

## **RULE 70. GENERAL PROVISIONS**

### **(a) General:**

- (1) *Methods and Limitations of Discovery:* A party may obtain discovery by written interrogatories (Rule 71), by production of documents, electronically stored information, or things (Rules 72 and 73), by depositions on consent of the parties (Rule 74(b)), or by depositions without consent of the parties in certain cases (Rule 74(c)). However, the Court expects the parties to attempt to attain the objectives of discovery through informal consultation or communication before utilizing the discovery procedures provided in these Rules. Discovery is not available under these Rules through depositions except to the limited extent provided in Rule 74. See Rules 91(a) and 100 regarding the relationship of discovery to stipulations.
- (2) *Time for Discovery:* Discovery may not be commenced, without leave of Court, before the expiration of 30 days after joinder of issue (see Rule 38). Discovery must be completed and any motion to compel or any other motion with respect to that discovery must be filed, unless the Court orders otherwise, no later than 45 days before the date set for call of the case from a trial calendar. Discovery by a deposition under Rule 74(c) may not be commenced before a notice of trial has been issued or the case has been assigned to a Judge or Special Trial Judge and any motion to compel or any other motion with respect to that discovery must be filed within the time provided by the preceding sentence. Discovery of matters that are relevant only to the issue of a party's entitlement to reasonable litigation or administrative costs may not be commenced, without leave of Court, before a motion for reasonable litigation or administrative costs has been noticed for a hearing, and discovery must be completed and any motion to compel or any other motion with respect to that discovery must be filed, unless the Court orders otherwise, no later than 45 days before the date set for hearing.
- (3) *Cases Consolidated for Trial:* With respect to a common matter in cases consolidated for trial, discovery may be had by any party to the consolidated case to the extent provided by these Rules.

### **(b) Scope of Discovery:**

- (1) Discovery may concern any matter not privileged that is relevant to the subject matter involved in the pending case. Discovery must be proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information,

the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

- (2) It is not ground for objection that the information or response sought will be inadmissible at the trial, if that information or response appears reasonably calculated to lead to discovery of admissible evidence, regardless of the burden of proof involved.
- (3) If the information or response sought is otherwise proper, it is not objectionable merely because the information or response involves an opinion or contention that relates to fact or to the application of law to fact. But the Court may order that the information or response sought need not be furnished or made until some designated time or a particular stage has been reached in the case or until a specified step has been taken by a party.

**(c) Limitations on Discovery:**

- (1) *General:* The Court may limit the frequency or extent of use of the discovery methods set forth in paragraph (a) if it determines that:
  - (A) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;
  - (B) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or
  - (C) the proposed discovery is outside the scope of Rule 70(b)(1).

The Court may act on its own after reasonable notice or pursuant to a motion under Rule 103.

- (2) *Electronically Stored Information:* A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the Court may nonetheless order discovery from those sources if the requesting party shows good cause, considering the limitations of Rule 70(c)(1). The Court may specify conditions for the discovery.
- (3) *Documents and Tangible Things:*
  - (A) A party generally may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including

the other party's attorney, consultant, surety, indemnitor, insurer, or agent), unless, subject to Rule 70(c)(4),

- (i) they are otherwise discoverable under Rule 70(b); and
- (ii) the party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.

- (B) If the Court orders discovery of those materials, it must protect against disclosure of mental impressions, conclusions, opinions, or legal theories of a party's counsel or other representative concerning the litigation.

(4) *Experts:*

- (A) Rule 70(c)(3) protects drafts of any expert witness report required under Rule 143(g), regardless of the form in which the draft is recorded.
- (B) Rule 70(c)(3) protects communications between a party's counsel and any witness required to provide a report under Rule 143(g), regardless of the form of the communications, except to the extent the communications:
  - (i) relate to compensation for the expert's study or testimony;
  - (ii) identify facts or data that the party's counsel provided and that the expert considered in forming the opinions to be expressed; or
  - (iii) identify assumptions that the party's counsel provided and that the expert relied on in forming the opinions to be expressed.
- (C) A party generally may not, by interrogatories or depositions, discover 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 for trial and who is not expected to be called as a witness at trial, except on a showing of exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

**(d) Claiming Privilege or Protecting Trial-Preparation Materials:**

- (1) *Information Withheld:* When a party withholds information otherwise discoverable by claiming that the information is

privileged or subject to protection as trial-preparation material, 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.

(2) *Information Produced:* If information produced in discovery is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party who received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the Court under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved.

(e) **Party's Statements:** On request to the other party and without any showing except the assertion in writing that the requester lacks and has no convenient means of obtaining a copy of a statement made by the requester, a party is entitled to obtain a copy of any statement that has a bearing on the subject matter of the case and is in the possession or control of another party to the case.

(f) **Use In Case:** The answers to interrogatories, things produced in response to a request, or other information or responses obtained under Rules 71, 72, 73, and 74 may be used at trial or in any proceeding in the case before or after trial to the extent permitted by the rules of evidence. The answers or information or responses will not be considered as evidence until offered and received as evidence. No objections to interrogatories or the answers thereto, or to a request to produce or the response thereto, will be considered unless made within the time prescribed, except that the objection that an interrogatory or answer would be inadmissible at trial is preserved even though not made before trial.

(g) **Signing of Discovery Requests, Responses, and Objections:**

(1) Every request for discovery or response or objection thereto made by a party represented by counsel must be signed by at least one counsel of record. A party who is not represented by counsel must sign the request, response, or objection. The signature must

conform to the requirements of Rule 23(a)(3). The signature of counsel or a party constitutes a certification that the signer has read the request, response, or objection, and that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry, it is:

- (A) consistent with these Rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law,
- (B) not presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, and
- (C) within the scope of Rule 70(b)(1).

The Court may strike a request, response, or objection that is not signed, unless the paper is signed promptly after the omission is called to the attention of the party making the request, response, or objection. The time within which a party is obligated to take action with respect to a request, response, or objection does not begin to run until the paper is signed.

- (2) If a certification is made in violation of this Rule, the Court on motion or on its own, may impose on the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including reasonable counsel's fees.

**(h) Other Applicable Rules:** For Rules concerning the frequency and timing of discovery in relation to other procedures, supplementation of answers, protective orders, the effect of evasive or incomplete answers or responses, and sanctions and enforcement action, see Title X.

(As effective October 3, 2008, [130 T.C. 426–29](#); as amended, effective January 1, 2010, [134 T.C. 315–21](#); effective May 5, 2011, [136 T.C. 612–16](#); effective July 6, 2012, [139 T.C. 534–39](#); effective March 20, 2023, [160 T.C. 613–20](#). For prior history, see [60 T.C. 1097–99](#) (1973); [71 T.C. 1190–92](#) (1973); [79 T.C. 1138–39](#) (1982); [81 T.C. 1052–53](#) (1983); [85 T.C. 1127–29](#) (1985); [93 T.C. 895–98](#) (1989); [109 T.C. 569–73](#) (1997).)