

INITIAL DISCOVERY PROTOCOLS

BUSINESS CONTRACT DISPUTES

Involving cases in which all of the parties are business enterprises or those arising out of commercial transactions, including commercial bank transactions

(Ref. LAO 2013-02 Par. 2.a.i & 2.b.iv)

PART 1: INTRODUCTION AND DEFINITIONS.

(1) Statement of purpose.

- a. The Initial Discovery Protocols for Business Cases is a proposal designed to be implemented as a pilot project by individual judges throughout Michigan Business Courts.
- b. In participating courts, the Initial Discovery Protocols for business/contract cases shall encompass all cases in which the parties are business enterprises and/or have a contractual business dispute (“Business Contract Protocols”) and will be implemented by local administrative order:

If any party believes that there is good cause why a particular case should be exempted, in whole or in part, from this program, that party may raise such reason with the Court.

- c. The Initial Discovery Protocols are not intended to preclude or to modify the rights of any party for discovery as provided by the Michigan Court Rules of Civil Procedure and other applicable local rules. The purpose of the pilot project is to encourage parties and their counsel to exchange the most relevant information and documents early in the case, to assist in framing the issues to be resolved and to plan for more efficient and targeted discovery.
- d. In the event that the parties’ claims apply to more than one of the initial discovery protocols (for example Employment, Non-Competition, Business Contract, Business Organization Dispute, etc), and the parties cannot agree upon which to follow, the parties’ must contact the Business Judge’s clerk within 10 days after the initial responsive pleading is filed to obtain clarification upon which to follow.
- e. The Initial Discovery Protocols were prepared by a group of highly experienced

attorneys from Macomb County who regularly represent plaintiffs and/or defendants in business matters. The information and documents identified are those most likely to be automatically requested by experienced counsel in any similar case. They focus on the type of information most likely to be useful in narrowing the issues for employment and business cases.

(2) Definitions.

The following definitions apply to cases proceeding under the Business/Contract Protocols.

- a. Concerning.** The term "concerning" means referring to, describing, evidencing, or constituting.
- b. Document.** The terms "document" and "documents" are defined to be synonymous in meaning and equal in scope to the terms "documents" and "electronically stored information" as used in M.C.R. 2.310 (A)(1) and MCR 2.302 (B)(5)
- c. Identify (Documents).** When referring to documents, to "identify" means to give, to the extent known: (i) the type of document; (ii) the general subject matter of the document; (iii) the date of the document; (iv) the author(s), according to the document; and (v) the person(s) to whom, according to the document, the document (or a copy) was to have been sent; or, alternatively, to produce the document.
- d. Identify (Persons).** When referring to natural persons, to "identify" means to give the person's: (i) full name; (ii) present or last known address and telephone number; (iii) present or last known place of employment; (iv) present or last known job title; and (v) relationship, if any, to the plaintiff or defendant. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

(3) Instructions.

- a. For this Initial Discovery, the relevant time period begins six years before the date of the adverse action, unless otherwise specified.
- b. This Initial Discovery is not subject to objections except upon the grounds set forth in MCR 2.309(B) and MCR 2.310(C)(2).
- c. If a partial or incomplete answer or production is provided, the responding party shall state specifically the reason that the answer or production is partial or

incomplete.

- d. If any document(s) required under this Initial Discovery Protocol are not produced, a producing party must provide a Privilege Log that (1) states the document number (e.g. Bates number) of the document, (2) describes the nature and general subject matter of the document not produced,(3) states the date and type of document (e.g., e-mail, notes, memo, etc.), (4) the name(s) of the author/sender, recipient, and any third parties recipients copied, (5) and the privilege(s) asserted as to the withheld document. Privilege must be asserted in the producing party's written response under M.C.R. 2.310. Privilege claims not timely asserted are waived in the instant action.

Privileged documents which are inadvertently produced by the producing party may be subject to waiver of the claimed privilege or clawback of the document consistent with MCR 2.302 (B)(7).

- e. This Initial Discovery is subject to M. C. R. 2.302 (E) regarding supplementation and M.C.R 2.302 (G) regarding certification of responses.
- f. This Initial Discovery is subject to MCR 2.302(H) and MCR 2.310(C)(5) regarding form of production.
- g. Prior to seeking a Protective Order from the Court, the parties shall confer in an effort to enter a Stipulated Protective Order regarding the disclosure and exchange of any Initial Discovery documents. The Court may deny any Protective Order sought if the parties have not personally conferred first regarding same.

PART 2: PRODUCTION BY PLAINTIFF.

(1) Timing.

- a. The plaintiff's responsive documents shall be provided within 30 days after the defendant has submitted a responsive pleading or motion, unless the court rules otherwise.

(2) Documents that Plaintiff must produce to Defendant.

- a. All contracts, documents or agreements between the parties which are in dispute.
- b. All supporting documentation, invoices, records of payment, or other back-up information concerning the contracts, documents, or agreement between the parties which are in dispute.
- c. All communications concerning the factual allegations or claims at issue in this

lawsuit between the plaintiff and the defendant.

- d. Claims, lawsuits, administrative charges, and complaints by the plaintiff that rely upon any of the same factual allegations or claims as those at issue in this lawsuit.
- e. Documents concerning the formation and termination, if any, of the contractual or business relationship at issue in this lawsuit, irrespective of the relevant time period.
- f. Any other document(s) upon which the plaintiff relies to support the plaintiff's claims.

(3) Information that Plaintiff must produce to Defendant.

- a. Identify persons the plaintiff believes to have knowledge of the facts concerning the claims or defenses at issue in this lawsuit, and a brief description of that knowledge.
- b. Describe the categories of damages the plaintiff claims.

PART 3: PRODUCTION BY DEFENDANT.

(1) Timing.

- a. The defendant's responsive documents shall be provided within 30 days after the defendant has submitted a responsive pleading or motion, unless the court rules otherwise.

(2) Documents that Defendant must produce to Plaintiff.

- a. All contracts, documents or agreements between the parties which are in dispute.
- b. All supporting documentation, invoices, records of payment, or other back-up information concerning the contracts, documents, or agreement between the parties which are in dispute.
- c. All communications concerning the factual allegations or claims at issue in this lawsuit between the plaintiff and the defendant.
- d. Responses to claims, lawsuits, administrative charges, and complaints by the plaintiff that rely upon any of the same factual allegations or claims as those at issue in this lawsuit.

- e. Documents concerning the formation and termination, if any of the contractual or business relationship at issue in this lawsuit, irrespective of the relevant time period.
- f. Agreements between the plaintiff and the defendant to waive jury trial rights, to arbitrate disputes, or to shorten statute of limitations.
- g. Any other document(s) upon which the defendant relies to support the defenses, affirmative defenses, and counterclaims, including any other document(s) describing the reasons for the breach of contract claimed.

(3) Information that Defendant must produce to Plaintiff.

- a. Identify persons the defendant believes to have knowledge of the facts concerning the claims or defenses at issue in this lawsuit, and a brief description of that knowledge.
- b. Any and all proof of insurance coverage for the stated claims, and the limits on that policy.