

**Implementation of Disclosure in United States District Courts,  
With Specific Attention to Courts' Responses to Selected  
Amendments to Federal Rule of Civil Procedure 26**

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(Update of March 24, 1995 Report)**



## **Implementation of Disclosure in United States District Courts**

This report is an update to the March 24, 1995 report on the federal district courts' responses to the 1993 amendments to Federal Rule of Civil Procedure 26. The heart of this report, as in last year's report (and the March 1, 1994 initial report), is the attached table, which is based on the courts' local rules, general orders, and CJRA plans and which describes for each court which of five key provisions of Rule 26 are in effect.

The four sections below briefly describe the background to this report; summarize the amendments to Rule 26; note how the attached table may be read; and identify some patterns in the courts' responses to amended Rule 26.

### **Background to this Report**

On December 1, 1993, amendments to the Federal Rules of Civil Procedure went into effect. Among these, amendments to Rule 26 provide for three types of self-executing disclosure: initial disclosure; expert disclosure; and pretrial disclosure. The amended rule also provides for deferral of formal discovery until parties have met to discuss and plan discovery and to make or arrange for the exchange of disclosures.

The proposed amendments to Rule 26 generated substantial controversy and an effort, ultimately unsuccessful, to persuade Congress to remove the proposed changes from the rule. The rule itself permits each court by local rule or order to exempt all cases or categories of cases from some of the rule's requirements and also permits parties to stipulate out of some of the requirements.

Since the effective date of the amendments, interest has been high in the courts' responses to amended Rule 26. How many have "opted out" of the rule's requirements, as the practice has come to be known? To answer this question, on March 1, 1994, I distributed a report summarizing the courts' responses to Rule 26. Regarding Rule 26(a)(1), one of the most controversial sections of the rule, the 1994 report showed that roughly a third of the courts had implemented Rule 26, a third had opted out (some because local rules or the CJRA plan provided for disclosure), and a third had not made a final decision. By March 1995, when I next reported, implementation of Rule 26(a)(1) had increased somewhat, with nearly half the courts requiring disclosure either through full implementation of the federal rule or through similar requirements in local rules or CJRA plans. The present report, which updates the information through March 1996, shows that the past year has been stable, with one or two courts reversing their decision to implement Rule 26(a)(1) and several others reversing their decisions not to implement it, for a net increase of two courts. Further discussion of the courts' responses to the rule may be found below.

### **Description of Selected Amendments to Federal Rule of Civil Procedure 26**

This report describes the district courts' responses to selected subsections of Fed. R. Civ. P. 26, specifically 26(a)(1)-(3), 26(d), and 26(f). These subsections are summarized below.

**Rule 26(a)(1), Initial Disclosure.** Except as otherwise stipulated or as directed by order or local rule, a party must provide, without awaiting a discovery request, the following information at or within ten days of the Rule 26(f) meeting of counsel:

- name, address, and telephone number of all persons likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings, with identification of the subjects of the information;
- a copy or description by category and location of all documents, data compilations, and tangible things in the party's possession, custody, or control that are relevant to disputed facts alleged with particularity in the pleadings;
- computation of damages claimed, with supporting documentation to be available for copying or inspection; and
- insurance policies that may satisfy the judgment, to be available for inspection or copying.

**Rule 26(a)(2), Expert Disclosure.** Parties must disclose the identity of persons who may testify as experts at trial [(a)(2)(A)] and, except as otherwise stipulated or as directed by the court, must provide a written report prepared and signed by the expert [(a)(2)(B)] containing:

- a complete statement of all opinions to be expressed by the expert and the basis and reasons for them;
- the data or other information considered by the expert in forming the opinions;
- exhibits to be used to summarize or support the opinions;
- qualifications of the expert;
- compensation to be paid the expert; and
- a list of cases in which the expert has testified, as an expert, at trial or by deposition in the last four years.

These disclosures must be made at the times and in the sequence directed by the court. In the absence of other directions by the court, disclosure of experts must be made at least 90 days before the case is to be ready for trial or within 30 days of another party's disclosure on the same subject matter when intended only to contradict or rebut that disclosure [(a)(2)(C)]. Note that Rule 26(a)(2) does not include a general opt-out provision and permits exemption from the expert's report only if stipulated by the parties or directed by the court.

**Rule 26(a)(3), Pretrial Disclosure.** In addition to the disclosures required above, a party must provide the following information about the evidence it may present at trial other than solely for impeachment purposes:

- name, address, and telephone number of each witness, separately identifying those the party expects to call and those it may call if necessary;
- list of witnesses whose testimony is expected to be presented by deposition and, if the deposition was not taken stenographically, a transcript of the pertinent portions; and
- an appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those the party expects to offer and those it may offer if necessary.

Unless otherwise directed by the court, these disclosures must be made at least 30 days before trial. Within fourteen days of this disclosure, certain objections [specified in the rule] must be made and if not made, excepting objections under Fed. Rules of Evid. 402 and 403, are waived unless excused by the court for good cause shown. Note that Rule 26(a)(3) does not include an opt-out provision but provides only that the court may alter the timing for pretrial disclosures.

**Rule 26(d), Timing and Sequencing of Discovery.** The first sentence of Rule 26(d) states that, except when authorized under the federal rules or by local rule, order, or agreement of the parties, a party may not seek discovery from any source before the parties have met and conferred as required by Rule 26(f). The remainder of the rule is unchanged—formal discovery may proceed as under the old rule.

**Rule 26(f), Meeting of Counsel and Written Discovery Plan.** Except in actions exempted by local rule or when otherwise ordered, parties must meet at least fourteen days before a Rule 16(b) scheduling conference is held or a scheduling order is due to:

- discuss the nature and basis of their claims and defenses and the possibility of settlement;
- make or arrange to make the disclosures required by Rule 26(a)(1); and
- develop a written discovery plan, which must be submitted to the court within 10 days after the meeting. (The rule specifies the type of “views and proposals” that should be included in the discovery plan.)

