

Mandatory Pilot Program Expedites Discovery Schedules for the Northern District of Illinois

IN SHORT

The Situation: Effective June 1, 2017, the "Mandatory Initial Discovery Pilot Project" requires parties in civil cases heard in the Northern District of Illinois to respond to a series of standard discovery requests.

The Motivation: The three-year pilot project was implemented to determine if the initial discovery requirements will reduce costs and decrease delays of civil litigation procedures.

The Result: The ultimate effects of the program will not be known until the end of its three-year run. In the meantime, parties to civil litigation should be aware that the program may require the production of discovery on a more expedited basis.

Beginning June 1, 2017, the Northern District of Illinois will be participating in a three-year pilot project, known as the "Mandatory Initial Discovery Pilot Project," which will require the parties in civil cases to respond to a series of standard discovery requests before undertaking other discovery in the case. These new standard initial discovery requests will go beyond the current disclosures required by Federal Rule of Civil Procedure 26(a)(1). The purpose of the program is to study whether requiring parties to respond to standard initial discovery requests at the outset of the litigation will reduce the cost and delay of civil litigation.

The Northern District of Illinois has adopted the attached [Standing Order](#) explaining the parties' obligations under the new program and setting forth the initial discovery requests to which the parties must respond. All civil cases filed on or after June 1, 2017, except those categories of cases exempted by the Standing Order and/or those cases assigned to judges who have opted out of the program, are included in the pilot project and subject to the Standing Order. (All magistrate judges and nearly all active district court judges sitting in the Northern District of Illinois are participating in the program. The full list of participating judges can be found on the Northern District of Illinois's website.) Unlike initial disclosures required by current Rule 26(a)(1)(A) & (C), the Northern District of Illinois's Standing Order does not allow the parties to opt out of the program.

The following are some of the key new requirements under the Northern District of Illinois's Standing Order:

- Parties must file answers, counterclaims, cross-claims, and replies within the time periods set forth in Rule 12(a)(1)–(3), even if they have filed or intend to file a motion to dismiss or other preliminary motion. A party can, however, petition the court to defer the time to file a responsive pleading where the motion to dismiss is based on lack of jurisdiction or immunity.
- At the Rule 26(f) conference, parties must discuss the mandatory initial discovery listed in the Standing Order and describe their discussions (including limitations invoked and disputes) in their Rule 26(f) report.
- Parties must now provide information as to facts and documents that are relevant to the parties' claims and defenses, regardless of whether the information/documents are favorable or unfavorable and regardless of whether the party intends to use the information in presenting their claims and defenses.
- Parties must serve their initial discovery responses and documents responsive to the mandatory discovery by the deadlines described in the Standing Order unless modified by the court. Under the Northern District of Illinois's Standing Order, the general deadlines are as follows:



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- A party seeking affirmative relief must file its response to the mandatory discovery within 30 days of the first pleading filed in response to the complaint, counterclaim, cross claim, or third-party complaint.
- A party filing a responsive pleading, whether or not it also seeks affirmative relief, must serve its initial discovery responses no later than 30 days after it files its responsive pleading.
- If a party must produce electronically stored information, or ESI, to respond to the mandatory initial discovery requests, such materials must be produced within 40 days of serving its initial response to the mandatory initial discovery requests.

Because the pilot program has not yet begun, it is not yet possible to assess what impact the program may have on parties in litigation. Both potential plaintiffs and potential defendants should be aware, however, that the program may require the production of discovery on a more expedited basis. Plaintiffs need to be aware of these new deadlines when timing the filing of complaints as the courts may not be particularly willing to exercise discretion to grant more time to plaintiffs who are in a position of knowing what documents support their case at time of filing. Defendants will be facing not only tighter deadlines for initial document production, but may also need to evaluate the strategic value of every aspect of motions to dismiss.

THREE KEY TAKEAWAYS

1. The "Mandatory Initial Discovery Pilot Project" requires that litigants in civil cases respond to a series of standard discovery requests prior to undertaking other discovery in the case.
2. Parties must file answers, counterclaims, cross-claims, and replies within the time periods set forth in Rule 12(a)(1)-(3), even if they have filed or intend to file a motion to dismiss or other prelliminary motion.
3. Parties also may be required to disclose and produce on a more expedited basis both favorable and unfavorable information/documents relevant to claims and defenses.

CONTACTS



Irene S. Fiorentinos
Chicago



Jeremy J. Gray
Chicago



Paula S. Quist
Chicago

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