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7 **IN THE SUPREME COURT**
8 **STATE OF ARIZONA**

9 In the Matter of:

10 **PETITION TO AMEND VARIOUS**
11 **RULES OF THE ARIZONA RULES**
12 **OF CIVIL PROCEDURE AND**
13 **ADOPT NEW RULE 7.5**

14 Supreme Court No. R-26-
15 **STATE BAR OF ARIZONA**
16 **PETITION**

17 Pursuant to Rule 28(a) of the Arizona Rules of the Supreme Court, the State
18 Bar of Arizona (“State Bar”) petitions this Court to (1) adopt a more broadly
19 applicable expedited dispute resolution rule in the Arizona Rules of Civil Procedure
20 (proposed Rule 7.5, the “Expedited Procedure for Resolving Certain Disputes”); (2)
21 make conforming changes to the current exemplary but rather narrow Rule 26(d) of
22 those rules; and (3) update the civil rules on amending pleadings, seeking discovery
23 or disclosure sanctions, issuing subpoenas, and making or responding to preservation
24 requests, to facilitate expedited resolution of disputes in those areas.

25 The Court should adopt proposed Rule 7.5 and amend Rules 15(a), 26(d),
37(a), 45(c)(6)(C), and 45.2(d), precisely because of Rule 26(d)’s resounding

1 success in helping achieve the goals that this Court set course for with its adoption.
2 Those goals included promoting efficiency in civil litigation while safeguarding
3 parties' rights.¹
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5 **I. BACKGROUND OF AND RATIONALE FOR THESE CHANGES**

6 Arizona Rule of Civil Procedure 26(d)'s progenitor was this Court's
7 Committee on Civil Justice Reform, charged in its appointing Order² with
8 developing recommendations "to reduce the cost and time required to resolve civil
9 cases" in Arizona trial courts. The rule took effect July 1, 2018, and to all reports
10 has worked beautifully since.
11

12 Pursuant to Arizona Rule of the Supreme Court 28(a)(4)(A)(iv), the State Bar
13 is aware of only one prior rule change petition seeking changes to expedited dispute
14 resolution procedures within the past five years. The Honorable Greg Sakall filed R-
15 22-0048 in December 2022, not to seek a substantive change to Rule 26(d), but to
16 provide clarity and promote further efficiency by setting a short deadline for
17 responding parties to prepare their portion of a joint statement of discovery or
18 disclosure dispute.³
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23 ¹ See R-17-0010, Pet'n by Committee on Civil Justice Reform, at 9, filed January
24 10, 2017, available at <https://rulesforum.azcourts.gov/Rules-Forum/aft/680>.

25 ² Admin. Ord. 2015-126.

³ The Petition was denied at the December 2023 rules agenda.

1 The State Bar opposed that petition in a comment filed May 1, 2023, and in
2 so commenting noted its ongoing work that led to the filing of this Petition.⁴ The
3 State Bar noted that its study and work in this area had been ongoing for multiple
4 years and recommended that the Court avoid piecemeal changes to the expedited
5 dispute resolution rule in favor of adopting an expanded, omnibus rule when the time
6 was right. The State Bar respectfully submits that that time is now.
7

8 The rationales for this expansion match those put forth by the Committee on
9 Civil Justice Reform and Judge Sakall—the State Bar seeks to reduce the cost and
10 time required to resolve civil cases, as well as to promote clarity and further
11 efficiencies by providing tools to resolve additional common civil litigation disputes
12 in expedited fashion. The exact areas targeted as ripe for expedited dispute resolution
13 procedures are discussed further below.
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16 **II. PROPOSED RULE 7.5 AND RELATED AMENDMENTS**

17 Moving expedited dispute resolution procedures to the 7-point series of rules
18 in a new Rule 7.5 would visually take them out of the disclosure-and-discovery-only
19 zone near Rule 26 and into “Pleadings and Motions; Pretrial Procedures” more
20 generally. Fans of Rule 26(d) will find proposed Rule 7.5’s three subsections
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25 ⁴ (See Cmt., at 7–8, available at <https://rulesforum.azcourts.gov/Rules-Forum/aft/1372>.)

