparty organization of its duty to confer with the serving party and to designate each person who will testify ~~make such a designation.~~ The persons ~~so~~ designated must ~~shall~~ testify about information as to matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure ~~authorized in~~ allowed by these rules.

(7) ~~The parties may stipulate in writing, or the court may upon motion order, that a deposition be taken by telephone or by other remote means. For the purposes of these rules, a deposition taken by telephone or by other remote means is taken at the place where the deponent is to appear to answer questions. Absent a court order or stipulation of the parties, the officer must be in the same location as the deponent.~~

(7) ~~(8)~~ Officer's Duties.

(A) Before the Deposition. Unless the parties stipulate otherwise, a deposition must be conducted before an officer identified by Rule 28 as a person before whom a deposition may be taken. The officer must begin the deposition with an on-the-record statement that includes: (i) the officer's name and business address; (ii) the date and, time, ~~and~~ place of the deposition; (iii) how the deposition is being taken and if the deposition is being taken in person, the place where it is being taken; ~~(iii-iv)~~ (iv) the deponent's name; ~~(iv v)~~ the officer's administration of the oath or affirmation to the deponent; and ~~(v vi)~~ (v) the identity and location of all persons ~~present~~ attending the deposition. If the deposition is recorded stenographically, the officer may include the foregoing information in the transcript rather than make an on-the-record statement.

(B) Conducting the Deposition; Avoiding Distortion. If the deposition is recorded nonstenographically, the officer must repeat the items in Rule 30(b)(8)(A)(i)-~~(iii iv)~~ at the beginning of each unit of the recording medium. The deponent's and attorneys' appearance or demeanor must not be distorted through recording techniques.

(C) After the Deposition. At the end of a deposition, the officer must state on the record that the deposition is complete and must set out any stipulations made by the attorneys about custody of the transcript or recording and of the exhibits, or about any other pertinent matters.

(c) Examination and Cross-Examination; Record of Examination; Oath; Objections.

(1) Examination and Cross-Examination. ~~The examination~~ Examination and cross-examination of a deponent ~~witnesses may~~ proceed as they would ~~permitted~~ at the trial under ~~the provisions of the Nebraska Evidence Rules, except Rules 103 and 615.~~ The officer ~~before whom the deposition is to be taken shall~~ must put the deponent ~~witness~~ under oath and, if an interpreter is used, also put the interpreter under oath. The officer ~~shall~~ must also ~~personally, or by someone acting under his or her direction and in his or her presence,~~ record the testimony ~~of the witness by the method designated under Rule 30(b)(4)(A).~~ The testimony ~~shall~~ must be recorded by the officer personally or by a person acting in the presence and under the direction of the officer, in accordance with subdivision (b)(4) of this rule. ~~If requested by one of the parties, the testimony shall be transcribed.~~

(2) Objections. ~~All objections made~~ An objection at the time of the examination ~~=~~ whether to evidence, to a party's conduct, to the officer's ~~the~~ qualifications of the officer ~~taking the deposition, to the~~ interpreter's qualifications ~~qualification of the interpreter, or~~

to the manner of taking the deposition, ~~or to the evidence presented, or to the conduct of any party, and~~ or to any other aspect of the deposition – must ~~objection to the proceedings, shall be noted on the record, but the examination still proceeds; the testimony is taken by the officer upon the deposition. Evidence objected to shall be taken subject to any objection. the objections.~~ (2) An objection must be stated concisely in a nonargumentative and nonsuggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(2).

(3) Participating Through Written Questions. ~~In lieu~~ Instead of participating in the oral examination, a party ~~parties~~ may serve written questions in a sealed envelope on the party ~~taking~~ noticing the deposition, who must deliver ~~and he or she shall transmit~~ them to the officer. The officer must ask the deponent those questions, who shall propound them to the witness and record the answers verbatim.

(d) Sanction; Motion to Terminate or Limit Examination.

(1) Sanction. The court may impose an appropriate sanction – including reasonable expenses and attorney fees incurred by any party – on a person who impedes, delays, or frustrates the fair examination of the deponent.

(2) Motion to Terminate or Limit.

(A) Grounds. At any time during a deposition, the deponent or a party may move to terminate or limit the deposition on the ground that (1) it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party or (2) the interpreter is not rendering a reasonably complete and accurate interpretation or is repeatedly altering, omitting, or adding things, including explanations, to what is stated. The motion may be filed in the court in which the action is pending. If the objecting deponent or party so demands, the deposition must be suspended for the time necessary to obtain an order.

(B) Order. The court may order that the deposition be terminated or may limit its scope and manner as provided in Rule 26(d e). If terminated, the deposition may be resumed only by order of the court in which the action is pending. ~~If the objecting deponent or party so demands, the deposition must be suspended for the time necessary to obtain an order.~~



(C) Award of Expenses. ~~The provisions of Rule 37(a)(5) 4 apply~~ applies to the award of expenses incurred in relation to the motion.

(e) Review; Changes; Waiver; Motion to Suppress.

(1) On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which (a) to review the transcript or recording and (b) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them. The deponent may be allowed more or fewer than 30 days if the parties stipulate to or the court orders a different number of days. The officer must note in the certificate required by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the period specified above for review.

(2) All objections to the accuracy of the deposition, including objections to accuracy of the interpreter's interpretation of the questions or answers, are waived if a request for review is not made before the deposition is completed or, if a request for review is made, no changes are submitted to the officer in the time and manner required by subdivision (1) of this rule and no motion is made pursuant to subdivision (3) of this rule.

(3) If a request for review is made, the deponent or any party may move to suppress the deposition pursuant to Rule 32(d)(4) on the ground that the deponent was not allowed to review the transcript or recording as provided in ~~subdivision~~ subpart (1) of this rule or that the transcription or interpretation of the deposition is inherently inaccurate.

(f) Certification and Delivery by Officer; Exhibits; Copies of the Transcript or Recording; Notice of Delivery.

(1) Certification and Delivery. The officer ~~shall~~ must certify in writing include in or attach to the deposition a certificate that the deponent witness was duly sworn by him or her and that the deposition accurately records the deponent's is an accurate record of the testimony of the witness. Unless ~~otherwise ordered by the court~~ orders otherwise, the officer ~~shall then~~ must promptly deliver the deposition to the party taking the deposition, who must store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

(2) Documents and Tangible Things.

(A) Originals and Copies. Documents and tangible things produced for inspection during the examination of the deponent ~~witness~~ must ~~shall, upon the~~ on a party's request ~~of a party,~~ be marked for identification and ~~annexed~~ attached to the deposition. Any party may inspect and copy them. But if the person who produced them wants to keep the originals, the person ~~and may be inspected and copied by any party, except that if the person producing the materials desires to retain them, he or she may:~~

~~(A) (i) offer copies to be marked, attached to the deposition, and then used as originals – after giving for identification and annexed to the deposition and to serve thereafter as originals if he or she affords to all parties a fair opportunity to verify the copies by comparing them to comparison with the originals; or~~

~~(B) (ii) give all parties a fair offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy the originals after they are marked – them, in which event the materials originals may then be used in the same manner as if annexed attached to the deposition.~~

(B) Order Regarding Originals. Any party may move for an order that the originals be ~~annexed~~ attached to the deposition; pending final disposition of the case.