### **Using the Attached Table to Understand the Courts’ Responses to FRCivP 26 and the Courts’ Requirements Concerning Disclosure**

The attached district-by-district table shows which subsections of Rule 26 are in effect in each district and which are not. The information in the table, which is current as of March 22, 1996, is derived primarily from orders, notices, and local rules adopted by the courts. Where a court has not formalized its response to the rule in writing, the clerks of court provided the necessary information. Each court has reviewed the attached table.<sup>1</sup>

For districts that decided not to implement one or more of the requirements of Rule 26(a), (d), and (f), I examined the CJRA plan<sup>2</sup> and local rules to see whether either of these had requirements similar to the federal rule. A number of courts, for example, included disclosure provisions in CJRA plans adopted before the federal rules were amended. Some of these courts were reluctant, when the amended federal rules went into effect, to change requirements already established in their districts. Others who adopted CJRA plans late in 1993 anticipated promulgation of the federal rule amendments and addressed these expected changes in their plans. Thus, for courts opting out of one or more of the federal rule requirements covered by this table, I have tried to indicate whether a similar requirement exists in local rules or CJRA plans. Without this information, it is easy to underestimate the number of courts with disclosure provisions.

Short summaries of technical information such as rules can do violence to the nuances of that information. This table is no different. It provides only limited information, for example, about the types of cases or information subject to disclosure requirements. It also does not reveal the extent to which individual judges require disclosure. In using the table, please read the footnotes carefully, as they provide important definitions and cautions regarding the information in the table. In general, the table is best used as an overview of the courts' responses to amended Rule 26 and their disclosure requirements. Users who need to know specific requirements—for example, attorneys handling cases in federal court—should not rely on the table or cite it as legal authority.

### **A Summary Description of the Courts' Responses to Amended FRCP 26 and of the Courts' Disclosure Requirements**

While the attached district-by-district table provides detailed information about the courts' responses to Fed. R. Civ. P. 26, Table 1 (next page) provides a numerical summary of those responses.<sup>3</sup> Table 1 shows that Rule 26(a)(1), which requires initial disclosure, has been more frequently rejected than have the other sections of Rule 26. Altogether, exactly half the districts have implemented 26(a)(1), and half have not. Compared to March 1994, this is an increase of two courts. The overall change across courts, is, however, slightly greater, as one or two courts decided this past year to reverse earlier decisions to implement the rule and several who hadn't implemented the rule decided to do so.

Of the forty-seven districts that have not implemented the rule, three require initial disclosure through local rules, orders, or the CJRA plan, one requires disclosure in a specified set of case types, and seventeen—two more than were reported last year—specifically give individual judges authority to require initial disclosure. In only twenty-six courts, then, are all cases routinely exempt from any rules—federal or local—requiring initial disclosure. The table also shows that six courts have implemented Rule 26(a)(1) with a significant revision. Typically the revision excludes either the requirement to disclose adverse material or the requirement to submit a computation of damages.

Although Rule 26 does not include provisions for opting out of expert disclosure, 26(a)(2), and pretrial disclosure, 26(a)(3), Table 1 shows that about a fifth of the districts have interpreted the federal rule that way. Still, the great majority require expert and pretrial disclosure—78 and 76 courts, respectively, an increase of four courts in both categories since March 1994. Of the courts adopting expert disclosure, seven have made a significant revision in their implementation of the rule; the most common revision is to exempt parties from submitting the experts’ signed report.

**Table 1**  
**Number of Courts in Which Specified Subsections of Federal Rule of Civil Procedure 26 Are or Are Not in Effect**

Nature of Court’s Response	Rule 26(a)(1)	Rule 26(a)(2)	Rule 26(a)(3)	Rule 26(d)	Rule 26(f)
In effect	47	78	76	58	65
In effect with a significant revision	6	7	1	1	2
Not in effect	47	16	18	34	28
But substantially provided for by CJRA plan or local rule	3	4	0	1	2
But the judge may order in the specific case	17	5	5	5	6
But is in effect for limited case types	1	0	0	0	1

Over two-thirds of the districts have implemented 26(f), which requires parties to meet and confer to prepare a discovery plan. Of the third that have not implemented this subsection, six permit individual judges to order it in the specific case. Fewer

courts—but still substantially more than half—require parties to postpone discovery until they have held the 26(f) meeting. As with the other sections of the rule, during the past year there has been a slight increase in the number of courts implementing these two sections—four additional courts in the case of the Rule 26(d) deferral of discovery and three additional courts in the case of the Rule 26(f) meeting.

In general, Table 1 suggests that classifying courts as “opting in” and “opting out” of Rule 26’s requirements over-simplifies their responses to the amended rule and may understate the extent to which parties will encounter disclosure requirements in federal courts. Rule 26(a)(1), for example, has been implemented in only half the districts, but those who practice in federal district court may encounter initial disclosure requirements in an additional twenty-one courts either upon order of the judge or through other local provisions for disclosure.

Focusing again on Rule 26(a)(1), we see from Table 2 (below) that six of the fourteen largest districts have implemented this subsection of the rule. Two additional courts require initial disclosure by local rule or the CJRA plan. Another five—one more than last year—have declined to adopt initial disclosure requirements but authorize individual judges to order it in specific cases, while one—one less than last year—has declined altogether to implement any initial disclosure requirements.

**Table 2**

**Implementation of Federal Rule of Civil Procedure 26(a)(1) in the Fourteen Largest District Courts\***

Court has implemented FRCivP 26(a)(1)	6
Local rule or CJRA plan requires initial disclosure	2
26(a)(1) is not in effect unless ordered by judge	5
26(a)(1) is not in effect	1

\* Courts with twelve or more judgeships

In sum, compared to a year ago, the number of courts requiring initial disclosure has increased slightly, with almost no change in the number of large courts requiring initial disclosure. There is, then, substantial stability in the Rule 26 picture, reflected not only in the small number of courts changing their positions on disclosure, but also in the noticeable number of additional courts that moved their disclosure response from general orders to local rules, suggesting they do not view their position as temporary or experimental. Fifteen courts have done this, half of them courts that have implemented disclosure and half of them courts that have not, giving us fifty-eight courts in which disclosure is addressed by local rule. For now, then, the Rule 26 picture, at least as reflected in court policy, appears to have settled down.



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<sup>1</sup> If any errors remain, however, they are mine alone.

<sup>2</sup> The Civil Justice Reform Act of 1990 (28 U.S.C. §§ 471-482) requires each federal district court to adopt a cost and delay reduction plan by December 1, 1993. All courts have adopted a CJRA plan.

