

SUGGESTED AMENDMENT
SUPERIOR COURT CIVIL RULES (CR)
CR 26 – GENERAL PROVISIONS GOVERNING DISCOVERY

[(a) unchanged.]

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

[(b)(1) – (b)(4) unchanged.]

(5) Trial Preparation: Experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subsection (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A)(i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion, and to state such other information about the expert as may be discoverable under these rules. (ii) Unless earlier required by these rules, and in no event later than the deadline for primary or rebuttal expert witness disclosures provided by a case schedule or court order, each party shall identify each person whom that party expects to call as a primary or rebuttal expert witness at trial, state the subject matter on which the expert is expected to testify, state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion, and state such other information about the expert as may be discoverable under these rules.

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(B) A party may, subject to the provisions of this rule and of rules 30 and 31, depose each person whom any other party expects to call as an expert witness at trial.

(BC) A party may discover facts known or opinions held by an expert who is not expected to be called as a witness at trial, only as provided in rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(CD) Unless manifest injustice would result: (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subsections (b)(5)(B)(A)(ii) and (b)(5)(CB) of this rule; and (ii) with respect to discovery obtained under subsection (b)(5)(B)(A)(ii) of this rule the court may require, and with respect to discovery obtained under subsection (b)(5)(CB) of this rule the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

[(b)(6) – (b)(8) unchanged.]

[(c) – (j) unchanged.]