~~(2) (3) Copies of the Transcript or Recording.~~ Unless otherwise stipulated by the parties or ordered by the court, the officer must retain the stenographic notes of a deposition taken stenographically or a copy of the recording of a deposition taken by another method. When paid reasonable charges ~~Upon payment of reasonable charges therefor,~~ the officer ~~shall~~ must furnish a copy of the transcript or recording to any party or to the deponent.

~~(3) The party taking the deposition shall give prompt notice to all other parties that it has been delivered by the officer before whom taken.~~

(g) Failure to Attend or to Serve Subpoena; Expenses. A party who, expecting a deposition to be taken, attends in person or by an attorney may recover reasonable expenses for attending, including attorney fees, if the noticing party failed to:

(1) attend and proceed with the deposition; or

(2) serve a subpoena on a nonparty deponent, who consequently did not attend.

(h) Protective Orders. The deponent or any party may move at any time for an order pursuant to Rule 26(e d) to limit the dissemination of the deposition, either in whole or in part, or to limit the persons who may have access to the deposition.

....

**§ 6-330(A). Interstate Deposition and Discovery.**

(a) Definitions. In this rule:

(1) “Foreign jurisdiction” means a state other than this state.

(2) “Foreign subpoena” means a subpoena issued in a civil proceeding under authority of a court of record of a foreign jurisdiction.

(3) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(4) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

(5) “Subpoena” means a document, however denominated, issued under authority of a court of record that ~~requires~~ commands a person to:

(A) testify at a deposition;

(B) produce and permit the party serving the subpoena to inspect, copy, test, or sample the following items that are within the scope of Rule 26(b) and for inspection, copying, testing, or sampling designated books, papers, documents, tangible things, or electronically stored information in the possession, custody, or control of the person; ~~or~~

(i) any designated documents or electronically stored information – including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations – stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding person into a reasonably usable form; or

(ii) any designated tangible things; or

(C) ~~allow permit~~ entry ~~upon onto~~ designated land or other property ~~possessed or controlled by that is in the possession or control of~~ the person ~~when such entry is within the scope of Rule 26(b)~~ so that the party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

(b) Issuance of Subpoena. To request issuance of a subpoena under this rule, a party must submit to the clerk of the district court for the county in which discovery is sought to be conducted a Request for the Issuance of a Nebraska Subpoena for a Proceeding in a Foreign Jurisdiction. The content of the request must be substantially the same as the content of the form in the Appendix to this rule, and shall include the name and address of the person on which the subpoena shall be served, and the method of service provided by Neb. Rev. Stat. §§ 25-1223(9), 25-1226(1), and/or 25-1228(2).

The party must attach to the request (1) a foreign subpoena for each person to be served and (2) a list of the names, addresses, telephone numbers, and email addresses of all counsel of record and self-represented parties in the proceeding to which the subpoena relates. The party must also pay to the clerk of the district court a fee of \$75 for each subpoena issued. If the clerk re-issues a subpoena, an additional \$75 fee ~~shall~~ must be paid.

The clerk ~~shall~~ must remit the fee to the State Treasurer for credit to the Nebraska Supreme Court's Counsel for Discipline Cash Fund not later than the 15th day of the month following the calendar month in which the fee was received.

When a party submits a foreign subpoena to a clerk of a district court in this state, the clerk, in accordance with the district court's procedure, ~~shall~~ must promptly issue a subpoena for service upon the person to which the foreign subpoena is directed.

A subpoena issued under this rule must:

(1) include as an attachment a copy of the list required by this subsection;

(2) accurately incorporate the time, place, and method of the discovery requested in the foreign subpoena; and

(3) if the subpoena commands the person to produce designated documents, electronically stored information, or tangible things, the subpoena must either accurately incorporate the commands from the foreign subpoena or attach the foreign subpoena and state that the person must produce the documents, information, or things designated in the attached foreign subpoena.

(c) Service of Subpoena. A deposition subpoena issued by a clerk of court under this rule must be served in compliance with Neb. Rev. Stat. § 25-1226(1) and the return made in compliance with § 25-1228(1). A subpoena for discovery from a nonparty without a deposition must be served and the return must be made in compliance with Rule 34(A)(d)(5)-(6)(a)(4).

(d) Deposition, Production, and Entry Upon Land. The statutes and rules of this state, including the Nebraska Court Rules of Discovery in Civil Cases, apply to subpoenas issued and discovery conducted pursuant to this rule.

(e) Appearance, Certification and Acknowledgment.

(1) A request for the issuance of a subpoena or engaging in discovery pursuant to such a subpoena does not constitute an appearance in the courts of this state or the unauthorized practice of law in this state.

(2) By submitting a request for a subpoena, attorneys or self-represented parties certify that the foreign subpoena was properly issued under the laws or rules of the foreign jurisdiction. By submitting a request for a subpoena, attorneys who are not admitted to practice in Nebraska further certify that they are admitted to practice in the foreign jurisdiction in which the proceeding is pending and that they have not been disbarred or suspended from practice in any jurisdiction.

(3) By submitting a request for a subpoena, attorneys or self-represented parties acknowledge that the district court has jurisdiction to impose sanctions on them for false certifications made in obtaining the subpoena and for any conduct related to the subpoena that violates the Nebraska Court Rules of Discovery in Civil Cases.

(f) Motions. A motion for a protective order or to enforce, quash, or modify a subpoena issued by a clerk of court under this rule must comply with the statutes and rules of this state and must be filed as a civil action in the district court for the county in which the discovery is to be conducted. Such a motion may be filed or opposed only by an attorney admitted to practice in this state or by a self-represented individual.

....

**§ 6-331. Depositions upon by written questions.**

(a) ~~Serving Questions; Notice~~ When a Deposition May be Taken.

~~(1) Without Leave. After commencement of the action, any A party may, by written questions, depose take the testimony of any person, including a party, without leave of court except as provided by Rule 31(a)(2) by deposition upon written questions. The deponent's attendance of witnesses may be compelled by a subpoena that contains the information specified by Rule 30(b)(1)(E). The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.~~

(2) With Leave. A party must obtain leave of court if:

(A) the party is a plaintiff and seeks to serve questions within 30 days after service of the summons, unless

(i) the parties stipulate that the deposition may be taken; or

(ii) the defendant has served a deposition notice in the action; or

(B) the deponent has already been deposed in the case and the deponent and the parties do not stipulate that the deponent may be deposed again; or

(C) the deponent is confined in prison.

~~(3) Service; Required Notice. A party desiring who intends to depose a person by take a deposition upon written questions must shall serve the questions on them upon every other party, with a notice stating, if known, (1) The the deponent's name and address, of the person who is to answer them, if known, and if If the name is unknown not known, the notice must provide a general description sufficient to identify the person him or her or the particular class or group to which he or she the person belongs. The notice must also state, and (2) The the name or descriptive title and the address of the officer before whom the deposition will is to be taken.~~

~~(3)~~ (4) Interpreter; Required Notice. If an interpreter will be used, the notice must shall also state that an interpreter will be used and state the language that will be interpreted or

the type of interpretation (e.g., sign language). ~~The provisions of Rule 30(b)(5) governs~~ govern who may serve as an interpreter.