<sup>3</sup> Note that in a few instances a court's status is ambiguous and the court is not included in the tally for Table 1; therefore the numbers do not add to 94 in every column. Note, too, that considerable judgment must be used in classifying some courts; others might assign specific courts to classifications different from mine.

**Implementation Of Disclosure In United States District Courts,  
With Specific Attention To Courts' Responses To Selected  
Amendments To Federal Rule Of Civil Procedure 26<sup>1</sup>**

**March 22, 1996 Update to March 24, 1995 Report**

<b>1</b> <b>District</b>	<b>2</b> <b>Rule/Order</b>	<b>3</b> <b>Initial Disclosure Rule 26(a)(1)</b>	<b>4</b> <b>Expert Disclosure Rule 26(a)(2)</b>	<b>5</b> <b>Pretrial Disclosure Rule 26(a)(3)</b>	<b>6</b> <b>Other Disclosure Requirements<sup>2</sup></b>	<b>7</b> <b>Discovery Deferment Rule 26(d)</b>	<b>8</b> <b>Confer &amp; Prepare Discovery Plan Rule 26(f)</b>	<b>9</b> <b>Other Requirements<sup>2</sup></b>
AL-M	General Order 12/1/93	Not in effect. <sup>3</sup>	26(a)(2)(A)&(C) are in effect. <sup>4</sup> 26(a)(2)(B) is not in effect.	In effect.	CJRA Plan encourages litigants to exchange infor- mation voluntarily.	In effect.	In effect.	
AL-N	Local Rule 26.1 12/94	In effect, except adverse documentary evidence need not be disclosed.	In effect.	In effect.		In effect.	In effect.	
AL-S <sup>5</sup>	Standing Order 3/2/94	In effect.	In effect.	In effect.		In effect.	In effect.	
AK	As reported by the court, 3/96	In effect.	In effect.	In effect.		In effect.	In effect.	
AZ	As reported by the court, 3/96	In effect.	In effect.	In effect.		In effect.	In effect.	

<b>1</b> <b>District</b>	<b>2</b> <b>Rule/Order</b>	<b>3</b> <b>Initial Disclosure Rule 26(a)(1)</b>	<b>4</b> <b>Expert Disclosure Rule 26(a)(2)</b>	<b>5</b> <b>Pretrial Disclosure Rule 26(a)(3)</b>	<b>6</b> <b>Other Disclosure Requirements<sup>2</sup></b>	<b>7</b> <b>Discovery Deferment Rule 26(d)</b>	<b>8</b> <b>Confer &amp; Prepare Discovery Plan Rule 26(f)</b>	<b>9</b> <b>Other Requirements<sup>2</sup></b>
AR-E	General Order 42 2/22/94	Not in effect unless ordered by the judge in the specific case or agreed to by the parties.	Not in effect unless ordered by the judge in the specific case or agreed to by the parties.	Not in effect unless ordered by the judge in the specific case or agreed to by the parties.		Not in effect.	Not in effect.	
AR-W	General Order 25 2/2/94	Not in effect unless ordered by the judge in the specific case.	Not in effect unless ordered by the judge in the specific case.	Not in effect unless ordered by the judge in the specific case.		Not in effect.	Not in effect.	
CA-C <sup>6</sup>	General Order 339(c) 12/30/94	Not in effect.	26(a)(2)(A)&(B) are in effect. 26(a)(2)(C) is not in effect.	Not in effect.	Local rule requires (1) exchange of documents that support one's own contentions; (2) any other evidence reasonably available; and (3) lists of witnesses.	Not in effect.	Not in effect.	
CA-E	Local Rule 253 12/19/94	Not in effect.	26(a)(2)(A)&(C) are in effect. 26(a)(2)(B) is not in effect.	Not in effect.	Local rule permits the judge to order initial disclosure in the specific case.	Not in effect.	Not in effect.	

<b>1</b> <b>District</b>	<b>2</b> <b>Rule/Order</b>	<b>3</b> <b>Initial Disclosure Rule 26(a)(1)</b>	<b>4</b> <b>Expert Disclosure Rule 26(a)(2)</b>	<b>5</b> <b>Pretrial Disclosure Rule 26(a)(3)</b>	<b>6</b> <b>Other Disclosure Requirements<sup>2</sup></b>	<b>7</b> <b>Discovery Deferment Rule 26(d)</b>	<b>8</b> <b>Confer &amp; Prepare Discovery Plan Rule 26(f)</b>	<b>9</b> <b>Other Requirements<sup>2</sup></b>
CA-N	Local Rules 16 and 26 9/1/95	In effect, except document disclosure limited to those that tend to support the disclosing party's position.	In effect.	Local rule requires pretrial disclosure similar to federal rule.		In effect.	In effect.	
CA-S	Local Rule 26.1 1/17/95	Not in effect, except by specific court order.	Not in effect, except by specific court order.	Not in effect, except by specific court order.	CJRA Plan requires initial disclosure similar to federal rule and some expert and pretrial disclosure.	Not in effect, except by specific court order.	Not in effect, except by specific court order.	
CO	Local Rule 26.1 4/15/94	In effect.	In effect.	In effect.		In effect.	In effect.	
CT	Local Rules 37 and 38 6/1/95	Not in effect.	In effect.	In effect.	CJRA Plan encourages voluntary exchange of information.	In effect.	In effect.	
DE	Local Rules 5.4 and 16.2 1/1/95	In effect.	In effect.	In effect.		In effect.	In effect.	

<b>1</b> <b>District</b>	<b>2</b> <b>Rule/Order</b>	<b>3</b> <b>Initial Disclosure Rule 26(a)(1)</b>	<b>4</b> <b>Expert Disclosure Rule 26(a)(2)</b>	<b>5</b> <b>Pretrial Disclosure Rule 26(a)(3)</b>	<b>6</b> <b>Other Disclosure Requirements<sup>2</sup></b>	<b>7</b> <b>Discovery Deferment Rule 26(d)</b>	<b>8</b> <b>Confer &amp; Prepare Discovery Plan Rule 26(f)</b>	<b>9</b> <b>Other Requirements<sup>2</sup></b>
DC	Executive Order 12/10/93  Local Rules 206, 207, and 209 3/1/94	In effect, except for cases on the complex track.	In effect.	In effect.		In effect.	In effect.	
FL-M	Order 12/15/93  Local Rule 3.05 2/1/94	In effect for standard (track 2) cases, except that (a)(1)(A)&(B) are mandatory only if ordered by the court or stipulated by the parties. Judge may order disclosure in any specific case.	In effect for standard (track 2) cases and not in other cases unless ordered by the judge.	In effect for standard (track 2) cases and not in other cases unless ordered by the judge.		In effect for standard (track 2) cases and not in other cases unless ordered by the judge.	In effect for standard (track 2) cases and not in other cases unless ordered by the judge.	
FL-N	Local Rule 26.1 4/1/95  Court's standard Initial Scheduling Order	In effect.	In effect.	In effect.		In effect.	In effect.	