1 familiar. They are denoted as (a) through (c): “Joint Statement of Dispute,”
2 “Expedited Hearing by the Court,” and “Resolution by Minute Entry Order.” Before
3 this Petition discusses the content of each, it is worth stating briefly on why the State
4 Bar requests expansion of use of these procedures.
5

6 At present, the narrowest construction of Rule 26(d) limits it to “disputes
7 between parties to the action that could properly be addressed in motions for
8 protective order under Rule 26(c) or motions to compel discovery or disclosure
9 under Rule 37(a).” *See* Ariz. R. Civ. P. 26(d)(1).
10

11 Rule 26(d)’s track record in expeditiously resolving disputes that used to
12 inspire full rounds or more of nested briefing⁵ shows a narrow construction and
13 narrow language to be outdated. To the extent Rule 26(d) was an experiment of sorts,
14 it has been a great success and should be expanded. Expanding the language used to
15 set forth these procedures also reduces the risk that parties will attempt to circumvent
16 the rule and claim a narrow reading once called to account.
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19 For example, in *City of Tucson v. Miramar Prop. Inv’rs, L.L.C.*, 2 CA-CV
20 2023-0167, 2024 WL 4815163, at *3 (App. Nov. 18, 2024) (examined for persuasive
21 value only pursuant to Ariz. R. Supreme Ct. 111(c)(1)(C)), a party subpoenaed a
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25 ⁵ Motion to Compel, for example, followed by Response, Reply, Sur-Reply, and so on.

1 nonparty for information instead of bringing a Rule 26(d) dispute when the opposing
2 party had objections to a request for production for that same information. The trial
3 court agreed with the opposing party that Rule 26(d) should have been used and
4 quashed the subpoena. The more expansive language used, the less wiggle room
5 parties and counsel would have to aim around it. The Court of Appeals affirmed.
6

7 Turning from rationale for Rule 7.5 itself to subsection (a) of the proposed
8 rule, it requires parties with a dispute to which the rule applies to file a three-page
9 joint statement, with each side entitled to submit one and one-half of those pages. In
10 cases where there is more than one party on a side or parties with more than one
11 position on a side, the rule language leaves room for trial court discretion in ordering
12 a statement of varied length or additional submissions from all or certain of the
13 parties. The parties must also file a Rule 7.1(h) good-faith consultation certificate
14 and comply with Rule 7.4, which has specific procedures for instances that require
15 joint filings. As in existing Rule 26(d), exhibits are generally disallowed, but the
16 experiences of State Bar members (both judicial and lawyer members) dictate a
17 recommendation that the new rule provide that the parties may attach “any proposed
18 amended pleading, discovery request, objection, or response directly applicable to
19 the dispute” to their joint statement of dispute.
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24 Other artifacts of Rule 26(d) in proposed Rule 7.5(a) include advising of the
25 purposes of the joint statement (“to notify the court of the dispute, and to make a

1 record of the relief sought”) and advising that additional briefing or other
2 submissions on the dispute are permitted only after the trial court orders them.

3
4 In turn, proposed Rule 7.5(b) and (c) adhere closely to what are now Rule
5 26(d)(3) and (d)(4), in providing for an expedited hearing by the trial court on the
6 dispute and for a written order or ruling, respectively. Similar to the last sentence of
7 Rule 26(d)(4), proposed Rule 7.5(c) provides in its last sentence: “After resolution,
8 a party may file with the court materials necessary to create a record of the dispute.”
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10 This preserves matters more fully for special action review, if appropriate, or later,
11 for review on appeal. It also gives trial courts a better record for continued review
12 and reflection; disclosure and discovery are not a static but rather an evolving
13 process—all benefit if the trial court has optimal information and bases for either
14 confirming the rulings made or, at times, changing its mind.
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16 **RULE 15(a)**

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18 Arizona Rule of Civil Procedure 15(a), on amendments to pleadings before
19 trial, is ripe for application of the expedited dispute resolution procedure—motions
20 for leave to amend a pleading are some of the most common filings on our trial
21 courts’ dockets, but are often not vehemently contested, if they are at all. Delaying
22 a matter still in the pleading stage or pausing ongoing disclosure and discovery to
23 allow for full briefing on a motion to amend a pleading causes unnecessary delays
24 and increased costs. The time limits on discovery set forth in Rule 26.2(f) usually do
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1 not begin running until the pleadings are considered closed. *Cf.* Ariz. R. Civ. P.
2 26.2(f) (“The time to complete discovery runs from the date of the Early Meeting . .
3 ..”).
4