(5) Questions Directed to an Organization. ~~A deposition upon written questions may be taken of a public or private corporation, of a partnership, an of association, of a governmental agency, or other entity may be deposed by written questions in accordance with the provisions of Rule 30(b)(6).~~

(6) Questions from Other Parties. ~~Any questions to the person from other parties must be served on all parties as follows: cross questions, within 14 days after being served with the notice and direct questions; redirect questions, within 7 days after being served with the cross-questions; and recross-questions, within 7 days after being served with redirect questions. Within thirty days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within ten days after being served with cross questions, a party may serve redirect questions upon all other parties. Within ten days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may, for good cause shown, lengthen enlarge or shorten these times the time.~~

(b) Delivery to the Officer; Officer's Duties. ~~Officer to Take Responses and Prepare Record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(c), (e), and (f), to take the testimony of the witness in response to the questions and to prepare, certify, and deliver the deposition, attaching thereto the copy of the notice and the questions received by him or her. The party who noticed the deposition must deliver to the officer a copy of all the questions served and of the notice. The officer must promptly proceed in the manner provided in Rule 30(c), (e), and (f) to:~~

- (1) take the deponent's testimony in response to the questions;
- (2) prepare and certify the deposition; and
- (3) send it to the party, attaching a copy of the questions and of the notice.

(c) Notice of Completion. ~~The party taking the deposition shall give prompt notice to must notify all other parties when it is completed that it has been delivered by the officer before whom taken.~~

....

**§ 6-332. Use of Using depositions in court proceedings.**

(a) ~~Use of~~ Using Depositions.

~~(1) In General. At a hearing or trial, all or Any part or all of a deposition, so far as admissible under the Nebraska Evidence Rules applied as though the witness were then present and testifying, may be used against any a party on these conditions:~~

~~(A) the party who was present or represented at the taking of the deposition or who had reasonable notice of it; thereof, in accordance with any of the following provisions:~~

~~(B) it is used to the extent it would be admissible under the Nebraska Rules of Evidence if the deponent were present and testifying; and~~

~~(C) the use is allowed by Rule 32(a)(2)-(8).~~

~~(4) (2) Any party may use a deposition may be used by any party for the purpose of contradicting or impeaching to contradict or impeach the testimony given by the of deponent as a witness, or for any purpose permitted allowed by the Nebraska Evidence Rules.~~

~~(2) (3) Deposition of a Party, Agent, or Designee. An adverse party may use for any purpose the The deposition of a party or of anyone who, when deposed, at the time of taking the deposition was an the party's officer, director, or managing agent, or a person designated designee under Rule 30(b)(6) or Rule 31(a)(5) to testify on behalf of a public or private corporation, partnership or association, or governmental agency which is a party may be used by an adverse party for any purpose.~~

~~(3) (4) Unavailable Witness. A party may use for any purpose the The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds:~~

~~(A) That that the witness is dead; or~~

~~(B) That that the witness is at a greater distance more than one hundred miles from the place of hearing or trial or hearing, or is outside out of the state, or beyond the subpoena~~



power of the court, unless it appears that the witness' absence ~~of the witness~~ was procured by the party offering the deposition; ~~or~~

(C) ~~That that~~ the witness is ~~unable to~~ cannot attend or testify because of age, illness, infirmity, or imprisonment; ~~or~~

(D) ~~That that~~ the party offering the deposition ~~has been unable to~~ could not procure the witness' attendance ~~of the witness~~ by subpoena; ~~or~~

(E) ~~That that~~ ~~such~~ exceptional circumstances ~~exist as to~~ make it desirable; in the interest of justice and with due regard to the importance of ~~presenting the live~~ testimony ~~of witnesses orally~~ in open court; in, to ~~allow~~ permit the deposition to be used; or

(F) ~~Upon on~~ motion ~~application~~ and notice prior to the taking of the deposition, that circumstances ~~exist such as to~~ make it desirable; in the interest of justice and with due regard to the importance of ~~presenting the live~~ testimony ~~of witnesses orally~~ in open court; in to ~~allow~~ permit the deposition to be used.

(5) Limitation on Use; Unavailable Deponent; Party Could Not Obtain an Attorney. A deposition taken without leave of court under the unavailability provision of Rule 30(a)(2)(A)(iii) must not be used against a party who shows that, when served with the notice, it could not, despite diligent efforts, obtain an attorney to represent it at the deposition.

(6) Using Part of a Deposition. ~~(4) If a party offers in evidence only part of a deposition is offered in evidence by a party, an adverse party may require him or her the offeror to introduce any other parts that part which ought in fairness to should be considered with the part introduced, and any party may itself introduce any other parts relevant to the issues.~~

(7) Substituting a Party. ~~Substituting a party~~ ~~Substitution of parties~~ does not affect the right to use a deposition ~~depositions~~ previously taken; in

(8) Deposition Taken in an Earlier Action. ~~A deposition lawfully taken in any federal- or state court-action may be used in a later ; and when an action has been brought in any court of the United States or of any state and another action involving the same subject matter is afterward brought between the same parties, or their representatives or successors in interest, to the same extent as if all depositions lawfully taken in the former action may be used in the latter as if originally taken in the later action therefor. A~~

deposition previously taken may also be used as ~~permitted~~ allowed by the Nebraska Evidence Rules.

(b) Objections to Admissibility. Subject to the provisions of Rule 28(b) and 32(d)(3) subdivision (d)(3) of this rule, an objection may be made at a hearing or the trial or hearing to receiving in evidence the admission of any deposition testimony or part thereof for any reason which would require the exclusion of the evidence that would be inadmissible if the witness were ~~then~~ present and testifying; or if the trial court directs, such objections may be heard and determined prior to trial.

(c) ~~(Not Used).~~ Transcript, Form of Presentation, and Notice of Use.

(1) Transcript. Unless the court orders otherwise, a party must:

(A) provide the court with a transcript of any deposition testimony the party offers, but may provide the court with the testimony in audio or audiovisual form as well; or

(B) if the deposition was not recorded stenographically, provide the court and the other parties with a transcript of the portions of the deposition requiring a ruling from the court.

(2) Form. On any party's request, deposition testimony offered in a jury trial for any purpose other than impeachment must be presented in audio or audiovisual form, if available, unless the court for good cause orders otherwise.

(3) Notice. A party who may offer a deposition in audio or audiovisual form for any purpose other than impeachment must give the other parties reasonable written notice before the hearing or trial and an opportunity to object to use of all or part of the deposition.

(d) Waiver of Objections Effect of Errors and Irregularities in Deposition.

(1) ~~As to~~ To the Notice. An objection to an error or irregularity ~~All errors and irregularities in the a deposition notice for taking a deposition are~~ is waived unless ~~written objection is promptly served upon~~ in writing on the party giving the notice.

(2) ~~To the Officer's Qualifications. An objection based on~~ As to Disqualification of Officer. Objection to taking a deposition because of disqualification of the officer before whom it a deposition is to be taken is waived ~~unless made before the taking of~~ if not made:

(A) before the deposition begins; or

(B) promptly after the basis for as soon thereafter as the disqualification becomes known or, could be discovered with reasonable diligence, could have been known.

(3) To the As-to-Taking of the Deposition.

(A) Objection to Competence or Relevance. An objection to a deponent's competence – or to the competence or relevance Objections to the competency of a witness or to the competency or relevancy of testimony – is are not waived by a failure to make them the objection before or during the taking of the deposition, unless the ground of the objection for it is one which might have been corrected obviated or removed if presented at that time. But if a deposition was recorded by audio or audiovisual means only, the objection is waived by the failure to make it to the court before the hearing or trial unless the court, for good cause, excuses the failure. In a deposition recorded and preserved by nonstenographic means, such objections shall be made to the court before the trial or hearing, or such objections will be waived unless otherwise ordered by the court.