<b>1</b> <b>District</b>	<b>2</b> <b>Rule/Order</b>	<b>3</b> <b>Initial Disclosure Rule 26(a)(1)</b>	<b>4</b> <b>Expert Disclosure Rule 26(a)(2)</b>	<b>5</b> <b>Pretrial Disclosure Rule 26(a)(3)</b>	<b>6</b> <b>Other Disclosure Requirements<sup>2</sup></b>	<b>7</b> <b>Discovery Deferment Rule 26(d)</b>	<b>8</b> <b>Confer &amp; Prepare Discovery Plan Rule 26(f)</b>	<b>9</b> <b>Other Requirements<sup>2</sup></b>
FL-S	Administrative Order 94-51 10/12/94  Local Rules 16.1 and 26.1 12/1/94	Not in effect, except as ordered by the judge in the specific case or stipulated by the parties and approved by the judge.	Not in effect, except as ordered by the judge in the specific case or stipulated by the parties and approved by the judge.	Not in effect, except as ordered by the judge in the specific case or stipulated by the parties and approved by the judge.	Local rule requires parties to disclose specified information about experts to be called at trial and their expected testimony.	Not in effect, except as ordered by the judge in the specific case or stipulated by the parties and approved by the judge.	In effect.	
GA-M	Local Rule 15 4/1/96	Not in effect.	Not in effect.	Not in effect.	Local rule requires mandatory interrogatories.	In effect.	In effect.	
GA-N	Local Rules 201, 225, and 235 2/1/96	In effect.	In effect.	Court uses its more comprehensive uniform pretrial order.		Unless the parties agree to begin earlier, local rule defers formal discovery until 30 days after issue is joined.	In effect.	
GA-S	Local Rules 26.1 and 26.3 9/1/94	Not in effect.	In effect.	In effect.	Local rule requires mandatory interrogatories that encompass some of the requirements of 26(a)(1)	Appears to be mooted by non-implementation of 26(f).	Not in effect.	

<b>1</b> <b>District</b>	<b>2</b> <b>Rule/Order</b>	<b>3</b> <b>Initial Disclosure Rule 26(a)(1)</b>	<b>4</b> <b>Expert Disclosure Rule 26(a)(2)</b>	<b>5</b> <b>Pretrial Disclosure Rule 26(a)(3)</b>	<b>6</b> <b>Other Disclosure Requirements<sup>2</sup></b>	<b>7</b> <b>Discovery Deferment Rule 26(d)</b>	<b>8</b> <b>Confer &amp; Prepare Discovery Plan Rule 26(f)</b>	<b>9</b> <b>Other Requirements<sup>2</sup></b>
GU	As reported by the court, 3/96	In effect.	In effect.	In effect.		In effect.	In effect.	
HI	Local Rule 230-1 2/15/95	Not in effect.	In effect.	In effect.		In effect.	In effect.	
ID	Local Rule 26.2 7/1/94	In effect.	In effect.	In effect.		In effect.	In effect.	
IL-C <sup>7</sup>	Local Rule 26.2 3/1/96	In effect.	In effect.	In effect.		In effect.	In effect.	
IL-N	General Order 3/9/95  Local Rule 5.00 3/20/95	26(a)(1) is not in effect except as ordered by the judge in the specific case.	In effect.	In effect.	In cases exempt from 26(a)(1) disclosures, insurance agreements may be sought under FRCP 34.	In effect.	Local rule requires a conference but no written plan unless ordered by the judge.	In cases exempt from holding the 26(f) meeting, parties may seek discovery after the first scheduling conference.
IL-S	Local Rule 12 3/24/94	In effect, except for 26(a)(1)(C).	In effect.	In effect.		In effect.	In effect.	

<b>1</b> <b>District</b>	<b>2</b> <b>Rule/Order</b>	<b>3</b> <b>Initial Disclosure Rule 26(a)(1)</b>	<b>4</b> <b>Expert Disclosure Rule 26(a)(2)</b>	<b>5</b> <b>Pretrial Disclosure Rule 26(a)(3)</b>	<b>6</b> <b>Other Disclosure Requirements<sup>2</sup></b>	<b>7</b> <b>Discovery Deferment Rule 26(d)</b>	<b>8</b> <b>Confer &amp; Prepare Discovery Plan Rule 26(f)</b>	<b>9</b> <b>Other Requirements<sup>2</sup></b>
IN-N	As reported by the court, 3/96	In effect.	In effect.	In effect.	The CJRA Plan describes the different forms of disclosure required by each judge.	In effect.	In effect.	The CJRA Plan describes the different forms of disclosure required by each judge.
IN-S	Local Rules 16.1 and 26.3 2/10/95	Not in effect.	In effect. Local rules instruct parties to consider in their case management plan whether 26(a)(2)(B) should be varied by parties' stipulation.	In effect.		Not in effect.	Not in effect.	
IA-N	Local Rule 16 7/1/94	Not in effect.	26(a)(2)(A) is in effect but is controlled by the Rule 16(b) scheduling order and the Rule 26(f) discovery plan. 26(a)(2)(B) & (C) are not in effect.	In effect except for 26(a)(3)(i) and (ii).		Not in effect.	In effect, except for references to 26(a)(1) disclosures.	



