

STANDARD DISCOVERY PROTOCOL FOR COMMERCIAL COURT DOCKET

The following provisions are suggested to the parties as a starting point in order to streamline discovery, reduce costs, and engage in meaningful alternative dispute processes as early in the litigation as practicable. The parties may agree to additional or different protocols as long as otherwise permitted by the Court. In carrying out these protocols, parties should bear in mind that the goal of the Commercial Court is to process all cases assigned to the Court within 12-18 months of the date of filing, if not sooner. The Court will consider principles of proportionality with regard to all discovery disputes.

(1) Written Discovery.

(a) All local rules pertaining to discovery in this Court remain in effect. In the event of a conflict, the local rules control.

(b) The Court will entertain motions to expand or increase the following limitations upon good cause shown, either initially in the case or later in the discovery process.

(c) Discovery must be served sufficiently in advance of the discovery cutoff date so as to allow the opposing party sufficient time to respond prior to the discovery cutoff. Discovery may be conducted after the discovery cutoff date by written stipulation only if the extension of time does not affect dates for any motion cutoff, settlement conference, submission of joint final pretrial order, final pretrial conference, or trial. If an extension of discovery would affect such dates, or if a party seeks adjournment of such dates for other reasons, a written motion demonstrating good cause must be filed as soon as the need for an extension or adjournment becomes apparent.

(d) Beyond any existing local rules, the parties are encouraged to agree upon any additional limitations on the number of interrogatories, request for admissions, and request for production, including the timing and sequencing of written discovery that will best serve the speedy, just and efficient resolution of the matter.

(e) In addition to any local rule requirements, when filing a motion to compel discovery, a party must state that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action.

(2) Depositions.

(a) The parties are encouraged to agree upon a limitation on the number and length of any depositions, including the timing, location and sequencing of those depositions that will best serve the speedy, just and efficient resolution of the matter.

(3) Electronic Discovery.

The parties are reminded that they are obligated to comply with Wisconsin Statute §804.01(2)(e). For sake of ease, the contents of the statute are reprinted below.

Wisconsin Statutes §804.01(2)(e). *Specific limitations on discovery of electronically stored information.*

1. No party may serve a request to produce or inspect under s. 804.09 seeking the discovery of electronically stored information, or respond to an interrogatory under s. 804.08 (3) by producing electronically stored information, until after the parties confer regarding all of the following, unless excused by the court:

- a. The subjects on which discovery of electronically stored information may be needed, when such discovery should be completed, and whether discovery of electronically stored information shall be conducted in phases or be limited to particular issues.
- b. Preservation of electronically stored information pending discovery.
- c. The form or forms in which electronically stored information shall be produced.
- d. The method for asserting or preserving claims of privilege or of protection of trial-preparation materials, and to what extent, if any, the claims may be asserted after production of electronically stored information.
- e. The cost of proposed discovery of electronically stored information and the extent to which such discovery shall be limited, if at all, under sub. 804.01(3) (a).
- f. In cases involving protracted actions, complex issues, or multiple parties, the utility of the appointment by the court of a referee under s. 805.06 or an expert witness under s. 907.06 to supervise or inform the court on any aspect of the discovery of electronically stored information.

2. If a party fails or refuses to confer as required by subd. 1., any party may move the court for relief under s. 804.12 (1).

3. If after conferring as required by subd. 1., any party objects to any proposed request for discovery of electronically stored information or objects to any response under s. 804.08 (3) proposing the production of electronically stored information, the objecting party may move the court for an appropriate order under 804.01(3).