(B) Objection to an Error or Irregularity. An objection to an error or irregularity Errors and irregularities occurring at the an oral examination is waived if:

(i) it relates to in the manner of taking the deposition, in the form of a question the questions or answer answers, in the oath or affirmation, a party's or in the conduct of parties, and errors of any kind which or other matters that might have been corrected at that time; and

(ii) it is not timely made during the deposition. be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the depositions.

(C) Objection to a Written Question. An objection Objections to the form of a written question questions submitted under Rule 31 is are waived unless if not served in writing upon on the party propounding them submitting the question within the time allowed for serving responsive questions or, if the question is a recross-question, the succeeding cross or other questions and within 7 ten days after being served with it service of the last questions authorized.

(4) As to Interpreting, Completing and Returning the Deposition. An objection to how the interpreter interpreted the questions or answers, how the officer transcribed the testimony, or how the officer prepared, signed, certified, sealed, endorsed, sent, or otherwise dealt with the deposition is waived unless a motion to suppress the deposition is made promptly after the error or irregularity becomes known or, with reasonable diligence, could have been known.

....

[Committee's Note: Although the proposed rule and current rule are similar in content, they are very different in organization. The difference in organization makes impossible to prepare a useful marked-up version of the current rule because just about everything in the current rule would be crossed out and just about everything in the proposed rule would be added in – even though the content was much the same.]

#### **§ 6-333. Interrogatories to Parties.**

~~(a) Availability; Procedures for Use. Any party may serve upon any other party written interrogatories to be answered by the party served or if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons upon that party. Unless otherwise permitted by the court for good cause shown, no party shall serve upon any other party more than fifty interrogatories. Each question, subquestion, or subpart shall count as one interrogatory.~~

~~Each interrogatory shall be repeated and answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within thirty days after the service of the interrogatories, except that a defendant may serve answers or objections within forty five days after service of the summons upon that defendant. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.~~

~~(b) Scope; Use at Trial. Interrogatories may relate to any matters which can be inquired into under Rule 26(b) and the answers may be used to the extent permitted by the Nebraska Evidence Rules.~~

~~An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.~~

~~(c) Option to Produce Business Records. Where the answer to an interrogatory may be derived or ascertained from the business records, including electronically stored information, of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of such business records, including a compilation, abstract, or summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries. A specification shall be in sufficient detail as to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.~~

(a) In General.

(1) Number. Unless otherwise stipulated or ordered by the court, a party may serve on any other party no more than 50 written interrogatories, including all discrete subparts. The court may grant leave to serve additional interrogatories for good cause shown.

(2) Scope. An interrogatory may relate to any matter that may be inquired into under Rule 26(b). An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact, but the court may order that the interrogatory need not be answered until designated discovery is complete or some other time.

(3) Time; Editable Format. Interrogatories may be served on the plaintiff after commencement of the action and on any other party with or after service of the summons on that party. Upon demand, the party served with the interrogatories must be given an electronic copy of the interrogatories in a readily editable format.

(b) Answers and Objections.

(1) Responding Party. The interrogatories must be answered:

(A) by the party to whom they are directed; or

(B) if that party is a public or private corporation, a partnership, an association, a governmental agency, or other entity, by any officer or agent, who must furnish the information available to the party.

(2) Time to Respond. The responding party must serve its answers and any objections within 30 days after being served with the interrogatories, except that a defending party may serve its answers and objections within 45 days after being served with the summons or 30 days after being served with the interrogatories, whichever is longer. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court.

(3) Answering Each Interrogatory. Each interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath.

(4) Objections. If a party objects to an interrogatory, the party must state the grounds for the objection and must also explain with specificity why the interrogatory is objectionable on those grounds. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure.

(5) Form of Answer or Objection. The answering or objecting party must reproduce each interrogatory and then state the party's answer or objection to the interrogatory.

(6) Signature. The person who makes the answers must sign them, and the attorney who objects must sign any objections.

(c) Use. An answer to an interrogatory may be used to the extent allowed by the Nebraska Evidence Rules.

(d) Option to Produce Business Records. If the answer to an interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing a party's business records (including electronically stored information), and if the burden of

deriving or ascertaining the answer will be substantially the same for either party, the responding party may answer by:

(1) specifying the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could; and

(2) giving the interrogating party a reasonable opportunity to examine and audit the records and to make copies, compilations, abstracts, or summaries.

....

**§ 6-334. ~~Production of~~ Producing documents, electronically stored information, and tangible things ~~and entry upon, or entering onto land, for inspection and other purposes.~~**

(a) ~~Scope. In General.~~ Any A party may serve on any other party a request within the scope of Rule 26(b):

(1) ~~To~~ to produce and permit the requesting party or its representative making the request, or someone acting on his or her behalf, to inspect, copy, test, or sample the following items in the responding party's possession, custody, and control:

(A) any designated documents or electronically stored information ~~(including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations – stored in any medium from which information can be obtained) either directly or, if necessary, after translation translated, if necessary,~~ by the responding party respondent into a reasonably usable form; or

(B) ~~to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody, or control of the party upon whom the request is served; or~~

(2) ~~to~~ to permit entry ~~upon~~ onto designated land or other property ~~in the possession or control of~~ possessed or controlled by the responding party, so that the requesting party may inspect, measure, survey, photograph, test, or sample upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation on it, thereon, within the scope of Rule 26(b).

(b) ~~Procedure~~ Time; Editable Format. The request may, ~~without leave of court,~~ be served ~~on~~ ~~upon~~ the plaintiff after commencement of the action and ~~on~~ ~~upon~~ any other party with or after service of the summons ~~upon~~ on that party. Upon demand, the party served with the request must be given an electronic copy of the request in a readily editable format.

(c) Procedure.

(1) Contents of the Request. The request:

~~(A) must shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity each item or category of items to be inspected; The request shall~~

~~(B) must specify a reasonable time, place, and manner of making for the inspection and performing the related acts; and~~

~~(C) The request may must specify the form or forms in which electronically stored information is to be produced.~~

(2) Responses and Objections.

~~(A) Time to Respond.~~ The party ~~upon~~ to whom the request is directed must respond in writing served shall serve a written response within 30 days after ~~the service of the request, being served,~~ except that a defendant defending party must respond ~~may serve a response~~ within 45 days after being served service of with the summons or 30 days after being served with the request, whichever is longer upon that defendant. ~~The court may allow a~~ A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court.

~~(B) Responding to Each Item.~~ The responding party must reproduce each request and then state the party's response to the request. For ~~The response shall state, with respect to each item or category, the response must either state that inspection and related activities will be permitted as requested or state an objection. The responding party may state that it will produce copies of documents or of electronically stored information instead of permitting inspection. The production must then be completed no later than the time for inspection specified in the request or another reasonable time specified in the response, unless the request is objected to, including an objection to the requested form or forms for~~



~~producing electronically stored information, in which event the reasons for objection shall be stated.~~

(C) Objections. If a party objects to a request, the party must state the grounds for the objection and must also explain with specificity why the request is objectionable on those grounds. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure.

(i) Withholding Materials. An objection must state whether any responsive materials are being withheld on the basis of that objection.

