

Local Rule Changes
in the
District of Oregon
Western District of WA

John Mansfield

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New Local Rules in the District of Oregon

Highlights, lowlights, nolights

LR 3-7 – Protective Orders

(See LR 26-4, 100-5)

(a) Proposed Protective Orders

Proposed protective orders must include language that:

- (1) Instructs the clerk whether the parties through their counsel are to have remote, electronic access to the documents pursuant to the protective order.
- (2) Identifies by name the parties authorized to have remote, electronic access to the documents.

(b) Documents Filed Pursuant to Protective Order

When a previous Court order authorizes the filing by a Registered User of a document or other materials under seal pursuant to a protective order, the filing party is to electronically file the document in the manner and process described in the CM/ECF User Manual. Remote, electronic access to documents in support of a protective order is allowed in a manner that is consistent with the terms of the protective order, or as otherwise ordered by the Court.

Practice Tip

Two forms of proposed Protective Orders are available on the Court's website on the For Attorneys page, under the Forms tab, and Forms for Civil Cases menu.

LR 6 – Computing Time After Service

(See Fed. R. Civ. P. 6(d))

When a party may or must act within a specified time after service and service is made under Fed. R. Civ. P. 5(b)(2)(A) or (B), three days are added after the period would otherwise expire under Fed. R. Civ. P. 6(a), regardless of whether any additional method of service is also made, unless otherwise ordered by the Court.

Commentary

Many deadlines under the Federal Rules and Local Rules are calculated from the time of service of the paper that triggers the deadline. Federal Rule of Civil Procedure 6(d) adds three days to a deadline, but only for certain kinds of service: mail (Fed. R. Civ. P. 5(b)(2)(C)), leaving with the clerk (Fed. R. Civ. P. 5(b)(2)(D)), electronic service (Fed. R. Civ. P. 5(b)(2)(E)), and delivery by other means with consent (Fed. R. Civ. P. 5(b)(2)(F)).

Under LR 6, three days are added to the response deadline regardless of the means by which the triggering paper is served. This is intended to remove the incentive to serve papers (including, without limitation, discovery requests) by hand under Fed. R. Civ. P. 5(b)(2)(A) or by leaving at person's office or dwelling under subsection (B), in order to keep the receiving party from having the three-day period provided by Fed. R. Civ. P. 6(d) for other means of service.

Amendment History to LR 6

[Date]

LR 6

New rule.

LR 7-2 Non-Discovery Motions

(b) Word-Count or Page Limits

(1) Without prior Court approval, memoranda, (including objections to a Findings and Recommendation of a Magistrate Judge and responses to such objections) may not exceed 11,000 words, or in the alternative, 35 pages. If the document exceeds the page limit, then the party must certify compliance with the word-count limit. This limitation includes headings, footnotes, and quotations, but excludes the caption, table of contents, table of cases and authorities, signature block, exhibits, and any certificates of counsel.

(2) Certificate of Compliance: The person preparing the certificate may rely on the word- count of the word- processing system used to prepare the brief. The certificate must state the number of words in the memorandum. Use of the suggested form of Certificate of Compliance displayed in the example below will be regarded as sufficient to meet the requirements of this rule.

Certificate of Compliance	
Example	This brief complies with the applicable word-count limitation under LR 7-2(b), 26-3(b), 54-1(c), or 54-3(e) because it contains (insert number) words, including headings, footnotes, and quotations, but excluding the caption, table of contents, table of cases and authorities, signature block, exhibits, and certificates of counsel.

LR 26-3 Discovery Motions

(See Fed R. Civ. P. 26 and LR 37)

(b) Word-Count or Page Limits

(1) Without prior Court approval, memorandum may not exceed 3,000 words, or in the alternative, 10 pages. If the document exceeds the page limit, the party must certify compliance with the word-count limit. This limitation includes headings, footnotes, and quotations, but excludes the caption, signature block, exhibits, and any certificates of counsel.

(2) Certificate of Compliance: As requires by these rules, the party must file a Certificate of Compliance as to the word-count limit as provided in LR 7-2(b).

LR 26-6 E-Discovery in Patent Cases

The Model Order Regarding E-Discovery in Patent Cases shall govern in all cases in which a claim of patent infringement is asserted. The Court may enter a specific order adopting the Model Order verbatim or tailored for a specific case. Absent a specific order, the Model Order applies in patent cases.

LR 26-7 Initial Discovery Protocols for Employment Cases Alleging Adverse Action

PART 1: INTRODUCTION AND DEFINITIONS

(1) Scope: Except for good cause shown, the Initial Discovery Protocols set forth below apply to all employment cases that challenge one or more actions alleged to be adverse except:

- a. Class actions; and
- b. Cases in which the allegations involve only the following:
 - i. Discrimination in hiring;
 - ii. Harassment/hostile work environment;
 - iii. Violations of wage and hour laws under the Fair Labor Standards Act (FLSA);
 - iv. Failure to provide reasonable accommodations under the Americans with Disabilities Act (ADA);
 - v. Violations of the Family Medical Leave Act (FMLA); and
 - vi. Violations of the Employee Retirement Income Security Act (ERISA).