5 This Petition recommends requiring parties—via the addition of a last
6 sentence to Arizona Rule of Civil Procedure 15(a)(2)—to use the Rule 7.5 expedited
7 dispute resolution procedure in cases where a party is seeking to amend its pleading,
8 but the written consent of all opposing parties has not been obtained. Rules 15(a)(4)
9 and (5) bear some conforming changes to facilitate that main change, and include,
10 in Rule 15(a)(4), express permission that the proposed amended pleading can be
11 attached to the joint statement of dispute.
12

13 **RULE 26(d)**

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15 With most of its current contents transported to proposed Rule 7.5 and
16 broadened, Rule 26(d) does retain two provisions. The first, “Generally,” provides
17 that disputes between parties that could properly be addressed under Rule 26(c)
18 (Protective Orders) or “any discovery or disclosure dispute” must use the expedited
19 procedure for resolving disputes set forth in Rule 7.5. Second, Rule 26(d) would
20 retain the necessary provision, currently in Rule 26(d)(5) but proposed for 26(d)(2),
21 that there is nothing in the procedures for expedited resolution that limits the ability
22 of the parties to seek court intervention by phone when on the record during a
23 deposition. A revised Rule 26(d) would eliminate ambiguity and redundancy within
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1 the rules, providing clarity concerning the scope and application of proposed Rule
2 7.5.

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4 **RULE 37(a)**

5 Only simple proposed changes are eyed for Rule 37(a), on compelling
6 disclosure and discovery. There are seven cross-references to Rule 26(d) within that
7 rule that should be changed to cross-reference Rule 7.5 once adopted.

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9 **RULE 45(c)(6)(C)**

10 Rule 45(c)(6)(C), Duty to Confer, currently protects the right of a subpoenaed
11 nonparty to refuse participation in expedited dispute resolution procedures, with the
12 idea being that nonparties who did not invite the trials of litigation upon themselves,
13 but rather had them thrust upon their plate via subpoena, should be eligible for the
14 due process of full briefing of these issues should they seek it. As with Rule 37(a),
15 the only proposed amendment here is a simple cross-reference fix.
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18 **RULE 45.2(d)**

19 Rule 45.2(d), on dispute resolution procedures related to preservation requests
20 made in already pending actions, would contain a simple cross-reference fix in Rule
21 45.2(d)(1). And, in Rule 45.2(d)(2), the State Bar proposes to make express that
22 nonparties in receipt of preservation requests related to pending actions have the
23 option to use Rule 7.5 procedures in lieu of filing a Rule 26(c) protective order
24 motion. As noted above, nonparties should not be required to use expedited dispute
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1 resolution procedures, but the proposed changes to Rule 45.2(d)(2) evince their
2 options: Nonparties may use those procedures or may also begin full briefing with a
3 Rule 26(c) motion.
4

5 **III. CONCLUSION**

6 The State Bar of Arizona asks that this Court continue the exemplary path
7 begun when it adopted the work of the Committee on Civil Justice Reform, including
8 Arizona Rule of Civil Procedure 26(d)—the Expedited Procedure for Resolving
9 Discovery and Disclosure Disputes. Adopting an omnibus expedited dispute
10 resolution rule applicable in the ways noted above will only further reduce the
11 burdens and expenses of civil litigation in Arizona.
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14 For the foregoing reasons, the State Bar of Arizona respectfully requests that
15 the Court adopt the proposed new rule and rule changes discussed above and shown
16 in the appendices to this Petition.
17

18 RESPECTFULLY SUBMITTED this 12th day of January, 2026.

19 *Jessica J. Fotinos*
20

21 Jessica J. Fotinos
22 General Counsel

23 Electronic copy filed with the
24 Clerk of the Supreme Court of Arizona
25 this 12th day of January, 2026.

by: PSeguin

APPENDIX A

APPENDIX A - Redline

Additions to the text of a rule are shown by underscoring and deletions are shown by ~~strike-through~~.

Rule 7.5. Expedited Procedure for Resolving Certain Disputes

(a) Joint Statement of Dispute. If the parties have a dispute to which these expedited procedures apply, they must file with the court a joint statement of dispute. The joint statement must not exceed 3 pages of explanatory text, with each side entitled to submit one and one-half pages of that text. The parties must also attach a good faith consultation certificate complying with Rule 7.1(h) and must comply with Rule 7.4. Unless the court orders otherwise, the parties may not attach exhibits, other than any proposed amended pleading, discovery request, objection, or response directly applicable to the dispute. The purposes of the joint statement are to notify the court of the dispute, and to make a record of the relief sought. Additional briefing or other submissions on the dispute are permitted only if the court orders it.