<b>1</b> <b>District</b>	<b>2</b> <b>Rule/Order</b>	<b>3</b> <b>Initial Disclosure Rule 26(a)(1)</b>	<b>4</b> <b>Expert Disclosure Rule 26(a)(2)</b>	<b>5</b> <b>Pretrial Disclosure Rule 26(a)(3)</b>	<b>6</b> <b>Other Disclosure Requirements<sup>2</sup></b>	<b>7</b> <b>Discovery Deferment Rule 26(d)</b>	<b>8</b> <b>Confer &amp; Prepare Discovery Plan Rule 26(f)</b>	<b>9</b> <b>Other Requirements<sup>2</sup></b>
IA-S	Local Rule 16 7/1/94	Not in effect.	26(a)(2)(A) is in effect but is controlled by the Rule 16(b) scheduling order and the Rule 26(f) discovery plan. 26(a)(2)(B)& (C) are not in effect.	In effect except for 26(a)(3)(i) and (ii).		Not in effect.	In effect, except for references to 26(a)(1) disclosures.	
KS	Standing Order 94-1, 1/28/94  Standing Order 94-8, 6/16/94  Local Rule 26.3	In effect.	In effect.	In effect.		In effect.	In effect.	
KY-E	General Order 1/9/95	In effect.	In effect.	In effect.		In effect.	In effect.	
KY-W	General Order 2/1/94	In effect.	In effect.	In effect.		In effect.	In effect.	

<b>1</b> <b>District</b>	<b>2</b> <b>Rule/Order</b>	<b>3</b> <b>Initial Disclosure Rule 26(a)(1)</b>	<b>4</b> <b>Expert Disclosure Rule 26(a)(2)</b>	<b>5</b> <b>Pretrial Disclosure Rule 26(a)(3)</b>	<b>6</b> <b>Other Disclosure Requirements<sup>2</sup></b>	<b>7</b> <b>Discovery Deferment Rule 26(d)</b>	<b>8</b> <b>Confer &amp; Prepare Discovery Plan Rule 26(f)</b>	<b>9</b> <b>Other Requirements<sup>2</sup></b>
LA-E	Local Rule 6 12/1/93	Not in effect unless ordered by the judge in the specific case.	In effect. The scope and timing of disclosures are directed by the court pursuant to the CJRA Plan.	In effect. The scope and timing of disclosures are directed by the court pursuant to the CJRA Plan.		In effect.	In effect, except that parties may agree in writing to hold the meeting by phone or argue in writing not to hold meeting.	
LA-M	Local Rule 6 11/30/93	Not in effect unless ordered by the judge in the specific case.	In effect. The scope and timing of disclosures are directed by the court pursuant to the CJRA Plan.	In effect. The scope and timing of disclosures are directed by the court pursuant to the CJRA Plan.		In effect.	In effect.	
LA-W	Local Rule 6 11/30/93	Not in effect unless ordered by the judge in the specific case or stipulated by the parties.	In effect.	In effect.		In effect.	In effect.	
ME	Local Rule 18 1/31/95	Not in effect.	Not in effect.	Not in effect.	Disclosures are made as required by the local rules and by the scheduling order in each case.	Appears to be mooted by non-implementation of 26(f).	Not in effect.	

<b>1</b> <b>District</b>	<b>2</b> <b>Rule/Order</b>	<b>3</b> <b>Initial Disclosure Rule 26(a)(1)</b>	<b>4</b> <b>Expert Disclosure Rule 26(a)(2)</b>	<b>5</b> <b>Pretrial Disclosure Rule 26(a)(3)</b>	<b>6</b> <b>Other Disclosure Requirements<sup>2</sup></b>	<b>7</b> <b>Discovery Deferment Rule 26(d)</b>	<b>8</b> <b>Confer &amp; Prepare Discovery Plan Rule 26(f)</b>	<b>9</b> <b>Other Requirements<sup>2</sup></b>
MD	Local Rules 104.4, 104.10, and 106.2 7/1/94	Not in effect, except for a limited number of case types.	In effect.	In effect.		In effect for most cases.	Not in effect, except in cases designated by the judge as complex.	
MA	Local Rules 16 and 26 1/2/95	In effect unless ordered otherwise by the judge.	In effect.	In effect.		Not in effect. By local rule, parties may not seek discovery until the 26(a)(1) disclosures have been made unless otherwise ordered by the judge.	In effect.	
MI-E	Local Rule 26.3 12/5/94	Not in effect unless ordered otherwise by the judge in the particular case.	In effect.	In effect.		In effect.	In effect.	
MI-W	Administrative Order 93-125 12/17/93	Not in effect, except as required by the judge in the specific case.	In effect, as directed by the case management order in the specific case.	In effect, as directed by the case management order in the specific case.		Not in effect.	In effect, but the meeting takes place as directed by the court's order setting the Rule 16 conference.	

<b>1</b> <b>District</b>	<b>2</b> <b>Rule/Order</b>	<b>3</b> <b>Initial Disclosure</b> <b>Rule 26(a)(1)</b>	<b>4</b> <b>Expert Disclosure</b> <b>Rule 26(a)(2)</b>	<b>5</b> <b>Pretrial Disclosure</b> <b>Rule 26(a)(3)</b>	<b>6</b> <b>Other Disclosure Requirements<sup>2</sup></b>	<b>7</b> <b>Discovery Deferment</b> <b>Rule 26(d)</b>	<b>8</b> <b>Confer &amp; Prepare Discovery Plan</b> <b>Rule 26(f)</b>	<b>9</b> <b>Other Requirements<sup>2</sup></b>
MN <sup>8</sup>	As reported by the court, 3/96	In effect, subject to application by the judge in the specific case.	In effect, subject to application by the judge in the specific case.	In effect, subject to application by the judge in the specific case.		In effect, subject to application by the judge in the specific case.	In effect, subject to application by the judge in the specific case.	
MS-N	CJRA Plan 10/1/93	In effect.	In effect.	In effect.		In effect.	In effect.	
MS-S	CJRA Plan 10/1/93	In effect.	In effect.	In effect.		In effect.	In effect.	
MO-E	Local Rule 3.01 1/1/96	In effect.	In effect.	In effect.		In effect, except local rule permits service of interrogatories and requests for production or inspection after entry of appearance.	In effect.	
MO-W	Order 94-15 7/1/94  Local Rule 15 7/1/94	In effect.	In effect.	In effect.		In effect.	In effect.	