(ii) Partial Objection. An objection to part of a request must specify the part and produce or permit inspection of the rest. ~~If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts.~~

(D) Responding to a Request for Production of Electronically Stored Information. ~~The response may state an objection to a~~ If objection is made to the requested form or forms for producing electronically stored information, If the responding party objects to a requested form –; or if no form was specified in the request; – the responding party must state the form or forms it intends to use. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

(E) Producing the Documents or Electronically Stored Information. ~~Unless the parties otherwise stipulated or ordered by agree, or the court, these procedures apply to producing documents or electronically stored information otherwise orders:~~

~~(1i) A a party who must produce produces documents for inspection shall produce them as they are kept in the usual course of business or shall must organize and label them to correspond with to the categories in the request;~~

~~(2ii) if If a request does not specify the a form or forms for producing electronically stored information, a responding party must produce it the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms that are reasonably usable; and~~

~~(3iii) a A party need not produce the same electronically stored information in more than one form.~~

~~(c) Persons Not Parties. This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land.~~

....

[Committee's Note: Although the proposed rule and current rule are similar in content, they are very different in organization. The difference in organization makes impossible to prepare a useful marked-up version of the current rule (other than for the title) because just about everything in the current rule would be crossed out and just about everything in the proposed rule would be added in – even though the content was much the same.]

**~~§ 6-334A. Discovery from a Nonparty without a Deposition~~**

~~(a) Procedure.~~

~~(1) Scope. Any party may, by subpoena without a deposition:~~

~~(A) require the production for inspection, copying, testing, or sampling of designated books, papers, documents, tangible things, or electronically stored information (including writings, drawings, graphs, charts, photographs, sound recordings, and other data compilations from which information can be obtained) translated if necessary by the owner or custodian into reasonably usable form, that are in the possession, custody, or control of a person who is not a party and within the scope of Rule 26(b); or~~

~~(B) obtain entry upon designated land or other property within the scope of Rule 26(b) that is in the possession or control of a person who is not a party for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon.~~

~~(2) Notice. A party intending to serve a subpoena pursuant to this rule shall give notice in writing to every other party to the action at least 10 days before the subpoena will be issued. The notice shall state the name and address of the person who will be subpoenaed, the time and place for production or entry, and that the subpoena will be issued on or after a stated date. A designation of the materials sought to be produced shall be attached to or included in the notice.~~

~~Such notice may be given by a party other than a plaintiff at any time. Such notice may not be given by a plaintiff until the time at which Rule 30(a) would permit a plaintiff to take a deposition.~~

~~(3) Issuance. A subpoena may be issued pursuant to this rule, either by a request to the clerk of the court or by an attorney authorized to do so by statute, at any time after all parties have been given the notice required by subsection (2). The subpoena shall identify all parties who were given notice that it would be issued and the date upon which each of them was given notice. A subpoena pursuant to this rule shall include or be accompanied by a copy of this rule.~~

~~(4) Time, manner, and return of service. A subpoena pursuant to this rule shall be served either personally by any person not interested in the action or by registered or certified mail not less than 10 days before the time specified for compliance. The person making personal service shall make a return showing the manner of service to the party for whom the subpoena was issued.~~

~~(b) Protection of Other Parties.~~

~~(1) Objection Before Issued. Before the subpoena is requested or issued any party may serve a written objection on the party who gave notice that it would be issued. The objection shall specifically identify any intended production or entry that is protected by an applicable privilege, that is not within the scope of discovery, or that would be unreasonably intrusive or oppressive to the party. No subpoena shall demand production of any material or entry upon any premises identified in the objection. If the objection specifically objects that the person served with the subpoena should not have the option to deliver or mail copies of documents or things directly to a party, the subpoena shall not be issued unless all parties to the lawsuit mutually agree on the method for delivery of the copies.~~

~~(2) Order. The party who gave notice that a subpoena would be issued may apply to the court in which the action is pending for an order with respect to any discovery for which another party has served a written objection. Upon hearing after notice to all parties the court may order that the subpoena be issued or not issued or that discovery proceed in a different manner, may enter any protective order authorized by Rule 26(c), and may award expenses as authorized by Rule 37(a)(4).~~

~~(3) Protective Order. After a subpoena has been issued any party may move for a protective order under Rule 26(c).~~

~~(c) Protection of the Person Served with a Subpoena.~~

~~(1) Avoiding Burden and Expense. A party or an attorney who obtains discovery pursuant to this rule shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court by which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings of the person subject to the subpoena and reasonable attorney fees.~~

~~(2) Responding to the Subpoena.~~

~~(A) A person served with a subpoena pursuant to this rule shall permit inspection, copying, testing, or sampling either where the documents or tangible things are regularly kept or at some other reasonable place designated by that person. If the subpoena states that the person served has an option to deliver or mail legible copies of documents or things instead of inspection, that person may condition the preparation of the copies on the advance payment of the reasonable cost of copying.~~

~~(B) A person served with a subpoena pursuant to this rule may, within 10 days after service of the subpoena, serve upon the party for whom the subpoena was issued a written objection to production of any or all of the designated materials or entry upon the premises. If objection is made, the party for whom the subpoena was issued shall not be entitled to production of the materials or entry upon premises except pursuant to an order of the court. If an objection has been made, the party for whom the subpoena was issued may, upon notice to all other parties and the person served with the subpoena, move at any time in the district court in the county in which the subpoena is served for an order to compel compliance with the subpoena. Such an order to compel production or to permit entry shall protect any person who is not a party or an officer of a party from significant expense resulting from complying with the command.~~

~~(3) Protections. On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:~~

~~(A) fails to allow reasonable time for compliance,~~

~~(B) requires disclosure of privileged or other protected matter and no exception or waiver applies, or~~

~~(C) subjects a person to undue burden.~~

~~(d) Duties in Responding to Subpoena.~~

~~(1) Production. A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.~~

~~(2) Objection. When information subject to a subpoena is withheld on an objection that it is privileged, not within the scope of discovery, or otherwise protected from discovery, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the party who requested the subpoena to contest the objection.~~

~~(e) Coordination.~~

~~(1) Copies. If the party for whom the subpoena was issued creates or obtains copies of documents or things, that party shall make available a duplicate of such copies at the request of any other party upon advance payment of the reasonable cost of making the copies.~~

~~(2) Inspection. If a notice of intent to serve a subpoena designates that the subpoena will require entry upon land or other property for the purposes permitted by subsection (a)(1)(B), any other party shall, upon request to the party who gave the notice, be named in the subpoena as also attending at the same time and place.~~

....

**§ 6-334(A). Subpoenas commanding nonparties to produce documents, electronically stored information, and tangible things or to allow entry onto land, for inspection and other purposes.**

(a) In General.

(1) Scope of Subpoena. A party may serve a subpoena that commands a person to produce and permit the party or its representative to do the following at a specified time and place:

(A) inspect, copy, test, or sample the following items that are within the scope of Rule 26(b) and in the person's possession, custody, or control:

(i) any designated documents or electronically stored information – including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations – stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding person into a reasonably usable form; or

(ii) any designated tangible things; or

(B) permit entry onto designated land or other property possessed or controlled by the person when such entry is within the scope of Rule 26(b) so that the party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

(2) Option to Provide Copies. The subpoena may give the person the option of (A) producing documents or electronically stored information for inspection or (B) providing copies of the documents or information by the date specified in the subpoena. If the subpoena gives the person such an option, the person may condition preparation of the copies on advance payment of the reasonable cost of preparing the copies.