(b) Expedited Hearing by the Court. The court, on its own motion or upon a request by a party to the dispute, should schedule a hearing at the earliest convenient time, unless the court determines that a hearing would not assist in the resolution of the dispute or there is otherwise good cause to rule on the dispute without a hearing.

(c) Resolution by Minute Entry, Order. The court must issue a written order or written ruling setting forth the dispute's resolution. After resolution, a party may file with the court materials necessary to create a record of the dispute.

Rule 15. Amended and Supplemental Pleadings

(a) Amendments Before Trial.

(1) *Amending as a Matter of Course.* A party may amend its pleading once as a matter of course:

(A) no later than 21 days after serving it if the pleading is one to which no responsive pleading is permitted; or

(B) no later than 21 days after a responsive pleading is served if the pleading is one to which a responsive pleading is required or, if a motion under Rule 12(b), (e), or (f) is served, on or before the date on which a response to the motion is due, whichever is earlier.

(2) *Other Amendments.* In all other instances, a party may amend its pleading only with leave of court or with the written consent of all opposing parties who have appeared in the action. Leave to amend must be freely given when justice requires. Unless the court decides to permit full briefing, a party seeking to amend its pleadings where written consent of all opposing parties has not been obtained must use the expedited procedure for resolving disputes set forth in Rule 7.5.

(3) *Effect on Pending Motions.* After the filing of a motion under Rule 12(b), (e), or (f), amending a pleading as a matter of course does not, by itself, make moot the motion as to the adequacy of the pleading's allegations as revised in the amended pleading and does not relieve a party opposing the motion from filing a timely response.

(4) *Proposed Pleading as an Exhibit.* A party ~~seeking~~~~moving~~ ~~for~~ leave to amend a pleading must attach a copy of the proposed amended pleading as an exhibit to the joint statement of dispute or to the motion if the court decided to permit full briefing. The exhibit must show the respects in which the proposed pleading differs from the existing pleading by bracketing or striking through the text to be deleted and underlining the text to be added.

(5) *Filing and Response.* If ~~a motion for~~ leave to amend is granted, the ~~amending~~~~moving~~ party must file and serve the amended pleading within 10 days after the entry of the order granting ~~the motion~~ leave, unless the court orders otherwise. If the pleading is one to which a responsive pleading is required, an opposing party must answer or otherwise respond to an amended pleading within the time remaining for response to the original pleading or within 10 days after the amended pleading is served, whichever is later, unless the court orders otherwise.

Rule 26. General Provisions Governing Discovery

(a) – (c) [No change]

(d) Expedited Procedure for Resolving Discovery and Disclosure Disputes.

(1) Generally. Unless the court decides to permit full briefing or all parties stipulate to the relief sought, a party seeking relief due to a dispute between parties that could properly be addressed under Rule 26(c) or any discovery or disclosure dispute must use the expedited procedure for resolving disputes set forth in Rule 7.5.

~~(1) When Applicable.~~ Unless the court decides to permit full briefing, this procedure applies to all disputes between parties to the action that could properly be addressed in motions for protective order under Rule 26(c) or motions to compel discovery or disclosure under Rule 37(a). The filings in a Rule 26(d) proceeding are not motions.

~~(2) Joint Statement of Discovery or Disclosure Dispute.~~ When the parties have a dispute that could properly be addressed under Rule 26(c) or Rule 37(a), they must file with the court a joint statement of discovery or disclosure dispute. The joint statement must not exceed 3 pages of explanatory text, with each party entitled to submit one and one-half pages of that text. The parties must also attach a good faith consultation certificate complying with Rule 7.1(h) and may not attach exhibits. The purposes of the joint statement are to notify the court of the dispute, and to make a record of the discovery or disclosure sought. Briefing on the dispute is permitted only if ordered by the court.

~~(3) Expedited Hearing by the Court.~~ Unless the court orders otherwise, the parties may jointly contact the court by telephone to request a hearing on the joint statement of discovery dispute. The court should schedule the matter at the earliest convenient time, whether by telephone or in person.

