

**INITIAL DISCOVERY PROTOCOL
BUSINESS ORGANIZATION DISPUTES**

**For cases involving the internal organization, or rights or obligations of
shareholders, partners members, owners, directors, officers or managers
(Ref. LAO 2013-02 Par.2.a.ii, iv & Par.2.b.ii)**

PART 1: INTRODUCTION AND DEFINITIONS.

(1) Statement of purpose.

- a. The Initial Discovery Protocol for Business Organization Disputes 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 Protocol for Business Organization Disputes shall encompass all cases involving the internal organization of business entities, and/or the rights or obligations of shareholders, partners members, owners, directors, officers or managers (“Business Organization Protocols”), shall be implemented by standing order, and will apply to all cases which encompass the internal organization of business entities, and/or the rights or obligations of shareholders, partners members, owners, directors, officers or managers as designated by each business court judge:

If any party believes that there is good cause why a particular case should be exempted, in whole or in part, from this Protocol, that party may file a motion seeking relief with the Court.

- c. The Initial Discovery Protocol is 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 additional 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 Protocol was 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 Organization Disputes Initial Discovery Protocol.

- 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 M.C.R. 2.302 (B)(5).
- c. Communication. The terms "communication" or "communications" mean letters, memoranda, emails, instant messages, text messages and any other document sent from one individual or entity to one or more other individuals or entities as a means of disseminating information and/or initiating or continuing a dialogue.
- d. 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.
- e. 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.

- f. Identify (Entities). When referring to entities, to “identify” means to give the entity’s: (i) full legal name; (ii) all assumed names; (iii) all names used by predecessor entities; (iv) the formal legal structure of the entity; (v) present or last known resident agent, or persons or entities designated for service of process, with address and telephone number. Once an entity has been identified in accordance with this subparagraph, only the name of that entity need be listed in response to subsequent discovery requesting the identification of that entity. g. Plaintiff is defined as the party challenging the action or inaction of the entity or those in control of the entity.

(3) Instructions.

- a. For this Initial Discovery Protocol, the relevant time period begins three years before the date of the last action, upon which a claim is based unless otherwise specified.
- b. Objection(s) to any part or requirement of this Initial Discovery Protocol must be stated and signed as required under M.C.R. 2.309(B)(1) and (B)(3), and M.C.R. 2.310(C)(2), with specific objection(s) stated as to each ground and the particular portion or requirement of this Initial Discovery Protocol to which objection is made, and the reason(s) for same.
- 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 M.C.R. 2.302(H) and M.C.R.2.310(C)(5) regarding form of production.

- g. For good reason shown, any party may promptly seek a Protective Order prior to disclosure. The parties shall immediately confer in an effort to enter a Stipulated Protective Order regarding the disclosure and exchange of any Initial Discovery documents. A sample Protective Order is provided on the Business Court's website. 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. Each plaintiff's initial discovery 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 communications concerning the factual allegations and claims at issue in this lawsuit between each plaintiff and the defendant(s).
- b. Claims, demands, notices, and complaints by the plaintiff that rely upon any of the same factual allegations or claims as those at issue in this lawsuit.
- c. Documents in the possession or under the control of plaintiff concerning the formation, modification and or termination, of the plaintiff's relationship to or status in the entity at issue in this lawsuit, irrespective of the relevant time period.
- d. With respect to any business entity involved in the dispute, copies of any articles of incorporation, articles of organization, operating agreements, shareholder agreements, stock certificates, partnership agreements, bylaws, shareholder, member and/or partner lists, amendments to any of the foregoing, and any other similar entity formation and governance documents that are in the possession or under the control of the plaintiff.
- e. Copies of any business entity board, management, member, partner or committee meeting minutes; any resolutions, written consents, or any other documents memorializing any actions taken by the business entity; and any other similar documents that are in the possession or under the control of the plaintiff and which the plaintiff reasonably believes to be related in any way to the allegations set forth in the pleadings.
- f. Agreements between any plaintiff and any defendant to waive jury trial rights, to mediate or arbitrate disputes, or to shorten statutes of limitations.

- g. Any other document(s) upon which the plaintiff relies to support the plaintiff's claims and damages.

(3) Information that each plaintiff must produce to defendant(s).

- a. Identify persons each 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, as well as the assumptions and method used to compute damages.

PART 3: PRODUCTION BY DEFENDANT.

(1) Timing.

- a. The defendant's Initial Discovery 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 communications concerning the factual allegations or claims at issue in this lawsuit among or between the defendant, its managers, officers, agents or representatives and each plaintiff;
- b. Responses to claims, demands, notices, administrative charges, and complaints by the plaintiff that rely upon any of the same or relevant factual allegations or claims as those at issue in this lawsuit.
- c. Documents concerning the formation, modification and or termination of each plaintiff's relationship to or status in the entity at issue in this lawsuit, irrespective of the relevant time period.
- d. Copies of any articles of incorporation, articles of organization, operating agreements, shareholder agreements, partnership agreements, bylaws, shareholder, member and/or partner lists, amendments to any of the foregoing, and any other similar entity formation and governance documents that are in the possession or under the control of the defendant(s).
- e. The minutes or records of action of all board of directors, managers or partners, including any meetings of any committees thereof, for the time period associated with the factual allegations or claims at issue in this lawsuit.
- f. The minutes or records of all shareholder, member or partner meetings for the time period concerning the factual allegations or claims at issue in this lawsuit.
- g. All resolutions or actions taken or voted upon by the shareholders, members,

managers, partners, or board of directors, including any such actions taken by written consent for the time period associated with the factual allegations or claims at issue in this lawsuit.

- h. All shareholder, member or partner agreements, including any buy-sell agreements or stock or member transfer agreements, voting agreements or proxies.
- i. Filed federal and state tax returns for the prior three years for each entity in which plaintiff is a member, shareholder, partner, including any attachments.
- j. Profit/loss statements for each entity in which plaintiff is a member, shareholder, partner for the relevant time period to the present.
- k. Balance sheets for each entity in which plaintiff is a member, shareholder, partner for the relevant time period to the present.
- l. Any and all documents reflecting distributions or dividends to members, shareholders, partners for each entity in which plaintiff is a member, shareholder, partner for the relevant time period to the present.
- m. Agreements between any plaintiff and any defendant to waive jury trial rights, to mediate or arbitrate disputes, or to shorten statutes of limitations.
- n. Any other document(s) upon which any defendant relies to support the defenses, affirmative defenses, and counterclaims.

(3) Information that defendant(s) must produce to plaintiff(s).

- 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. Please list all individuals who have served as managers, officers and/or directors of defendant entity from the relevant to the present, and specifically note the positions they held, the time they served in their respective positions, and the responsibilities said positions entailed.
- c. Identify the individual(s) and entity, if applicable, responsible for maintaining defendant's books and records, financial accounts and electronically stored information, as well as the books and records, financial accounts and electronically stored information for any non-party entity in which plaintiff is a member, shareholder or partner.