(3) Subpoena for Deposition and Documents. Pursuant to Neb. Rev. Stat. § 25-1224, the subpoena may command the person to appear and testify at a deposition at the time and place specified for production. Such a subpoena must comply with this rule and contain the information that the statutes and Rule 30(b)(1)(E) require for deposition subpoenas. It must also contain a statement of the method for recording the testimony.

(b) Prior Notice to Parties.

(1) A party who intends to serve a subpoena pursuant to this rule must serve a written notice on every other party at least 10 days before issuance of the subpoena. Leave of court or a stipulation of the parties is required only if a plaintiff seeks to serve the notice within 30 days after service of the summons and no defending party has served such a notice.

(2) The notice must state the name and address of the person to whom the subpoena will be directed, the date on or after which the subpoena will be issued, the time and place of the inspection or entry, and whether the person will be given the option of providing the party with copies of the designated documents or electronically stored information. The notice must also contain a designation of (i) the documents or electronically stored information to be produced or (ii) the land or other property to be entered.

(c) Objections; Request. Before the subpoena is issued, any party may serve a written objection to the subpoena on all the other parties, including the party who gave written notice of the intent to serve the subpoena. If the subpoena is for entry onto land, any party may request that it be named in the subpoena as also entering at the same time and place.

(1) Objection to Production or Entry. A party may object to one or more of the designations in the subpoena on the grounds that the designated production or entry is (i) protected by a privilege, in which case the party must identify the applicable privilege, (ii) not within the scope of Rule 26(b), or (iii) would be unreasonably intrusive or oppressive to the party. The objection must specify the designated production or entry to which the objection is directed and must also specify the grounds for the objection.

(2) Unless the party withdraws the objection or the court orders otherwise, a subpoena may not command the production of any items or the entry onto any land to which an objection has been made pursuant to subpart (1) of this rule.

(3) The party who intends to serve the subpoena may move for an order on the objection. The motion must be filed in the court where the action is pending and served on the other parties. The court may sustain or overrule the objection in whole or in part, order that discovery proceed in a different manner, or enter a protective order pursuant to Rule 26(d). The court may also award expenses as authorized in Rule 37(a)(5).

(d) Issuance; Contents; Form of Production; Service.

(1) Issuance. A subpoena may be issued pursuant to this rule by either the clerk of the court where the action is pending upon the request of a party or by an attorney on behalf of the court if the attorney is authorized to practice in the court.

(2) Contents. A subpoena issued pursuant to this rule must:

(A) state the name of the court from which it is issued, the title of the action, and the case number;

(B) command the person to whom it is directed to produce the designated documents, electronically stored information, or things or permit the designated entry;

(C) if for production, specify the time and place for the production or give the person the option of producing the designated documents or electronically stored information for inspection at the specified time and place or providing copies of them by the specified date;

(D) if for entry, specify the time and place for the designated entry and state the name of each party entering;

(E) state the name of each party who was given written notice that the subpoena would be issued and the date on which the party was given notice; and

(F) include this rule, either in the text of the subpoena or as an attachment to the subpoena.

(3) Form of Production. A subpoena may specify the form or forms in which electronically stored information is to be produced.

(4) Reasonable Particularity. The designations in the subpoena must describe the documents, electronically stored information, or items with reasonable particularity.

(5) Service on the Person; Time; Return of Service. A subpoena issued pursuant to this rule must be served on the person to whom it is directed no less than 14 days before the time specified for production or entry. The subpoena may be served by any person who is authorized by statute to serve a deposition subpoena. Service and return of service must be made in the manner authorized by statute for the service and return of service of a deposition subpoena.

(6) Service on the Other Parties. The party who serves a subpoena on the person pursuant to this rule must also serve a copy of the subpoena on the other parties no less than 14 days before the time specified for production or entry.



(7) Protective Order. After a subpoena has been issued, any party or the person served with a subpoena may move for a protective order pursuant to Rule 26(d).

(8) Avoiding Undue Burden or Expense. A party or an attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court by which the subpoena was issued must enforce this duty and impose an appropriate sanction – which may include lost earnings and reasonable attorney fees – on a party or attorney who fails to comply.

(e) Objections; Motions. If a person served with a subpoena believes that compliance with the subpoena should not be required in whole or in part, the person may serve an objection to the subpoena or file a motion to quash or modify the subpoena.

(1) Objection.

(A) Making an Objection. A person served with a subpoena may serve on the party serving the subpoena an objection to producing any or all of the designated items, to producing electronically stored information in the specified form or forms, or to allowing the designated entry. The objection must be in writing and served within 14 days after the subpoena was served. The party on whom the objection was served must promptly serve a copy of the objection on all the other parties to the action.

(B) Waiver of Objection. The objection must state the grounds for the objection and must also state with specificity why the subpoena is objectionable on those grounds. Any ground not stated in a timely objection is waived unless (i) the objection is based on a privilege or protection as trial preparation material or (ii) the court, for good cause, excuses the failure.

(C) Ruling on an Objection. If the person serves an objection, the person is not required to produce objected-to items or entry unless a court orders otherwise. The party serving the subpoena may file a motion in the court where the action is pending for an order overruling the objection and compelling compliance with the subpoena. An order compelling compliance must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(2) Motion to Quash. A person served with a subpoena may file a motion to quash or modify the subpoena. The motion must be filed in the court where the action is pending

before the time specified for compliance or within 14 days after the subpoena was served, whichever is earlier, and must also be served on all the parties. The court must grant the motion to quash or modify if the subpoena:

(A) fails to allow a reasonable time for compliance;

(B) requires disclosure of privileged or other protected matter, and no exception or waiver applies; or

(C) subjects the person to undue burden.

(f) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information.

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the subpoena.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person must produce it in a form or forms in which it is ordinarily maintained or in a reasonably useable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person need not produce the same electronically stored information in more than one form.

(2) Claiming Privilege or Protection. When a person withholds subpoenaed information by claiming that the information is privileged or subject to protection as work product, the party must:

(A) expressly make the claim; and

(B) describe the nature of the documents, communications, or tangible things not produced – and do so in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(g) Production of Privileged or Protected Documents. Rule 26(b)(5) applies to documents or electronically stored information produced in response to a subpoena.

(h) Duplicates. If the party who served the subpoena creates or obtains copies of any items from the person served with the subpoena, the party must make duplicate copies available to any other party who requests them and pays in advance the reasonable cost of making the duplicates.

**§ 6-335. Physical and mental examinations of persons.**

(a) Order for Examination.

(1) In General. The court where the action is pending may order a party whose ~~When the mental or physical condition~~ ~~(including the blood group)~~ ~~of a party, or of a person in the custody or under the legal control of a party,~~ is in controversy, ~~the court in which the action is pending may order the party~~ to submit to a physical or mental examination by one or more ~~physicians, or other persons~~ suitably licensed or certified examiners ~~under the laws to engage in a health profession, or to produce for examination the person in his or her custody or legal control.~~ The court has the same authority to order a party to produce for examination a person who is in the party's custody or under the party's legal control.