~~(4) Resolution by Minute Entry.~~ The court must issue a minute entry setting forth the resolution of the discovery dispute. After resolution, a party may file with the court those materials necessary to create a record of the discovery or disclosure the court permitted or denied.

(5-2) *Depositions*. Nothing in Rule 26(d)(1) limits the ability of the parties to seek the intervention of the court by telephone during a deposition without the necessity of filing a written statement of discovery dispute.

Rule 37. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions

(a) Motion for Order Compelling Disclosure or Discovery.

(1) *Generally*. Subject to Rule ~~7.526(d)~~, a party may move for an order compelling disclosure or discovery. The party must serve the motion on all other parties and affected persons and must attach a good faith consultation certificate complying with Rule 7.1(h).

(2) *Appropriate Court*. A motion for an order to a party must be made in the court where the action is pending. A motion for an order to a nonparty must be made in the court in the county where the discovery is or will be taken.

(3) Specific Motions.

(A) *To Compel Disclosure*. If a party fails to make a disclosure required by Rule 26.1, any other party may move to compel disclosure and for appropriate sanctions.

(B) *To Compel a Discovery Response*. A party seeking discovery may move for an order compelling an answer, designation, production, or inspection if:

- (i) a deponent fails to answer a question asked under Rule 30 or 31;
- (ii) a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(b)(4);
- (iii) a party fails to answer an interrogatory served under Rule 33;
- (iv) a party fails to produce documents or fails to respond that inspection will be permitted--or fails to permit inspection--as requested under Rule 34; or
- (v) a person fails to produce materials requested in a subpoena served under Rule 45.

(C) *Related to a Deposition*. When taking an oral deposition, the party asking a question may complete or adjourn the examination before moving for an order to compel an answer.

(4) *Evasive or Incomplete Disclosure, Answer, or Response.* For purposes of this rule, the court may treat an evasive or incomplete disclosure, answer, or response as a failure to disclose, answer, or respond.

(5) *Payment of Expenses; Protective Orders.*

(A) If the Motion or Rule ~~7.526(d)~~ Relief Is Granted (or Disclosure or Discovery Is Provided After Filing). In this situation, the court may, after giving an opportunity to be heard, require the party or person whose conduct necessitated the motion or Rule ~~7.526(d)~~ request, the party or attorney advising that conduct, or both, to pay the movant's or requestor's reasonable expenses incurred in making the motion or request, including attorney's fees. But the court may not order this payment if:

(i) the movant or requestor sought relief before attempting in good faith to obtain the disclosure or discovery without court action;

(ii) the opposing party's nondisclosure, response, or objection was substantially justified; or

(iii) other circumstances make an award of expenses unjust.

(B) If the Motion or Rule ~~7.526(d)~~ Relief Is Denied. In this situation, the court may issue any protective order authorized under Rule 26(c) and may, after giving an opportunity to be heard, require the movant, the attorney filing the motion or Rule ~~7.526(d)~~ request, or both, to pay the party or person who opposed the motion or request its reasonable expenses incurred in opposing the motion or request, including attorney's fees. But the court may not order this payment if the motion was substantially justified or other circumstances make an award of expenses unjust.

(C) If the Motion or Rule ~~7.526(d)~~ Relief Is Granted in Part and Denied in Part. In this situation, the court may issue any protective order authorized under Rule 26(c) and may--after giving an opportunity to be heard--apportion the reasonable expenses, including attorney's fees, for the motion or Rule ~~7.526(d)~~ request.

Rule 45. Subpoena

(a) – (b) [No change]

(c) Subpoena to Produce Materials or to Permit Inspection; Duties; Objections.

(1) – (5) [No change]

(6) *Objection Procedures; Duty to Confer.*

(A) – (B) [No change]

(C) *Duty to Confer.* Before bringing any motion to compel, motion to quash, or motion for protective order regarding compliance with a subpoena, the movant must attempt to resolve the dispute by good faith consultation with the opposing party or person. Any motion regarding compliance with a subpoena must be accompanied by a good faith consultation certificate under Rule 7.1(h). Absent agreement of the subpoenaed person, the expedited procedures in Rule ~~7.526(d)~~ do not apply to motions under this rule.

(7) [No change]

Rule 45.2. Dispute Resolution Procedures Regarding Preservation Requests

(a) – (c) [No change]

(d) Dispute Resolution Procedures--Pending Action.

