

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE NO. 4 FOR

SENATE BILL NO. 224

100TH GENERAL ASSEMBLY

0633H.14C

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend supreme court rules 25.03, 56.01, 57.01, 57.03, 57.04, 58.01, 59.01, and 61.01, relating to discovery.

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

Section A. Supreme court rules 25.03, 56.01, 57.01, 57.03, 57.04, 58.01, 59.01, and
2 61.01, are amended, to read as follows:

25.03. Misdemeanors or Felonies-Disclosure by State to Defendant Without Court Order
2 (a) Disclosure upon filing of felony complaint. Except as otherwise provided in these
3 Rules, the state shall, upon written request of defendant's counsel, disclose to defendant's
4 counsel[,] the following material and information in the possession of the prosecutor: any arrest
5 reports, incident reports, investigative reports, written or recorded statements, documents,
6 photographs, video, electronic communications and electronic data that relate to the offense for
7 which defendant is charged.

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

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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

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

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

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

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

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

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

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

44 (c) The request provided for by this Rule shall be made by filing the request in the court
45 where the case is pending and serving a copy of the request upon counsel for the state.

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

53 (e) The state may elect to provide a separate copy of a redacted document to defendant's
54 counsel to be delivered to defendant and designated as "Defendant's Copy." If the state provides
55 a redacted document designated as "Defendant's Copy," in addition to the information permitted
56 to be redacted pursuant to Rule 25.03(d), the state may also redact from "Defendant's Copy" of
57 the document the following information: date of birth, home address, work address, and personal
58 phone number and work phone number of a victim or witness. However, the redaction must be
59 done in a manner that makes it clear the information has been redacted from the document.
60 Defendant's counsel shall be provided a separate document designated as "Lawyer Copy Only
61 – Not for Defendant" that includes the information that has been redacted from the document
62 pursuant to Rule 25.03(e). If defendant's counsel is provided with a redacted document by the
63 state designated as "Defendant's Copy," only that copy shall be provided to defendant.
64 Defendant's counsel shall not provide to defendant the unredacted document or any information
65 redacted from the document pursuant to this Rule without court approval. For any document
66 designated "Defendant's Copy" or "Lawyer Copy Only – Not for Defendant," every page of the
67 respective document shall be so designated.

68 (f) Defendant is not entitled to the information redacted from a document as provided
69 in Rule 25.03(d) or (e) unless the court determines after a showing of good cause that the
70 disclosure of the information is necessary for the defense of the case.

71 (g) The state shall, without written request, disclose to defendant any material or
72 information that tends to negate the guilt of defendant for the charged offense, mitigate the
73 degree of the offense charged, reduce the punishment of the offense charged, and any additional
74 material or information that would be required to be disclosed to comply with *Brady v.*
75 *Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972) and their progeny.

76 (h) If material or information would be discoverable under subsections (b) and (g) of this
77 Rule if in the possession or control of the state, but is in possession or control of other
78 governmental personnel, the state shall use diligence and make good faith efforts to make the
79 material or information available to defendant. If the state's efforts are unsuccessful and the
80 material or information or other governmental personnel are subject to the jurisdiction of the
81 court, the court, upon request, shall issue subpoenas or orders to cause the material or
82 information to be made available to the state for disclosure to the defense.

56.01. General Provisions Governing Discovery

2 (a) Discovery Methods. Parties may obtain discovery by one or more of the following
3 methods: depositions upon oral examination or written questions; written interrogatories;
4 production of documents, **electronically stored information**, or things or permission to enter
5 upon land or other property, for inspection and other purposes; physical and mental
6 examinations; and requests for admission.

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

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

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

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

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

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

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

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

31 (3) **Specific Limitations on Electronically Stored Information. A party need not**
32 **provide discovery of electronically stored information from sources that the party identifies**
33 **as not reasonably accessible because of undue burden or cost. On motion to compel**
34 **discovery or for a protective order, the party from whom discovery is sought must show**
35 **that the information is not reasonably accessible because of undue burden or cost. If that**
36 **showing is made, the court may nonetheless order discovery from such sources if the**
37 **requesting party shows good cause, considering the limitations of Rule 56.01(b)(2). The**
38 **court may specify conditions for the discovery.**

39 (4) Insurance Agreements. A party may obtain discovery of the existence and contents,
40 including production of the policy and declaration page, of any insurance agreement under which
41 any person carrying on an insurance business may be liable to satisfy part or all of a judgment
42 that may be entered in the action or to indemnify or reimburse for payments made to satisfy the

43 judgment. Information concerning the insurance agreement is not by reason of disclosure
44 admissible in evidence at trial. For purposes of this Rule [~~56.01(b)(2)~~] **56.01(b)(4)**, an
45 application for insurance shall not be treated as part of an insurance agreement.