<b>1</b> <b>District</b>	<b>2</b> <b>Rule/Order</b>	<b>3</b> <b>Initial Disclosure Rule 26(a)(1)</b>	<b>4</b> <b>Expert Disclosure Rule 26(a)(2)</b>	<b>5</b> <b>Pretrial Disclosure Rule 26(a)(3)</b>	<b>6</b> <b>Other Disclosure Requirements<sup>2</sup></b>	<b>7</b> <b>Discovery Deferment Rule 26(d)</b>	<b>8</b> <b>Confer &amp; Prepare Discovery Plan Rule 26(f)</b>	<b>9</b> <b>Other Requirements<sup>2</sup></b>
MT	Standing Order 5 1/25/94  Rule 200-5 3/31/92	In effect.	In effect.	In effect.		In effect.	In effect.	
NE	Order 12/30/93	In effect.	In effect.	In effect.		In effect.	In effect.	
NV	Special Order 85 12/1/93	Not in effect.	26(a)(2)(A) & (C) are in effect. 26 (a)(2)(B) is not in effect.	In effect.		Not in effect.	Not in effect.	
NH	Local Rule 26.1 1/1/96	Not in effect, unless the court orders otherwise.	In effect.	In effect.		In effect.	In effect.	
NJ	Order 1/13/94  Local Rule 15 1/13/94	In effect.	In effect.	In effect.		In effect.	In effect.	
NM	Local Rule 26.3 1/1/96	In effect.	In effect.	In effect.		In effect.	In effect.	

<b>1</b> <b>District</b>	<b>2</b> <b>Rule/Order</b>	<b>3</b> <b>Initial Disclosure</b> <b>Rule 26(a)(1)</b>	<b>4</b> <b>Expert Disclosure</b> <b>Rule 26(a)(2)</b>	<b>5</b> <b>Pretrial Disclosure</b> <b>Rule 26(a)(3)</b>	<b>6</b> <b>Other Disclosure Requirements<sup>2</sup></b>	<b>7</b> <b>Discovery Deferment</b> <b>Rule 26(d)</b>	<b>8</b> <b>Confer &amp; Prepare Discovery Plan</b> <b>Rule 26(f)</b>	<b>9</b> <b>Other Requirements<sup>2</sup></b>
NY-E	Rule of Court 12/21/93	CJRA Plan with broader mandatory disclosure takes precedence over federal rule.	CJRA Plan takes precedence over federal rule.	CJRA Plan takes precedence over federal rule.	CJRA Plan requires initial disclosure similar to the federal rule (excepting 26(a)(1)(C)) and expert disclosure.	CJRA Plan takes precedence over federal rule.	CJRA Plan takes precedence over federal rule.	CJRA Plan requires counsel to confer prior to the initial scheduling conference on the possible contents of the scheduling order.
NY-N	General Order 40 12/14/93  Uniform Pretrial Scheduling Order Amended 10/95	Not in effect.	In effect.	Not in effect.	CJRA Plan requires voluntary exchange of information.	In effect.	In effect.	
NY-S	Local Rule 49 1/25/95	Not in effect.	In effect.	In effect.		Not in effect.	Not in effect.	
NY-W	Local Rule 26 12/1/94	Not in effect unless ordered by the judge in the specific case.	In effect unless ordered otherwise by the judge in the specific case.	In effect unless ordered otherwise by the judge in the specific case.		Discovery may not commence until issue is joined unless otherwise stipulated by the parties or ordered by the judge in the specific case.	Not in effect unless ordered otherwise by the judge in the specific case.	

<b>1</b> <b>District</b>	<b>2</b> <b>Rule/Order</b>	<b>3</b> <b>Initial Disclosure Rule 26(a)(1)</b>	<b>4</b> <b>Expert Disclosure Rule 26(a)(2)</b>	<b>5</b> <b>Pretrial Disclosure Rule 26(a)(3)</b>	<b>6</b> <b>Other Disclosure Requirements<sup>2</sup></b>	<b>7</b> <b>Discovery Deferment Rule 26(d)</b>	<b>8</b> <b>Confer &amp; Prepare Discovery Plan Rule 26(f)</b>	<b>9</b> <b>Other Requirements<sup>2</sup></b>
NC-E <sup>9</sup>	Local Rule 23.07 12/31/94	Not in effect.	In effect.	In effect.		Not in effect.	In effect.	
NC-M	Order, 12/9/93  Local Rule 203 12/1/93	Not in effect.	In effect.	In effect.		In effect.	In effect.	
NC-W	As reported by the court, 3/96	In effect.	In effect.	In effect.		In effect.	In effect.	
ND <sup>10</sup>	Local Rule 26 1/23/95	In effect.	In effect.	In effect.		In effect.	In effect.	
NMI	CJRA Plan 6/93	In effect.	In effect.	In effect.		Not addressed in the CJRA Plan.	Not addressed in the CJRA Plan.	
OH-N	As reported by the court, 3/96	In effect.	In effect.	In effect.		In effect.	In effect.	
OH-S	General Order 93-3, 12/1/93  Local Rules 26.3, 26.4, and 26.5 12/1/93	Not in effect unless ordered by the judge or agreed to by the parties in the specific case.	In effect.	In effect.		Not in effect.	Not in effect unless ordered by the judge in the specific case.	

<b>1</b> <b>District</b>	<b>2</b> <b>Rule/Order</b>	<b>3</b> <b>Initial Disclosure Rule 26(a)(1)</b>	<b>4</b> <b>Expert Disclosure Rule 26(a)(2)</b>	<b>5</b> <b>Pretrial Disclosure Rule 26(a)(3)</b>	<b>6</b> <b>Other Disclosure Requirements<sup>2</sup></b>	<b>7</b> <b>Discovery Deferment Rule 26(d)</b>	<b>8</b> <b>Confer &amp; Prepare Discovery Plan Rule 26(f)</b>	<b>9</b> <b>Other Requirements<sup>2</sup></b>
OK-E	Order 7 12/17/93	26(a)(1)(D) is in effect. 26(a)(1)(A)-(C) are not in effect.	Not in effect.	In effect.	CJRA Plan requires disclosure of factual and legal basis for the claim.	Not in effect.	In effect.	
OK-N	Local Rules 26.1, 26.2, and 26.3 12/1/93	26(a)(1)(D) is in effect. 26(a)(1)(A)-(C) are not in effect. Disclosure may be required by the judge on a case-by-case basis.	In effect.	In effect.	CJRA Plan encourages voluntary disclosure.	Not in effect.	In effect.	
OK-W	Local Rules 16.1, 26.1, and 26.2 3/1/96	Not in effect.	In effect.	In effect.	Local rule, in lieu of 26(a)(1), requires disclosure of documents and insurance agreements; experts and their expected testimony; and witnesses whose testimony bears significantly on claims and defenses.	Not in effect.	Not in effect.	Counsel are required by local rule to submit a report prior to the case management conference. Topics for the report are stated in the local rules.
OR	Order 94-7 3/15/94  Local Rules 230-1, 205-1, and 235-3 1/1/95	Not in effect unless otherwise ordered by the judge in the specific case.	In effect.	In effect.		Not in effect unless otherwise ordered by the judge in the specific case.	Not in effect unless otherwise ordered by the judge in the specific case.	