(1) *Parties.* If the parties to a pending action are unable to satisfactorily resolve any dispute regarding the preservation of electronically stored information and seek a resolution from the court, they must follow the procedures in Rule ~~7.526(d)~~.

(2) *Nonparties.* If a preservation request is made to a nonparty in connection with an action pending in superior court, the nonparty may use the procedures for resolving disputes set forth in Rule 7.5 or may move for a Rule 26(c) protective order in the action. If the nonparty moves for a Rule 26(c) protective order, ~~t~~The motion must be accompanied by a Rule 7.1(h) good faith consultation certificate.

(e) – (h) [No change]

APPENDIX B

APPENDIX B - Clean

Rule 7.5. Expedited Procedure for Resolving Certain Disputes

(a) Joint Statement of Dispute. If the parties have a dispute to which these expedited procedures apply, they must file with the court a joint statement of dispute. The joint statement must not exceed 3 pages of explanatory text, with each side entitled to submit one and one-half pages of that text. The parties must also attach a good faith consultation certificate complying with Rule 7.1(h) and must comply with Rule 7.4. Unless the court orders otherwise, the parties may not attach exhibits, other than any proposed amended pleading, discovery request, objection, or response directly applicable to the dispute. The purposes of the joint statement are to notify the court of the dispute, and to make a record of the relief sought. Additional briefing or other submissions on the dispute are permitted only if the court orders it.

(b) Expedited Hearing by the Court. The court, on its own motion or upon a request by a party to the dispute, should schedule a hearing at the earliest convenient time, unless the court determines that a hearing would not assist in the resolution of the dispute or there is otherwise good cause to rule on the dispute without a hearing.

(c) Resolution by Minute Entry, Order. The court must issue a written order or written ruling setting forth the dispute's resolution. After resolution, a party may file with the court materials necessary to create a record of the dispute.

Rule 15. Amended and Supplemental Pleadings

(a) Amendments Before Trial.

(1) *Amending as a Matter of Course.* A party may amend its pleading once as a matter of course:

(A) no later than 21 days after serving it if the pleading is one to which no responsive pleading is permitted; or

(B) no later than 21 days after a responsive pleading is served if the pleading is one to which a responsive pleading is required or, if a motion under Rule 12(b), (e), or (f) is served, on or before the date on which a response to the motion is due, whichever is earlier.

(2) *Other Amendments.* In all other instances, a party may amend its pleading only with leave of court or with the written consent of all opposing parties who have appeared in the action. Leave to amend must be freely given when justice requires. Unless the court decides to permit full briefing, a party seeking to amend its pleadings where written consent of all opposing parties has not been obtained must use the expedited procedure for resolving disputes set forth in Rule 7.5.

(3) *Effect on Pending Motions.* After the filing of a motion under Rule 12(b), (e), or (f), amending a pleading as a matter of course does not, by itself, make moot the motion as to the adequacy of the pleading's allegations as revised in the amended pleading and does not relieve a party opposing the motion from filing a timely response.

(4) *Proposed Pleading as an Exhibit.* A party seeking leave to amend a pleading must attach a copy of the proposed amended pleading as an exhibit to the joint statement of dispute or to the motion if the court decided to permit full briefing. The exhibit must show the respects in which the proposed pleading differs from the existing pleading by bracketing or striking through the text to be deleted and underlining the text to be added.

(5) *Filing and Response.* If leave to amend is granted, the amending party must file and serve the amended pleading within 10 days after the entry of the order granting leave, unless the court orders otherwise. If the pleading is one to which a responsive pleading is required, an opposing party must answer or otherwise respond to an amended pleading within the time remaining for response to the original pleading or within 10 days after the amended pleading is served, whichever is later, unless the court orders otherwise.

Rule 26. General Provisions Governing Discovery

(a) – (c) [No change]

(d) Expedited Procedure for Resolving Discovery and Disclosure Disputes.

(1) *Generally.* Unless the court decides to permit full briefing or all parties stipulate to the relief sought, a party seeking relief due to a dispute between parties

that could properly be addressed under Rule 26(c) or any discovery or disclosure dispute must use the expedited procedure for resolving disputes set forth in Rule 7.5.

(2) *Depositions*. Nothing in Rule 26(d)(1) limits the ability of the parties to seek the intervention of the court by telephone during a deposition without the necessity of filing a written statement of discovery dispute.