46 [~~(3)~~] **(5)** Trial Preparation: Materials. Subject to the provisions of Rule [~~56.01(b)(4)~~]
47 **56.01(b)(6)**, a party may obtain discovery of documents and tangible things otherwise
48 discoverable under Rule 56.01(b)(1) and prepared in anticipation of litigation or for trial by or
49 for another party or by or for that other party's representative, including an attorney, consultant,
50 surety, indemnitor, insurer, or agent, only upon a showing that the party seeking discovery has
51 substantial need of the materials in the preparation of the case and that the adverse party is
52 unable without undue hardship to obtain the substantial equivalent of the materials by other
53 means. In ordering discovery of such materials when the required showing has been made, the
54 court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal
55 theories of an attorney or other representative of a party concerning the litigation.

56 A party may obtain without the required showing a statement concerning the action or
57 its subject matter previously made by that party. For purposes of this paragraph, a statement
58 previously made is: (a) a written statement signed or otherwise adopted or approved by the
59 person making it, or (b) a stenographic, mechanical, electrical, audio, video, motion picture or
60 other recording, or a transcription thereof, of the party or of a statement made by the party and
61 contemporaneously recorded.

62 [~~(4)~~] **(6)** Trial Preparation: Experts. Discovery of facts known and opinions held by
63 experts, otherwise discoverable under the provisions of Rule 56.01(b)(1) and acquired or
64 developed in anticipation of litigation or for trial, may be obtained only as follows:

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

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

76 [~~(5)~~] **(7)** Trial Preparations: Non-retained Experts. A party, through interrogatories,
77 may require any other party to identify each non-retained expert witness, including a party, whom
78 the other party expects to call at trial who may provide expert witness opinion testimony by

79 providing the expert's name, address, and field of expertise. For the purpose of this Rule
80 ~~[56.01(b)(5)]~~ **56.01(b)(7)**, an expert witness is a witness qualified as an expert by knowledge,
81 experience, training, or education giving testimony relative to scientific, technical or other
82 specialized knowledge that will assist the trier of fact to understand the evidence. Discovery of
83 the facts known and opinions held by such an expert shall be discoverable in the same manner
84 as for lay witnesses.

85 ~~[(6)]~~ **(8) Approved Interrogatories and Request for Production.** A circuit court by local
86 court rule may promulgate "approved" interrogatories and requests for production for use in
87 specified types of litigation. Each such approved interrogatory and request for production
88 submitted to a party shall be denominated as having been approved by reference to the local court
89 rule and paragraph number containing the interrogatory or request for production.

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

91 **(A) Information produced.**

92 **(i) If information produced in discovery is subject to a claim of privilege or of**
93 **protection as trial preparation material, the party making the claim may notify any party**
94 **that received the information of the claim and the basis for it. After being notified, a party**
95 **must promptly return, sequester, or destroy the specified information and any copies it**
96 **has; must not use or disclose the information until the claim is resolved; must take**
97 **reasonable steps to retrieve the information if the party disclosed it before being notified;**
98 **and may promptly present the information to the court under seal for a determination of**
99 **the claim. The producing party must preserve the information until the claim is resolved.**

100 **(ii) An attorney who receives information that contains privileged communications**
101 **involving an adverse or third party and who has reasonable cause to believe that the**
102 **information was wrongfully obtained shall not read the information or, if he or she has**
103 **begun to do so, shall stop reading it. The attorney shall promptly notify the attorney whose**
104 **communications are contained in the information to return the information to the other**
105 **lawyer and, if in electronic form, delete it and take reasonable measures to assure that the**
106 **information is inaccessible. An attorney who has been notified about information**
107 **containing privileged communications has the obligation to preserve the information.**

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

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

- 115 (1) that the discovery not be had;
- 116 (2) that the discovery may be had only on specified terms and conditions, including a
117 designation of the time or place **or the allocation of expenses**;
- 118 (3) that the discovery may be had only by a method of discovery other than that selected
119 by the party seeking discovery;
- 120 (4) that certain matters not be inquired into, or that the scope of the discovery be limited
121 to certain matters;
- 122 (5) that discovery be conducted with no one present except persons designated by the
123 court;
- 124 (6) that a deposition after being sealed be opened only by order of the court;
- 125 (7) that a trade secret or other confidential research, development, or commercial
126 information not be disclosed or be disclosed only in a designated way;
- 127 (8) that the parties simultaneously file specified documents or information enclosed in
128 sealed envelopes to be opened as directed by the court.