<b>1</b> <b>District</b>	<b>2</b> <b>Rule/Order</b>	<b>3</b> <b>Initial Disclosure Rule 26(a)(1)</b>	<b>4</b> <b>Expert Disclosure Rule 26(a)(2)</b>	<b>5</b> <b>Pretrial Disclosure Rule 26(a)(3)</b>	<b>6</b> <b>Other Disclosure Requirements<sup>2</sup></b>	<b>7</b> <b>Discovery Deferment Rule 26(d)</b>	<b>8</b> <b>Confer &amp; Prepare Discovery Plan Rule 26(f)</b>	<b>9</b> <b>Other Requirements<sup>2</sup></b>
PA-E	Standing Order 12/1/93	Not in effect.	Not in effect.	Not in effect.	CJRA Plan requires initial disclosure similar to federal rule, excepting 26(a)(C).	Not in effect.	Not in effect.	CJRA Plan requires defer- ment of discovery until initial dis- closure is made.
PA-M	As reported by the court, 3/96	In effect.	In effect.	In effect.		In effect.	In effect.	
PA-W	Order of Court 12/10/93	Not in effect.	In effect.	In effect.		Not in effect.	Not in effect.	
PR	Notice 94-21 7/8/94  Local Rule 311.16 6/16/94	Not in effect.	Not in effect.	Not in effect.		Mooted by non- implementation of 26(f).	Not in effect.	
RI	General Order 5/9/94	Not in effect.	Not in effect.	Not in effect.		Not in effect.	Not in effect only insofar as it relates to 26(a)(1).	
SC	Local Rules 1.03, 7.00-7.11, and 13.00 12/1/93	Replaced by local rule interrogatories.	Replaced by local rule disclosure requirements.	In effect as modified by local rule.	Local rule requires each party to com- plete standard inter- rogatories, whose substance is similar to 26(a)(1) and (2).	Not in effect.	Not in effect.	

<b>1</b> <b>District</b>	<b>2</b> <b>Rule/Order</b>	<b>3</b> <b>Initial Disclosure Rule 26(a)(1)</b>	<b>4</b> <b>Expert Disclosure Rule 26(a)(2)</b>	<b>5</b> <b>Pretrial Disclosure Rule 26(a)(3)</b>	<b>6</b> <b>Other Disclosure Requirements<sup>2</sup></b>	<b>7</b> <b>Discovery Deferment Rule 26(d)</b>	<b>8</b> <b>Confer &amp; Prepare Discovery Plan Rule 26(f)</b>	<b>9</b> <b>Other Requirements<sup>2</sup></b>
SD	Standing Order 12/30/93	In effect.	In effect.	In effect.		In effect.	In effect.	
TN-E	Local Rule 26.1 3/1/94	In effect.	In effect.	In effect.		In effect.	In effect.	
TN-M	Administrative Order 132-6 12/1/93  Local Rule 9, 3/1/94	Not in effect.	In effect.	In effect.	CJRA Plan permits the judge to order initial disclosure in the specific case.	The individual judge may order in the specific case.	The individual judge may order in the specific case.	
TN-W <sup>11</sup>	Administrative Order 94-2 2/7/94	In effect.	In effect.	In effect.		In effect.	In effect.	
TX-E	Notice re: 12/1/93 Amendments to FRCivP 2/1/94	In effect. CJRA Plan controls where there is a conflict with the federal rules.	In effect. CJRA Plan controls where there is a conflict with the federal rules.	In effect. CJRA Plan controls where there is a conflict with the federal rules.	CJRA Plan requires initial, expert, and pretrial disclosure similar to the federal rule.	In effect. CJRA Plan controls where there is a conflict with the federal rules.	In effect. CJRA Plan controls where there is a conflict with the federal rules.	
TX-N <sup>12</sup>	Special Order 2-12 12/20/93	Application of the rule is at the discretion of each judge.	Application of the rule is at the discretion of each judge.	Application of the rule is at the discretion of each judge.	CJRA Plan encourages voluntary exchange of information.	Application of the rule is at the discretion of each judge.	Application of the rule is at the discretion of each judge.	

<b>1</b> <b>District</b>	<b>2</b> <b>Rule/Order</b>	<b>3</b> <b>Initial Disclosure Rule 26(a)(1)</b>	<b>4</b> <b>Expert Disclosure Rule 26(a)(2)</b>	<b>5</b> <b>Pretrial Disclosure Rule 26(a)(3)</b>	<b>6</b> <b>Other Disclosure Requirements<sup>2</sup></b>	<b>7</b> <b>Discovery Deferment Rule 26(d)</b>	<b>8</b> <b>Confer &amp; Prepare Discovery Plan Rule 26(f)</b>	<b>9</b> <b>Other Requirements<sup>2</sup></b>
TX-S	Order for Conference and Instructions Under Rule 26(f) Federal Rules of Civil Procedure	In effect.	In effect.	In effect.		In effect.	In effect.	
TX-W	Local Rule CV 16(e) 1/14/94	Not in effect.	Not in effect.	Not in effect.	Local rule requires early disclosure of all potential witnesses, a written summary of experts' proposed testimony, and a list of proposed trial exhibits.	Not in effect.	Not in effect.	
UT	Order of the Court 1/9/96	In effect.	In effect.	In effect.		In effect.	In effect.	
VT	General Order 33 1/3/94	Not in effect.	Not in effect.	Not in effect.		In effect.	In effect.	
VI	Local Rules 16.1(c), 26.2(c), 26.3(a), 26.3(b), and 26.3(c) 2/8/96	In effect, except 26(a)(1)(C).	In effect.	In effect.		Not in effect.	Not in effect.	

