



PLUNKETT COONEY
ATTORNEYS & COUNSELORS AT LAW

Under Pressure

Deadlines & Landmines Under Michigan's New Court Rules

Presented by
Katherine M. Nighswander
Richard G. Szymczak

Today's Presenters



Katherine M. Nighswander
(248) 594-5798
knighswander@plunkettcooney.com




Richard G. Szymczak
(810) 342-7007
rszymczak@plunkettcooney.com



MCR 1.105

- "These rules are to be construed, administered, and employed by the parties and the court to secure the just, speedy, and economical determination of every action and to avoid the consequences of error that does not affect the substantial rights of the parties."
- Announced motivation behind the rules and rule changes – and with which they may conflict



Overview of Most Critical Changes In Discovery

- Initial disclosures
- Depositions
- Interrogatories
- Discovery plans
- Discovery disputes
- Electronically Stored Information (ESI)



Initial Disclosures – Biggest Change

- **Timing of disclosures** (Rule 2.302(A)(5)):
 - Plaintiff files 14 days after filing of answer to complaint
 - Responding party files 14 days opposing party's are due or 28 days after filing its answer – which ever is later
 - Later appearing parties file 14 days after filing first pleading



Initial Disclosures – Contents (In General)

- All Parties
 - Factual basis for defenses
 - Legal basis for defenses
 - Names and contact information of known witnesses

Continued



Initial Disclosures – Contents (In General)

- Documents in possession
- Documents not in possession, but will likely rely upon
- Subject areas of expert testimony

Continued



Initial Disclosures – Contents (In General)

- Plaintiffs:
 - Executed authorizations
 - Computation of claimed damages
- Defendants:
 - Insurance policies and indemnity agreements



Initial Disclosures – Contents

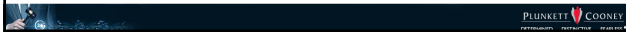
- **No-Fault cases:**
 - Defendant insurance carrier:
 - Claim file
 - Privilege log
 - Payment log

Continued



Initial Disclosures – Contents

- Plaintiff:
 - Names of all providers of No-Fault PIP benefits
 - All provider bills or outstanding balances
 - Name, address and phone numbers of employers
 - Executed authorizations



Initial Disclosures – Signature Requirement

- Signing of disclosures, discovery requests, responses and objections; sanctions
 - Must be signed by at least one attorney of record or party in pro per

Continued



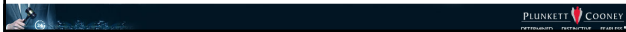
Initial Disclosures – Signature Requirement

- Unsigned disclosures or responses are stricken.
- Another party need not take action with respect to it until it is signed.



Initial Disclosures – Supplementing Disclosures

- Duty to supplement:
 - Automatic or by request, or both
 - Timely, if disclosure is incomplete, incorrect or additional information or by court order
 - Per agreement or order to supplement sanction for failure



Consequences of Not Timely Submitting or Supplementing

- Another party may move to compel disclosures and for appropriate sanctions.
- Possible sanctions:
 - If party fails to list witness or information in its initial disclosures, party is not allowed to use missing witness or information at trial or in support of future motions, unless failure was substantially harmless. *Continued*



Consequences of Not Timely Submitting or Supplementing

- Payment of expenses, including attorney fees, caused by failure
- Informing jury of failure
- Other sanctions court finds just



Timing & Completion of Discovery

- Initiation of discovery:
 - Party may seek discovery only after party serves its initial disclosures.
- Completion of discovery:
 - “the serving party shall initiate the discovery by a time that provides for a response or appearance ... **before the completion date.**”



Scope of Discovery

- Scope of discovery:
 - Still limited to non-privileged matters that are relevant to claims/defenses
 - Now, further limited to what is proportional to needs of case, taking into account the following pertinent factors:

Continued



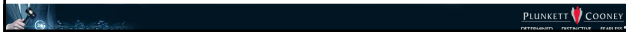
Scope of Discovery

- Whether burden or expense of proposed discovery outweighs its likely benefit
- Complexity of case
- Importance of issues at stake in action
- Amount in controversy
- Parties' resources and access to relevant information



Discovery Disputes

- Parties may stipulate or court may order mediation of discovery disputes. MCR 2.411(H)
- Court may specify that discovery disputes must first be submitted to mediator before being filed as a motion, unless there is a need for expedited attention by the court. MCR 2.401(H)(3)



Electronic Stored Information (ESI)

- Duty to preserve like all other information
- Possible ESI planning conference:
 - In cases in which excessive amounts of ESI are requested/at issue

Continued



Electronic Stored Information (ESI)

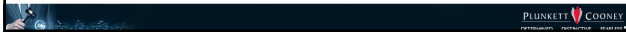
- Disputes regarding production of ESI:
 - Contesting production of ESI based upon undue burden and expense
 - Likely outcomes:
 - Court compelling production, if requesting party proves good cause and proportionality of needs of case

Continued



Electronic Stored Information (ESI)

- Court placing conditions on production of ESI, like:
 - Allocation of expense
 - Limit frequency and scope



Consequences of Failure to Preserve ESI

- If ESI should have been preserved and is lost/deleted because of failure to take reasonable steps to preserve it, courts may:
 - Upon finding prejudice, order measures no greater than cure the prejudice

Continued



Consequences of Failure to Preserve ESI

- Upon finding intent to deprive another party of requested information, court may order spoliation sanctions, which include:
 - Presumption missing ESI was unfavorable to non-producing party

Continued



Consequences of Failure to Preserve ESI

- Jury instruction directing jury to presume missing ESI was unfavorable
- Dismissal of action and/or entry of default judgment



Questions?



Katherine M. Nighswander
(248) 594-5798
knighswander@plunkettcooney.com

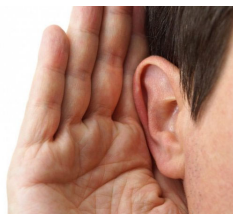


Richard G. Szymczak
(810) 342-7007
rszymczak@plunkettcooney.com



Post-Webinar Survey

We want to hear from you!



Event Page ... Please Share!

Events

ATTORNEYS
Katherine M. Highlander
Richard G. Seymchak

PRACTICE AREAS
Torts & Litigation

Register Now - Michigan's New Court Rules Webinar

Under Pressure - Deadlines & Landmines Under Michigan's New Court Rules

Go to Webinar
03.19.2020 | Noon to 1 p.m.
Share

[Click here to register](#)



Date: March 19, 2020
Time: Noon to 1 p.m.
Cost: Complimentary



Please Follow, Like & Share!

LITIGATION DEFENDERS
Risk management resources and insights

Subscribe

Warehouse Clubs Should Consider Arbitration for Member Disputes

With U.S. tort litigation continuing to climb to historic levels, arbitration may offer insurance providers lower costs, better venue option for resolving claims.

[Continue Reading](#)

Topics



Have a Good Day!

Thank You!