Rule 37. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions

(a) Motion for Order Compelling Disclosure or Discovery.

(1) *Generally*. Subject to Rule 7.5, a party may move for an order compelling disclosure or discovery. The party must serve the motion on all other parties and affected persons and must attach a good faith consultation certificate complying with Rule 7.1(h).

(2) *Appropriate Court*. A motion for an order to a party must be made in the court where the action is pending. A motion for an order to a nonparty must be made in the court in the county where the discovery is or will be taken.

(3) Specific Motions.

(A) *To Compel Disclosure*. If a party fails to make a disclosure required by Rule 26.1, any other party may move to compel disclosure and for appropriate sanctions.

(B) *To Compel a Discovery Response*. A party seeking discovery may move for an order compelling an answer, designation, production, or inspection if:

- (i) a deponent fails to answer a question asked under Rule 30 or 31;
- (ii) a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(b)(4);
- (iii) a party fails to answer an interrogatory served under Rule 33;
- (iv) a party fails to produce documents or fails to respond that inspection will be permitted--or fails to permit inspection--as requested under Rule 34; or
- (v) a person fails to produce materials requested in a subpoena served under Rule 45.

(C) Related to a Deposition. When taking an oral deposition, the party asking a question may complete or adjourn the examination before moving for an order to compel an answer.

(4) *Evasive or Incomplete Disclosure, Answer, or Response.* For purposes of this rule, the court may treat an evasive or incomplete disclosure, answer, or response as a failure to disclose, answer, or respond.

(5) *Payment of Expenses; Protective Orders.*

(A) If the Motion or Rule 7.5 Relief Is Granted (or Disclosure or Discovery Is Provided After Filing). In this situation, the court may, after giving an opportunity to be heard, require the party or person whose conduct necessitated the motion or Rule 7.5 request, the party or attorney advising that conduct, or both, to pay the movant's or requestor's reasonable expenses incurred in making the motion or request, including attorney's fees. But the court may not order this payment if:

(i) the movant or requestor sought relief before attempting in good faith to obtain the disclosure or discovery without court action;

(ii) the opposing party's nondisclosure, response, or objection was substantially justified; or

(iii) other circumstances make an award of expenses unjust.

(B) If the Motion or Rule 7.5 Relief Is Denied. In this situation, the court may issue any protective order authorized under Rule 26(c) and may, after giving an opportunity to be heard, require the movant, the attorney filing the motion or Rule 7.5 request, or both, to pay the party or person who opposed the motion or request its reasonable expenses incurred in opposing the motion or request, including attorney's fees. But the court may not order this payment if the motion was substantially justified or other circumstances make an award of expenses unjust.

(C) If the Motion or Rule 7.5 Relief Is Granted in Part and Denied in Part. In this situation, the court may issue any protective order authorized under Rule 26(c) and may--after giving an opportunity to be heard--apportion the reasonable expenses, including attorney's fees, for the motion or Rule 7.5 request.

Rule 45. Subpoena

(a) – (b) [No change]

(c) Subpoena to Produce Materials or to Permit Inspection; Duties; Objections.

(1)– (5) [No change]

(6) *Objection Procedures; Duty to Confer.*

(A) – (B) [No change]

(C) *Duty to Confer.* Before bringing any motion to compel, motion to quash, or motion for protective order regarding compliance with a subpoena, the movant must attempt to resolve the dispute by good faith consultation with the opposing party or person. Any motion regarding compliance with a subpoena must be accompanied by a good faith consultation certificate under Rule 7.1(h). Absent agreement of the subpoenaed person, the expedited procedures in Rule 7.5 do not apply to motions under this rule.

(7) [No change]

45.2. Dispute Resolution Procedures Regarding Preservation Requests

(a) – (c) [No change]

(d) Dispute Resolution Procedures--Pending Action.

(1) *Parties.* If the parties to a pending action are unable to satisfactorily resolve any dispute regarding the preservation of electronically stored information and seek a resolution from the court, they must follow the procedures in Rule 7.5.

(2) *Nonparties.* If a preservation request is made to a nonparty in connection with an action pending in superior court, the nonparty may use the procedures for resolving disputes set forth in Rule 7.5 or may move for a Rule 26(c) protective order in the action. If the nonparty moves for a Rule 26(c) protective order, the motion must be accompanied by a Rule 7.1(h) good faith consultation certificate.

(e) – (h) [No change]