<b>1</b> <b>District</b>	<b>2</b> <b>Rule/Order</b>	<b>3</b> <b>Initial Disclosure Rule 26(a)(1)</b>	<b>4</b> <b>Expert Disclosure Rule 26(a)(2)</b>	<b>5</b> <b>Pretrial Disclosure Rule 26(a)(3)</b>	<b>6</b> <b>Other Disclosure Requirements<sup>2</sup></b>	<b>7</b> <b>Discovery Deferment Rule 26(d)</b>	<b>8</b> <b>Confer &amp; Prepare Discovery Plan Rule 26(f)</b>	<b>9</b> <b>Other Requirements<sup>2</sup></b>
VA-E	Local Rule 11.1 1/1/94	Not in effect.	In effect.	In effect.		Not in effect.	Not in effect.	
VA-W	As reported by the court, 3/96	In effect.	In effect.	In effect.		In effect.	In effect.	
WA-E	General Order 81-A 10/12/94  Local Rule 26.2 May 1, 1996	In effect.	In effect.	In effect.		In effect.	In effect.	
WA-W	Order 94-27 9/30/94  Local Civil Rule CR16 9/30/94	Not in effect.	26(a)(2)(A) & (C) are in effect. 26(a)(2)(B) is not in effect, but the individual judge may order it in the specific case.	In effect.	Local rule requires counsel to prepare a statement of experts' opinions, the information relied on, and their qualifications and compensation.	Not in effect.	Not in effect.	
WV-N	Articles 2 and 3 of Local Rules 3/1/96	In effect.	In effect.	Not in effect.		Not specifically addressed in local rules.	In effect.	
WV-S	Local Rule 301 9/1/94	In effect.	In effect.	In effect.		In effect.	In effect.	

<b>1</b> <b>District</b>	<b>2</b> <b>Rule/Order</b>	<b>3</b> <b>Initial Disclosure Rule 26(a)(1)</b>	<b>4</b> <b>Expert Disclosure Rule 26(a)(2)</b>	<b>5</b> <b>Pretrial Disclosure Rule 26(a)(3)</b>	<b>6</b> <b>Other Disclosure Requirements<sup>2</sup></b>	<b>7</b> <b>Discovery Deferment Rule 26(d)</b>	<b>8</b> <b>Confer &amp; Prepare Discovery Plan Rule 26(f)</b>	<b>9</b> <b>Other Requirements<sup>2</sup></b>
WI-E	Order 1/7/94	Not in effect.	Not in effect.	Not in effect.	Local rules require expert disclosure and mandatory interrogatories. CJRA Plan requires disclosure of the substance of experts' testimony.	Not in effect.	Not in effect.	
WI-W	General Order 12/6/93	In effect.	In effect.	In effect.		In effect.	In effect.	
WY	Local Rule 26 11/30/95  Local Rule 16 11/93	In effect.	In effect, except deposition testimony may be submitted in lieu of written report.	In effect.		Not in effect.	Not in effect.	

- 1 The information in the table, which is current through March 22, 1996, is derived from orders and notices issued by the courts in anticipation of or subsequent to the December 1, 1993, federal rule amendments; from local rules; from CJRA plans; and from clerks of court or other court staff. See the introduction to these tables for a fuller discussion of the sources. The table should not be cited as legal authority or substituted for a careful examination of federal rules or local rules, orders, and Civil Justice Reform Act plans. I appreciate the invaluable help of Julie Hong, my research assistant, in preparing this update. And I am very grateful to the clerks of the district courts for being responsive as always to my requests for information and review.
- 2 Columns 6 and 9 identify local rule or CJRA plan requirements that may apply in courts that have elected to exempt cases from some or all of the disclosure provisions of Rule 26(a), (d), or (f). Some of these courts have requirements similar to the federal rule, while others require much more limited disclosure or require none but permit judges to order it in the specific case. Where the entry says “similar to the federal rule”, the local rule may be similar to an early version of the federal rule (“bears significantly on”) or to the final version (“alleged with particularity”). Though similar, the local rule may differ in its particulars—e.g., the timing of disclosure—but in general “similar” signifies that the court embraces the idea of self-executing disclosure and requires it in some form.

- 3 “Not in effect” means that cases filed in these courts are exempt from the requirements of the federal rule subdivision identified at the head of the columns. In many courts, however, individual judges may require parties to follow the federal rule requirements, or local rules or CJRA plans may provide for some type of disclosure (see columns 6 and 9).
- 4 “In effect” means that cases filed in these courts are subject to the requirements of the federal rule. Where the federal rule is in effect, the court may nonetheless use local rules or orders to alter the effect of the federal rule—e.g., by exempting such case types as habeas corpus, social security, and bankruptcy; setting different time frames for disclosure; or permitting individual judges to opt out. Local rules or orders may also establish an effective date later than December 1, 1993 and may specify whether the federal rules apply only to newly filed cases or also to pending cases. Two significant alterations—not requiring documents adverse to one’s case and not requiring damage computations—are noted in the table. Some courts’ orders in response to the federal rule are explicit only in stating which provisions are *rejected*. When the order does not specifically reject a provision, we assume it is in effect.
- 5 The court hopes to revise its local rules to incorporate the standing order, without changes, into the rules.
- 6 Proposed amendments to Local Rules 6 and 9 are out for comment and would put into effect FRCivP 26(a)(1), 26(a)(2)(C), 26(a)(3), 26(d), and 26(f).
- 7 Parties may not agree to opt out of the requirements of FRCivP 26.
- 8 Proposed local rules adopting FRCivP 26 are under consideration, but as a practical matter the federal rule is applied to most cases.
- 9 The court may change Local Rule 23.07 to clarify that FRCivP 26(d) is not in effect.
- 10 The CJRA advisory group meets in April 1996 and may recommend some changes at that time.
- 11 Still pending is a court decision on implementing disclosure through the local rules, rather than through the current administrative order.
- 12 The court plans to adopt a local rule regarding disclosure.