(2) Interaction with FRCP: The Initial Discovery Protocols do not preclude or modify the rights of any party to discovery as provided by the Federal Rules of Civil Procedure or other applicable local rules, but they supersede the parties' obligations to make initial disclosures pursuant to F.R.C.P. 26(a)(1).

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(3) **Definitions:** The following definitions apply:

a. **Concerning** The term “concerning” means referring to, describing, evidencing, or constituting.

b. **Document** The terms “document” and “documents” are synonymous in meaning and equal in scope to the terms “documents” and “electronically stored information” as used in F.R.C.P. 34(a).

c. **Identify (Documents)** When referring to documents, to “identify” means either to produce the document or to give, to the extent known: (i) the type of document; (ii) the general subject of the document; (iii) the date of the document; (iv) the author(s), according to the document; (v) the person(s) to whom, according to the document, the document (or a copy) was to have been sent.

d. **Identify (Persons)** When referring to natural persons, to “identify” means to give the person’ s: (i) full name; (ii) present or last known address and telephone number; (iii) present or last known place of employment; (iv) present or last known job title; and (v) relationship, if any, to plaintiff or defendant. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

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(4) Instructions:

- a. For this Initial Discovery, the relevant time period begins three years before the date of the adverse action unless otherwise specified.
- b. This Initial Discovery is not subject to objections except on the grounds set forth in F.R.C.P. 26(b)(2)(B).
- c. If a responding party provides a partial or incomplete answer or production, that party shall state the reason the answer or production is partial or incomplete.
- d. This Initial Discovery is subject to F.R.C.P. 26(e) regarding supplementation and F.R.C.P. 26(g) regarding certification of responses.
- e. This Initial Discovery is subject to F.R.C.P. 34(b)(2)(E) regarding form of production.

LR 26-7 Initial Discovery Protocols for Employment Cases Alleging Adverse Action

PART 2: PRODUCTION BY PLAINTIFF

(1) Timing: Plaintiff shall provide Initial Discovery to defendant within 30 days after such defendant has submitted a responsive pleading or motion.

(2) Documents plaintiff must produce to defendant:

- a. All communications concerning the factual allegations or claims at issue in this lawsuit between plaintiff and defendant.
- b. Claims, lawsuits, administrative charges, and complaints by plaintiff that rely on any of the same factual allegations or claims as those at issue in this lawsuit.
- c. Documents concerning the formation and termination, if any, of the employment relationship at issue in this lawsuit, irrespective of the relevant time period.
- d. Documents concerning the terms and conditions of the employment relationship at issue in this lawsuit.
- e. Diary, journal, and calendar entries maintained by plaintiff concerning the factual allegations or claims at issue in this lawsuit.
- f. Plaintiff's current resume(s).
- g. Documents in the possession of plaintiff or plaintiff's agent concerning claims for unemployment benefits.
- h. Documents concerning: (i) communications with potential employers; (ii) job search efforts; and (iii) offer(s) of employment, job description(s), and income and benefits of subsequent employment. Defendant shall not contact or subpoena a prospective or current employer to discover information about plaintiff's claims without first giving plaintiff 30 days' notice and an opportunity to file a motion for a protective order or a motion to quash such subpoena. If such a motion is filed, defendant will not initiate such contact or serve such subpoena until the motion is ruled upon.
- i. Documents concerning the termination of any subsequent employment.
- j. Any other document(s) on which plaintiff relies to support plaintiff's claims.

LR 26-7 Initial Discovery Protocols for Employment Cases Alleging Adverse Action

(3) Information plaintiff must produce to defendant:

- a. Identify persons plaintiff believes have knowledge of the facts concerning the claims or defenses at issue in this lawsuit and a brief description of that knowledge.
- b. Describe the categories of damages plaintiff claims.
- c. State whether plaintiff has applied for disability benefits and/or social security disability benefits after the adverse action, whether any application has been granted, and the nature of the award, if any. Identify any document concerning any such application.

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PART 2: PRODUCTION BY DEFENDANT

(4) Timing: Defendant shall provide Initial Discovery within 30 days after such defendant has submitted a responsive pleading or motion. When the United States Government is a defendant, it shall provide Initial Discovery within 60 days after it has submitted a responsive pleading or motion.