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

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

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

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

57.01. Interrogatories to Parties

- 2 (a) Scope. **Unless otherwise stipulated or ordered by the court**, any party may serve
3 upon any other party **no more than 25** written interrogatories, **including all discrete subparts**.
4 Interrogatories may relate to any matter that can be inquired into under Rule 56.01. An

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

9 (b) Issuance.

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

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

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

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

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

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

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

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

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

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

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

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

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

39 The court may allow a shorter or longer time.

40 (2) Form. The title of the response shall identify the responding party and the number
41 of the set of interrogatories. The response to the interrogatories shall quote each interrogatory,
42 including its original paragraph number, and immediately thereunder state the answer or all
43 reasons for not completely answering the interrogatory, including privileges, the work product
44 doctrine and objections.

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

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

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

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

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

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

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

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

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

72 The certificate shall show the caption of the case, the name of the party served, the date
73 and manner of service, the designation of the document, e.g., first interrogatories or answers to
74 second interrogatories, and the signature of the serving party or attorney. The answers bearing
75 the original signature of the party answering the interrogatories shall be served on the party

76 submitting the interrogatories, who shall be the custodian thereof until the entire case is finally
77 disposed.

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

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

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

57.03. Depositions Upon Oral Examination

2 (a) When Depositions May Be Taken.

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

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

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

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

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

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

21 **(B) the deponent is confined in prison.**

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

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

27 The notice shall state the time and place for taking the deposition and the name and
28 address of each person to be examined, if known. If the name is not known, a general

29 description sufficient to identify the person or the particular class or group to which the person
30 belongs shall be stated.

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

34 A party may attend a deposition by telephone.

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

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

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

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

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

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

59 (1) If the deposition is to be recorded by video tape, every notice or subpoena for the
60 taking of the deposition shall state that it is to be video taped and shall state the name, address
61 and employer of the recording technician. If a party upon whom notice for the taking of a
62 deposition has been served desires to have the testimony additionally recorded by other than
63 stenographic means, that party shall serve notice on the opposing party and the witness that the
64 proceedings are to be video taped. Such notice must be served not less than three days prior to

65 the date designated in the original notice for the taking of the depositions and shall state the
66 name, address and employer of the recording technician.

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

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

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

73 (5) The attorney for the party requesting the video taping of the deposition shall take
74 custody of and be responsible for the safeguarding of the video tape and shall, upon request,
75 permit the viewing thereof by the opposing party and if requested, shall provide a copy of the
76 video tape at the cost of the requesting party.

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

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

85 All objections made at the time of the examination to the qualifications of the officer
86 taking the deposition, to the manner of taking it, to the evidence presented, to the conduct of any
87 party, or any other objection to the proceedings shall be noted by the officer upon the deposition.
88 Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral
89 examination, parties may serve written questions in a sealed envelope on the party taking the
90 deposition, and that party shall transmit them to the officer before whom the deposition is to be
91 taken, who shall propound them to the witness, and the questions and answers thereto shall be
92 recorded.

93 (e) Motion to Terminate or Limit Examination. At any time during the taking of the
94 deposition, on motion of a party or of the deponent and upon a showing that the examination is
95 being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress
96 the deponent or party, the court in which the action is pending or a court having general
97 jurisdiction in the place where the deposition is being taken may order the officer conducting the
98 examination to cease forthwith from taking the deposition, or may limit the scope and manner
99 of the taking of the deposition as provided in Rule 56.01(c). If the order made terminates the
100 examination, it shall be resumed thereafter only upon the order of the court in which the action

101 is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall
102 be suspended for the time necessary to make a motion for an order. The provisions of Rule
103 61.01(g) apply to the award of expenses incurred in relation to the motion.

104 (f) Submission to Witness; Changes; Signing. When the testimony is fully transcribed,
105 the officer shall make the deposition available to the witness for examination, reading and
106 signing, unless such examination, reading, and signing are waived by the witness or by the
107 parties. Any changes in form or substance that the witness desires to make shall be entered upon
108 an errata sheet provided to the witness with a statement of the reasons given for making such
109 changes. The answers or responses as originally given, together with the changes made and
110 reasons given therefor, shall be considered as a part of the deposition. The deposition shall then
111 be signed by the witness before a notary public unless the witness is ill, cannot be found, is dead,
112 or refuses to sign. If the deposition is not signed by the time of trial, it may be used as if signed,
113 unless, on a motion to suppress, the court holds that the reasons given for the refusal to sign
114 requires rejection of the deposition in whole or in part.

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

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

120 (2) Filing.

121 (a) By the Officer. Upon delivery of a deposition, the officer shall file with the court a
122 certificate showing the caption of the case, the name of the deponent, the date the deposition was
123 taken, the name and address of the person having custody of the original deposition, and whether
124 the charges have been paid. The officer shall not file a copy of the deposition with the court
125 except upon court order.