(2) Motion and Notice; Contents of the Order. The order;

(A) may be made only on motion for good cause ~~shown~~ and ~~on upon~~ notice to all parties ~~the person to be examined;~~ and ~~to all parties and shall~~

(B) must specify the time, place, manner, conditions, and scope of the examination, as well as ~~and~~ the person or persons who will perform it ~~by whom it is to be made.~~

(b) Examiner's Report of Examining Physician.

(1) Request by the Party or Person Examined. ~~If requested by the party against whom an order is made under subdivision (a) of this rule or the person examined, the party~~ The party who moved for causing the examination must, on request, to be made shall deliver to the requester ~~him or her~~ a copy of the examiner's a detailed written report of the examining physician setting out his or her findings, including results of all tests made, diagnoses, and conclusions, together with like reports of all earlier examinations of the

same condition. The request may be made by the party against whom the examination order was issued or by the person examined.

(2) Contents. The examiner's report must be in writing and must set out in detail the examiner's findings, including diagnoses, conclusions, and the results of any tests.

(3) Request by the Moving Party. After delivering the reports, ~~delivery the party who moved for causing the examination shall be entitled upon~~ may request – and is entitled to receive – from the party against whom the examination order was issued is made a like ~~reports report of all earlier or later examinations any examination, previously or thereafter made,~~ of the same condition. But those reports need not be delivered by the party with custody or control of the person examined, unless, in the case of a report of examination of a person not a party, if the party shows that he or she is unable to it could not obtain them ~~it.~~

(4) Failure to Deliver a Report. The court on motion may ~~make an order – on just terms – that against a party requiring delivery of a~~ deliver the report of an examination. If the report is not provided ~~on such terms as are just, and if a physician fails or refuses to make a report,~~ the court may exclude ~~his or her~~ the examiner's testimony if offered at the trial.

(2) (Not used).

(5) (3) Scope. This ~~subdivision~~ subpart (b) applies also to an examination examinations made by the parties' agreement ~~of the parties,~~ unless the agreement expressly provides states otherwise. This ~~subpart~~ ~~subdivision~~ does not preclude ~~discovery of a~~ obtaining an examiner's report of an examining physician or deposing an examiner under the taking of a deposition of the physician in accordance with the provisions of any other rules ~~rule.~~

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### **§ 6-336. Requests for admission.**

(a) Request for Admission Scope and Procedure.

(1) Scope. A party may serve ~~upon~~ on any other party a written request to admit for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate relating to:

(A) facts, statements or opinions of fact or of the application of law to fact, or opinions about either; and

(B) including the genuineness of any described documents described in the request.

(2) Form; Copy of a Document. Each matter must be separately stated. A request to admit the genuineness of a document must be accompanied by a copy. Copies of the document documents shall be served with the request unless it is, or has been, they have been or are otherwise furnished or made available for inspection and copying.

(3) When Served; Editable Format. The request Requests may, without leave of court, be served on upon the plaintiff after commencement of the action and upon on any other party with or after service of the summons upon on that party. Upon demand, the party served with the requests must be given an electronic copy of the requests in a readily editable format. Each matter of which an admission is requested shall be separately set forth by the party making the request, and shall be repeated by the responding party in the answer or objection thereto.

(4) Time to Respond; Effect of Not Responding. A The matter is admitted unless, within thirty days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves on upon the party requesting party the admission a written answer or objection addressed to the matter; and signed by the party or its by his or her attorney;

(A) within 30 days after being served with the request;

(B) if the party is a defending party within 45, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of forty five days after being served with service of the summons upon him or her. or 30 days after being served with the request, whichever is longer; or

(C) the time stipulated to under Rule 29 or ordered by the court.

(5) Answer. If a matter is not admitted, the objection is made, the reasons therefor shall be stated. The answer shall must specifically deny it the matter or set forth state in detail the reasons why the answering party cannot truthfully admit or deny it the matter. A denial shall must fairly respond to meet the substance of the matter; requested admission, and when good faith requires that a party qualify his or her an answer or deny only a part of the matter of which an admission is requested, he or she shall the answer must specify

~~the part admitted so much of it as is true and qualify or deny the rest remainder. An~~ The answering party may ~~assert not give~~ assert lack of ~~knowledge or information or knowledge~~ knowledge as a reason for ~~failure failing~~ failure to admit or deny ~~only if the party states unless he or she states that he or she it~~ only if the party states unless he or she states that he or she it has made reasonable inquiry and that the information ~~it knows known~~ it knows or ~~can~~ can readily ~~obtain obtainable by him or her~~ obtain is insufficient to enable ~~it him or her~~ it to admit or deny.

(6) The grounds for objecting to a request must be stated. A party must not object solely on the ground that the request who considers that a matter of which an admission has been requested presents a genuine issue for trial, may not, on that ground alone, object to the request; he or she may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why he or she cannot admit or deny it.

(7) Form of Answer or Objection. The answering or objecting party must reproduce each request and then state the party's answer or objection to the request.

(8) Motion Regarding the Sufficiency of an Answer or Objection. The requesting party who has requested the admissions may move to determine the sufficiency of an answer or objection the answers or objections. Unless the court finds determines that an objection is justified, it must shall order that an answer be served. On finding If the court determines that an answer does not comply with the requirements of this rule, the court it may order either that the matter is admitted or that an amended answer be served. The court may defer its final decision until, in lieu of these orders, determine that final disposition of the request be made at a pretrial conference or at a specified designated time before prior to trial. The provisions of Rule 37(a)(4)(5) apply applies to an the award of expenses incurred in relation to the motion.

(b) Effect of Admission; Withdrawing or Amending It. Any A matter admitted under this rule is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended withdrawal or amendment of the admission. The court may permit withdrawal or amendment when if it promotes the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy if the court is not persuaded that it would prejudice the requesting party withdrawal or amendment will prejudice him or her in maintaining his or her or defending the action or defense on the merits. Any An admission made by a party under this rule is for the purpose of the pending action only and is not an admission by him or her for any other purpose nor may it and cannot be used against the party him or her in any other proceeding.

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**§ 6-337. Failure to Make disclosures or to cooperate in discovery; sanctions.**

(a) Motion for Order Compelling Disclosure or Discovery.

(1) In General. On A party, upon reasonable notice to other parties and all affected persons affected thereby, a party may move apply for an order compelling disclosure or discovery, as follows: The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action.

(2) (1)-Appropriate Court. An application A motion for an order compelling disclosure or discovery must to a party may be made to in the court in which the action is pending; or alternatively, on matters relating to a deposition, to the district court in the district where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to the district court where the deposition is taken.

(3) Specific Motions Motion.

(A) To Compel Disclosure. If a party fails to make a disclosure required by Rule 26(d), any other party may move to compel disclosure and for appropriate sanctions.

(B) To Compel a Discovery Response. A party seeking discovery may move for an order compelling an answer, designation, production or inspection. The motion may be made if:

(i) If a deponent fails to answer a question asked propounded or submitted under Rule 30 or Rule 31; or

(ii) a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a)(4); or

(iii) a party fails to answer an interrogatory submitted under Rule 33; or

(iv) if a party, in response to a request for inspection submitted under Rule 34, fails to produce documents or fails to respond that inspection will be permitted as requested or fails to permit inspection as requested under Rule 34, the discovering party may move

~~for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request.~~

(C) Related to a Deposition. When taking a an oral deposition ~~on oral examination~~, the party asking ~~propoent~~ of the question may complete or adjourn the examination before ~~he or she applies~~ moving for an order.