(5) Documents defendant must produce to plaintiff:

- a. All communications concerning the factual allegations or claims at issue in this lawsuit among or between:
 - i. Plaintiff and defendant;
 - ii. Plaintiff's manager(s) supervisor(s), and defendant's human resources representative(s).
- b. Responses to claims, lawsuits, administrative charges, and complaints by plaintiff that rely on any of the same factual allegations or claims as those at issue in the lawsuit.
- c. Documents concerning the formation and termination, if any, of the employment relationship at issue in this lawsuit, irrespective of the relevant time period.
- d. Plaintiff's personnel file, in any form, maintained by defendant, including files concerning plaintiff maintained by plaintiff's supervisor(s), manager(s), or defendant's human resources representative(s), irrespective of the relevant time period.
- e. Plaintiff's performance evaluations and formal discipline.
- f. Documents relied on to make the employment decision(s) at issue in this lawsuit.
- g. Workplace policies or guidelines relevant to the adverse action in effect at the time of the adverse action. Depending on the case, those may include policies or guidelines that address: discipline, termination of employment; promotion; discrimination; performance reviews or evaluations; misconduct; retaliation; and the nature of the employment relationship.

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(5) Documents defendant must produce to plaintiff (cont.):

- h. The table of contents and index of any employee handbook, code of conduct, or policies and procedures manual in effect at the time of the adverse action.
- i. Job description(s) for the position(s) plaintiff held.
- j. Documents showing plaintiff's compensation and benefits. Those normally include retirement plan benefits, fringe benefits, employee benefit summary plan descriptions, and summaries of compensation.
- k. Agreements between plaintiff and defendant to waive jury trial rights or to arbitrate disputes.
- l. Documents concerning investigation(s) of any complaint(s) about plaintiff or made by plaintiff, if relevant to plaintiff's factual allegations or claims at issue in this lawsuit and not otherwise privileged.
- m. Documents in the possession of defendant and/or defendant's agent(s) concerning claims for unemployment benefits unless production is prohibited by applicable law.
- n. Any other document(s) on which defendant relies to support the defenses, affirmative defenses, and counterclaims, including any other document(s) describing the reasons for the adverse action.

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(6) Information defendant must produce to plaintiff:

- a. Identify plaintiff's supervisor(s) and manager(s).
- b. Identify persons known to defendant who were involved in making the decision to take the adverse action.
- c. Identify persons defendant believes have knowledge of the facts concerning the claims or defenses at issue in this lawsuit, and a brief description of that knowledge.
- d. State whether plaintiff has applied for disability benefits and/or social security disability benefits after the adverse action. State whether defendant has provided information to any third party concerning any application by plaintiff for disability benefits and/or social security disability benefits after the adverse action and identify any documents concerning any such application or any such information provided.

LR 54-1 Costs – Other than Attorney Fees

(See Fed R. Civ. P. 54(d)(1))

(c) Word or Page-Count Limitations

(1) Without prior Court approval, any legal memorandum in support of, or in opposition to, the Bill of Costs may not exceed 3,000 words, or in the alternative, 10 pages. If the document exceeds the page limit, then the party must certify compliance with the word-count limit. This limitation includes headings, footnotes, and quotations, but excludes the caption, signature block, exhibits, and any certificates of counsel.

(2) Certificate of Compliance: As requires by these rules, the party must file a Certificate of Compliance as to the word-count limit as provided in LR 7-2(b).

LR 83-11 Withdrawal from a Case

(c) Withdrawal by Counsel Appearing *Pro Hac Vice*:

Unless a member of the withdrawing attorney's firm or former law firm remains as counsel of record for the party, counsel appearing *pro hac vice* may withdraw as counsel of record only with leave of Court as provided in subsection (a). In such cases, counsel appearing *pro hac vice* must notify local counsel of the intent to withdraw and must ascertain whether local counsel objects to such withdrawal. The motion required by subsection (a) must be served on local counsel and must inform the Court of local's counsel's position regarding the motion. If a member of the withdrawing attorney's law firm or former law firm remains as counsel of record for the party, the withdrawing attorney may instead file a notice of withdrawal as provided in subsection (b).

LR 100-2 Mandatory Electronic Filing; Format of Filing

Unless otherwise limited by these rules, the Court and Registered Users must:

- (a) open all new civil cases electronically through the CM/ECF system, and
- (b) file all pleadings, documents (including attachments and exhibits), and other papers in civil and criminal cases electronically through the CM/ECF system. All pleadings and documents, including attachments and exhibits, must be filed as text searchable PDF files, unless otherwise directed by the Court.

Practice Tips

1. Word processing systems (like WordPerfect, or Microsoft Word) can generate a searchable PDF version of every document created by the system.
2. Attachments, or other documents not generated by the filing party's word processing system which are scanned and then converted into a PDF file in preparation for electronic filing, should be run through an application (like an optical character recognition program (OCR)) to convert the contents into a text searchable PDF file.
3. The on-line User's Manual has additional information about creating text searchable PDF files. The filer should also consult their word processing manuals.