

Discovery in Federal Court Is Closely Supervised

As discussed in the main article, the CPLR provides for a myriad of discovery devices in state court, with few limits on their use and combination. The U.S. District Courts and local district court rules, on the other hand, severely limit discovery, unless otherwise directed by the court.

Except in certain prescribed categories of cases (e.g. for administrative review, habeas corpus, etc. [FRCP 26(a)(1)(E) & 26(d)], the Federal Rules of Civil Procedure prohibit the parties from seeking any discovery prior to the parties conferring, developing and submitting a proposed discovery plan to the court in advance of a scheduling conference [FRCP 16; 26(d)&(f)].

Once discovery begins, the rules restrict the use of the various discovery devices. For example, no more than a total of 10 depositions are allowed by each side [FRCP 30(a)(2)(A)] and each deposition is limited to one day of seven hours [FRCP 30(d)(2)]. Interrogatories are limited to 25 questions, including sub-parts [FRCP 33(a)]. Southern District Rule 33.3 further limits the scope of interrogatories to identifying witnesses, documents, insurance, physical evidence and damage computations. Western District Rule 34 also limits the number of document requests to 25 items.

The Rules provide that certain discovery must automatically be provided "without awaiting a discovery request." I.e., the identity of individuals with knowledge, copies of relevant documents, computation of damages and insurance coverage [FRCP 26(a)(1)], which are to be given within 14 days after the Rule 26(f) conference). There are no rules of priority [FRCP 26(d)]. SD/ED Rule 26.2 and WD Rule 26(f) provide special rules for assertions of privilege, and SD/ED Rule 26.3 and WD Rule 26(e) uniform definitions for certain words, such as "document" and "identify."

The one area where the Federal Rules are more liberal than the state rules is expert discovery. While CPLR 3101(d)(1) provides for limited disclosure of the identity, opinion, basis and qualifications, the Federal Rules require production of the expert's report setting forth "a complete statement of all opinions ... and the basis and reasons therefor." The expert's qualifications must include a list of all publications going back ten years, the compensation being paid and a list of all cases where the expert testified at trial or deposition going back four years [FRCP 26(a)(2)(B)]. Unlike state court, the Federal Rules also provide that a party may depose his adversary's expert [FRCP 26(b)(4)(A)] provided that -- unless "manifest injustice" will result -- the deposing party pay the expert's reasonable fee for his time [FRCP 26(b)(4)(C)].

Of course, the Federal Rules provide for court supervision and that the court may otherwise limit discovery based upon factors such as whether it is cumulative or duplicative, burden, need, amount in controversy and party resources [FRCP 26(b)(2)]. The various rules cited above also allow for broadening discovery for cause. The parties may also alter the procedures by stipulation, so long as extensions regarding interrogatories, documents and admissions do not interfere with the discovery cut-off date [FRCP 29].

Parties and their attorneys are subject to various sanctions and being subject to pay for expenses for abuses [FRCP 26(g)(3); 30(d)(3); 37].