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

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

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

135 (3) Exhibits. Documents and things produced for inspection during the examination of
136 the witness shall, upon the request of a party, be marked for identification and annexed to and

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

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

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

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

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

57.04. Depositions Upon Written Questions

2 (a) Serving Questions; Notice.

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

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

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

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

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

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

16 (B) the deponent is confined in prison.

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

25 (4) Within thirty days after the notice and written questions are served, a party may serve
 26 cross questions upon all other parties. Within ten days after being served with cross questions,
 27 a party may serve redirect questions upon all other parties. Within ten days after being served
 28 with redirect questions, a party may serve recross questions upon all other parties. The court may
 29 for cause shown enlarge or shorten the time.

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

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

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

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

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

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

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

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

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

22 (b) Issuance.

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

24 (A) Set forth [~~the items to be inspected, either by individual item or by category, and~~
25 ~~describe each item and category]~~ with reasonable particularity[~~].—The request shall] **each item**
26 **or category of items to be inspected;**~~

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

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

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

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

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

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

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

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

44 (B) Number of the set of requests;

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

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

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

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

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

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

55 The court may allow a shorter or longer time.

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

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

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

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

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

77 (d) Filing. The request and responses thereto shall not be filed with the court except
78 upon court order or contemporaneously with a motion placing the request in issue. However,
79 both when the request and responses are served, the party serving them shall file with the court
80 a certificate of service. The certificate shall show the caption of the case, the name of the party
81 served, the date and manner of service, and the signature of the serving party or attorney. Each
82 party filing a certificate shall maintain a copy of the document that is the subject of the certificate
83 until the case is finally disposed.

84 (e) Enforcement. The party submitting the request may move for an order under Rule
85 61.01(d) with respect to any objection or other failure to respond to the request or any part
86 thereof or any failure to permit inspection as requested.

59.01. Request for and Effect of Admissions

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

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

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

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

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

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

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

28 (c) Issuance.

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

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

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

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

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

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

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

47 (B) Number of the set of requests,

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

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

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

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

57 (A) Entering an appearance, or

58 (B) Being served with process.

59 The court may allow a shorter or longer time.

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

63 (A) Admit the matter; or

64 (B) Deny the matter; or

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

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

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

69 When good faith requires that a party qualify an answer or deny only a part of the matter

70 of which an admission is requested, the party shall specify so much of it as true and qualify or
71 deny the remainder.

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

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

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

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

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

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

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

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

100 (1) The matter is admitted, or

101 (2) An amended answer be served.

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

61.01. Failure to Make Discovery: Sanctions

2 (a) Failure to Act - Evasive or Incomplete Answers. Any failure to act described in this

3 Rule 61 may not be excused on the ground that the discovery sought is objectionable unless the
4 party failing to act has served timely objections to the discovery request or has applied for a
5 protective order as provided by Rule 56.01(c).

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

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

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

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

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

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

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

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

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

35 (d) Failure to Produce Documents and Things or to Permit Inspection. If a party fails
36 to respond that inspection will be permitted as requested, fails to permit inspection, or fails to
37 produce documents and tangible things as requested under Rule 58.01, or timely serves
38 objections thereto that are thereafter overruled and the documents and things are not timely

39 produced or inspection thereafter is not timely permitted, the court may, upon motion and
40 reasonable notice to other parties, take such action in regard to the failure as are just and among
41 others the following:

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

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

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

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

53 (e) Failure to Appear for Physical Examination. If a party fails to obey an order directing
54 a physical or mental or blood examination under Rule 60.01, the court may, upon motion and
55 reasonable notice to the other parties and all persons affected thereby, make such orders in regard
56 to the failure as are just, and among others, it may take any action authorized under Rules
57 61.01(d)(1), (2), and (4). Where a party has failed to comply with an order requiring the
58 production of another for examination, the court may enter such orders as are authorized by this
59 Rule 61.01, unless the party failing to comply shows an inability to produce such person for
60 examination.

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

67 (g) Failure to Answer Questions on Deposition. If a witness fails or refuses to testify in
68 response to questions propounded on deposition, the proponent of the question may move for
69 an order compelling an answer. The proponent of the question may complete or adjourn the
70 deposition examination before applying for an order. In ruling upon the motion, the court may
71 make such protective order as it would have been empowered to make on a motion pursuant to
72 Rule 56.01(c).

73 If the motion is granted, the court, after opportunity for hearing, shall require the party
74 or deponent whose conduct necessitated the motion or the party or attorney advising such

75 conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining
76 the order, including attorney's fees, unless the court finds that the opposition to the motion was
77 substantially justified or that other circumstances make an award of expenses unjust.

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

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

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

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

✓