~~If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 26(e).~~

(4) (3) Evasive or Incomplete Disclosure, Answer, or Response. For purposes of this ~~subpart subdivision (a)~~, an evasive or incomplete disclosure, answer, or response ~~is to~~ must be treated as a failure to disclose, answer, or respond.

(5) (4) Payment Award of Expenses; Protective Orders of Motion.

(A) If the Motion is Granted (or Disclosure or Discovery is Provided After Filing). If the motion is granted, ~~–~~ or if the disclosure or requested discovery is provided after the motion was filed -- the court ~~shall~~ must, after giving an opportunity for hearing to be heard, require the party or deponent whose conduct necessitated the motion, ~~or~~ the party or attorney advising ~~such that~~ that conduct, the attorney's law firm or employer, or some or all ~~or both~~ of them to pay ~~to the moving party~~ the movant's reasonable expenses incurred in ~~obtaining making the order~~ making the motion, including attorney fees. ~~But, unless the court must not order this payment if:~~

(i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;

(ii) the opposing party's nondisclosure, response, or objection finds that the opposition to the motion was substantially justified; ~~or that~~

(iii) other circumstances make an award of expenses unjust.

(B) If the Motion is Denied. If the motion is denied, the court ~~shall~~ may issue any protective order authorized under Rule 26(d) and must, after giving an opportunity to be heard for hearing, require the ~~moving party~~ movant, ~~or~~ the attorney ~~advising~~ filing the motion, the attorney's law firm or employer, or some or all ~~both~~ of them to pay to the party or deponent who opposed the motion ~~the its~~ reasonable expenses incurred in opposing the motion, including attorney fees, ~~unless~~ But the court must not order this



payment if finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

(C) If the Motion is Granted in Part and Denied in Part. If the motion is granted in part and denied in part, the court may issue any protective order authorized under Rule 26(d) and may, after giving an opportunity to be heard, apportion the reasonable expenses incurred in relation to for the motion among the parties and persons in a just manner.

(b) Failure to Comply with a Court Order.

~~(1) Sanctions by Court in District Where Deposition is Taken.~~ If a deponent fails to be sworn or to answer a question after being directed to do so by the district court in the district in which the deposition is being taken, the failure may be considered a contempt of that court.

~~(1 2) Sanctions, by Court in Which Action Is Pending.~~ If a party or an a party's officer, director, or managing agent of a party or a witness person designated under Rule 30(b)(6) or Rule 31(a)(4) 31(a) to testify on behalf of a party or fails to obey an order to provide or permit discovery, including an order made under Rule 35 or Rule 37(a) subdivision (a) of this rule or Rule 35, the court in which the action is pending may issue further just make such orders, in regard to the failure as are just, and among others They may include the following:

(A) directing ~~An order~~ that the matters regarding which embraced in the order was ~~made or any other designated facts shall be taken to be as established for the purposes of the action, as the prevailing in accordance with the claim of the party claims obtaining the order;~~

(B) ~~An order refusing to allow~~ prohibiting the disobedient party from supporting or opposing to support or oppose designated claims or defenses, or ~~prohibiting him or her~~ from introducing designated matters in evidence;

(C) ~~An order striking out pleadings in whole or in part; or parts thereof, or~~

(D) staying further proceedings until the order is obeyed, or

(E) dismissing the action or proceeding in whole or in or any part; thereof, or

(F) rendering a default judgment by default against the disobedient party; or

~~(D)~~ (G) ~~In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any order orders except an order to submit to a physical or mental examination;~~

~~(2) (E) Where For Not Producing a Person for Examination. If a party has failed~~ fails to comply with an order under Rule 35(a) requiring ~~him or her~~ it to produce another for examination, ~~the court may issue any of the such orders as are listed in paragraphs (A), (B), and (C) of this subdivision Rule 37(b)(1)(A)-(F), unless the disobedient party failing to comply shows that he or she is unable to~~ it cannot produce such the other person for examination.

~~(3) Payment of Expenses. Instead In lieu of or in addition to any of the foregoing orders above or in addition thereto, the court shall require~~ must order the disobedient party, failing to obey the order or the attorney advising him or her that party, the attorney's law firm or employer, or some or all of them both to pay the reasonable expenses, including attorney fees, caused by the failure, unless ~~the court finds that~~ the failure was substantially justified or ~~that~~ other circumstances make an award of expenses unjust.

~~(c) Expenses on Failure to Admit.~~

If a party fails to admit ~~what is requested the genuineness of any document or the truth of any matter as requested~~ under Rule 36; and if the requesting party requesting the admissions thereafter later proves ~~the genuineness of the a document to be genuine or the truth of the matter true,~~ the requesting party may move he or she may, within 30 days of so proving, ~~apply to the court for an order requiring that the other party who failed to admit be ordered to pay him or her the reasonable expenses, including attorney fees,~~ incurred in making that proof, ~~including reasonable attorney fees.~~ The court ~~shall make the must so~~ order unless ~~it finds that:~~

~~(1) the~~ The request was held objectionable ~~pursuant to~~ under Rule 36(a); ~~or~~

~~(2) the~~ The admission sought was of no substantial importance; ~~or~~

~~(3) the~~ The party failing to admit had a reasonable ground to believe that ~~he or she~~ it might prevail on the matter; ~~or~~

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

(d) Party's Failure of Party to Attend Its at Own Deposition, or Serve Answers to Interrogatories, or Respond to a Request for Inspection, Disclose, or Supplement an Earlier Response.

(1) In General.

(A) Motion; Grounds for Sanctions. The court in which the action is pending may, on motion, order sanctions if:

(i) ~~(1) If a party or an a party's officer, director, or managing agent – of a party or a person designated under Rule 30(b)(6) or Rule 31(a)(4) – fails to testify on behalf of a party fails (1) To appear before the officer who is to take his or her deposition, after being served with a proper notice, to appear for that person's deposition; or~~

(ii) ~~(2) a party, after being properly served with To serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (3) To serve a written response to a request for inspection submitted under Rule 34, fails to serve its answers, objections, or written response. after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (A), (B), and (C) of subdivision (b)(2) of this rule.~~

(iii) a party fails to provide information or identify a witness as required by Rule 26(c) or (e).

(B) Certification. A motion for sanctions under subpart (ii) for failing to answer or respond must include a certification that the movant has in good faith conferred or attempted to confer with the party failing to act in an effort to obtain the answer or response without court action.

(2) Unacceptable Excuse for Failing to Act. A failure described in Rule 37(d)(1)(A) is not excused on the ground that the discovery sought was objectionable, unless the party failing to act has a pending motion for a protective order under Rule 26(d).

(3) Types of Sanctions. Sanctions may include any of the orders listed in Rule 37(b)(1)(A)-(F). Instead of or ~~In lieu of any order or~~ in addition to these sanctions ~~thereto~~, the court ~~shall~~ must require the party failing to act, ~~or the attorney advising him or her~~ that party, the attorney's law firm or employer, or some or all of them both to pay the reasonable expenses, including attorney fees, caused by the failure, unless ~~the court~~

~~finds that~~ the failure was substantially justified or ~~that~~ other circumstances make an award of expenses unjust.

~~The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26(e).~~

(e) Failure to Preserve Electronically Stored Information. If electronically stored information that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery, the court:

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

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

(A) presume that the lost information was unfavorable to the party;

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

(C) dismiss the action or enter a default judgment.

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