

# Guidelines For Completing The Model Discovery Plan



**Guideline 1:** The Court requires each case to be governed by a written Discovery Plan prepared pursuant to Rule 26(f)(3).

**Guideline 2:** The Model Discovery Plan is designed to help you draft your own Discovery Plan customized to the needs of your case. This Model Discovery Plan may contain provisions you do not need, and may be missing others that you do need. Add or delete provisions as you feel necessary. Your Discovery Plan might be 2 pages or 20 pages depending on the complexity of your case and the anticipated discovery.

**Guideline 3:** The Court expects you to expend real time, thought and energy in coming up with a workable Discovery Plan, and to draft realistic limits on discovery with an eye to avoiding unnecessary expenditures of time and money.

**Guideline 4:** All discovery in this case will be conducted in accordance with Rule 1, which requires that the Rules “be construed, administered, and employed **by the court and the parties** to secure the just, speedy, and inexpensive determination of every action and proceeding.”

**Guideline 5:** So long as counsel are acting in good faith, the Court will be flexible in adopting agreements to change the Discovery Plan, or in imposing reasonable and necessary changes in the absence of an agreement of counsel.

**Guideline 6:** To facilitate this flexibility, the Court likely will schedule telephonic status conferences with counsel, the frequency of which will depend upon the complexity of the case. One of the topics for these status conferences will be a report on the progress of discovery and whether the Discovery Plan requires modification. The parties also may request additional telephonic status conferences with the Court.

**Guideline 7:** Discovery issues will be analyzed by you – and, if necessary, resolved by the Court – using the proportionality factors set forth in Rule 26(b)(1): (1) The importance of the issues at stake in the action; (2) The amount in controversy; (3) The parties’ relative access to relevant information; (4) The parties’ resources; (5) The importance of the discovery in resolving the issues; and (6) Whether the burden or expense of the proposed discovery outweighs its likely benefit.

**Guideline 8:** Rule 26(g) requires the parties “to consider [proportionality] factors in making discovery requests, responses or objections.” *See Advisory Committee Notes.*

**Guideline 9:** Proportionality “does not place on the party seeking discovery the burden of addressing all proportionality considerations.” *See Advisory Committee Notes.*

**Guideline 10:** The Rules do not authorize boilerplate objections or refusals to provide discovery on the ground that it is not proportional – the grounds must be stated with specificity. *See Advisory Committee Notes.*

**Guideline 11:** Monetary stakes are only one factor in evaluating proportionality. A case seeking to “vindicate vitally important personal or public values” (like “employment [or] free speech” issues) “may have importance far beyond the monetary amount involved.” *See Advisory Committee Notes.*

**Guideline 12:** Transparency in search methodology is crucial to instilling confidence in the production of ESI and other material. Thus, each party should reveal the search methodology they use in responding to requests for production of ESI and other material, to the extent possible given the protections afforded by the attorney-client privilege and the work product doctrine.

**Guideline 13:** To assist counsel, the Court has attached to the back of the Model Discovery Plan a checklist developed by the Northern District of California. Counsel are free to use it or ignore it. Counsel should reference also [Dist. Idaho L. Rule 16.1\(c\)](#), which provides a checklist for the parameters of anticipated e-discovery.

**Guideline 14:** Pursuant to Rule 26(f)(2), the Discovery Plan is due 14 days after the meet-and-confer session discussed in Rule 26(f)(1). But in some cases that might be difficult because the parties have not had time to review voluminous initial disclosures or because those disclosures were late-filed or incomplete. The

Rule 26(f)(2) deadline will apply, but the Court will work with counsel on a case-by-case basis to determine if that deadline needs to be modified.

**Guideline 15:** File your Discovery Plan via Pacer. The Court will incorporate the Discovery Plan's deadlines into the Court's Case Management Order so there will be a single Order with all deadlines to avoid any confusion.

**Guideline 16:** The parties must comply with the Judge's preferences for handling discovery disputes. The parties must review the information on the Judge's webpage, located at <https://www.id.uscourts.gov/district/judges/>, and comply with the Judge's directions, prior to filing a motion involving a discovery dispute.