

IN THE SUPREME COURT OF OHIO

YUNIS ADON EL EXPRESS TRUST a Natural Person DBA JONAH BURTON ADDIS PLANTIFF/CLAIMANT, V	) ) CIVIL ACTION FILE ) ) Case No.: ) ) <u>AND ALL ASSOCIATED CASE</u> ) <u>NO. WITH THIS MATTER</u> ) <u>Motion Bill Of Complaint</u> ) MOTION FOR JOINING MOTIONS FR Civil P ) 12 (g)
DEFENDANT/RESPONDENT (S) KIMBERLY HALL DBA ODJFS DIRECTOR, ARMOND BUDISH d/b/a CUYAHOGA COUNTY EXECUTIVE OHIO DEPARTMENT OF JOB AND FAMILY SERVICES	MOTION TO TAKE JUDICIAL NOTICE OF ADJU- DICATIVE FACTS MOTION TO BE HEARD ON ADJUDICATIVE FACTS MOTION TO COMPEL DISCOVERY MOTION FOR TRIAL BY JURY MOTION FOR SPEEDY TRIAL MOTION FOR SUMMARY JUDGMENT MOTION FOR JUDGMENT AS a MATTER OF LAW MOTION TO RECORD Motion for Video Hearing COIVD 19
<b>Agency:</b> OFFICE OF CHILD SUPPORT ENFORCEMENT AGENCY	Verified Complaint Right To A Trail By Jury Jury Trial-A trial in which the factual issues are determined by a jury, not by the judge. Blacks Law Dictionary 2nd edition.

**MOTION FOR JOINING MOTIONS**

COMES NOW, Claimant Addis, Jonah B a natural person and Authorized Person of the YUNIS ADON El EXPRESS TRUST who is First Lien Holder, Registered Agent and real party of interest of, JONAH BURTON HOLMES dba JONAH BURTON ADDIS (hereinafter "Claimant") making Special Appearance request [Motion for Joining Motions] to be granted pursuant to [FR Civil P 12(g) [Exhibit H]]. Claimant requests [Motion to Take Judicial Notice of Adjudicative Facts] AND [Motion to Be Heard On Adjudicative Facts] to be granted pursuant to [1776 U.S. Constitution Bill of Rights Amendment I [Exhibit E]] AND [1877 Georgia Constitution Art. I Section I Par. III, Par. IV [Exhibit F]].

**NOTICE OF MOTION TO JOINING MOTIONS**

Authenticated Copy of the 1776 U.S. Constitution [Exhibit E]

Authenticated Copy of the 1877 Georgia Constitution [Exhibit F]

Authenticated Copy of the Speedy Trial Act of 1974 [Exhibit G]

Authenticated Copy of the Federal Rules of Civil Procedure Rule 12(g) [Exhibit H]

Authenticated Copy of Trinsey v Pagliaro [Exhibit I] Authenticated Copy of Federal Rules of Civil Procedure Rule 5.1, Constitutional Challenge to a Statute—Notice, Certification, and Intervention [Exhibit J]

Authenticated Copy of U.S. Constitution Clause 2. Supreme Law of Land [Exhibit K]

Authenticated Copy of the Federal Rules of Civil Procedure Rule 30(a) (3) (A) (B) [Exhibit L]

Authenticated Copy of the Federal Rules of Civil Procedure Rule 50 [Exhibit M]

Affidavit To Record In Court [Exhibit N]

Authenticated Copy of the Federal Rules of Civil Procedure Rule 12(f) [Exhibit H]

Authenticated Copy of the Federal Rules of Civil Procedure Rule 37(A) [Exhibit O]

Authenticated Copy of the Federal Rules of Civil Procedure Rule 41(b) [Exhibit P]

Authenticated Copy of the Federal Rules of Civil Procedure Rule 56 [Exhibit Q]

Affidavit of Rebuttal [Exhibit R]

[FR Civil P 12(f)] [Exhibit H]] the following charges, accusations and allegations;

1. Case No:CU01105388, SETS No: 7032394590, [Exhibit A] to be dismissed pursuant to [1776 U.S. Constitution[Exhibit E]], [1877 Georgia Constitution[Exhibit F]], [FR Civil P Rule 5.1, Constitutional Challenge to a Status- Notice, Certification, and Intervention[Exhibit J]], [U.S. Constitution Clause 2. Supreme Law of Land[Exhibit K]]

Claimant/Movant requests [Motion to Dismiss [ FR Civil P 41(b)] ] AND [Motion to Strike Claimant requests [Motion to Compel Discovery pursuant to [ FR Civil P 37(a)

**NOTICE OF MOTION TO JOINING MOTIONS**

1.Claimant attests that Kimberly Hall ODJFS Director, Armond Budish d/b/a Cuyahoga County Executive [Ohio Department Of Job And Family Services Office Of Child Support Enforcement Agency violated the U.S. and State of OHIO Public Oath of Office] by: unconstitutionality applying

2.Ohio Revised code. Title 31 XXXI §3121.36.

i.Ohio Revised code. Title 31 XXXI §3121.03

ii. Ohio Revised code. Title 31 XXXI §5101:12 by extorting money from me without my consent to participate in a health care coverage program administered by the state of Ohio. Violating Ohio Constitution (1851) Article I Bill Of Rights Paragraph (A) Preservation Of the Freedom to Choose Health Care Coverage Pursuant to Ohio Constitution, Oath of Officers §7, (1851) Art.I Bill of Rights Section 1., PAR VI, Par. XXI (A) Section II. Legislative PAR XXVIII, ART VIII Sect 5.

iii. Pursuant to [1877 Georgia Constitution Art. 1 Sec. 1 Par. I, II, III, IV, XVI, XIX, XXV, Sec. III Par. II, Sec IV Par. I, II, Sec. V Par. I, II [Exhibit F] AND [1776 U.S. Constitution Bill of Rights Amendment 4, 5, 6, 8, 13, 14, 15 [Exhibit E]

3. Claimant attests that [Ohio Department Of Job And Family Services Office Of Child Support Enforcement Agency Kimberly Hall ODJFS Director, Armond Budish d/b/a Cuyahoga County Executive violated her/his U.S. and State of OHIO Public Oath of Office]

by unconstitutionally blocking my right to travel without

committing a crime and illegally seized trust property pursuant to Articles of Confederation Section I PAR IV. Pursuant to Treaty of Tripoli Peace and Friendship 1796 Article 4. Pursuant to Ohio Constitution 1851 Art I Bill of Rights § 19, Pursuant to [1877 Georgia Constitution Art. 1 Sec. 1 Par. I, II, III, IV, XVI, XIX, XXV, Sec. III Par. II, Sec IV Par. I, II, Sec. V Par. I, II [Exhibit F] AND [1776 U.S. Constitution Bill of Rights Amendment 4, 5, 6, 8, 13, 14, 15 [Exhibit E]]

6. Claimant seeks all, claims and accusations against Claimants' property [JONAH B ADDIS, JONAH ADDIS, JONAH BURTON ADDIS, JONAH BURTON HOLMES] be dismissed.

Claimant request [Motion To Record to be granted pursuant to [FR Civil P 30(a) (3) (A) (B) [Exhibit L]]] with supporting [Affidavit To Record In Court [Exhibit N]].

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Given under my hand and seal of office this 16th day of October 2020.



UCC 1-306, UCC 1-308, UCC 1-301, UCC 1-307  
Addis, Jonah B, Authorized Person of  
Yunis Adon El Express Trust  
Dba JONAH BURTON ADDIS  
c/o [3873] Lake Sanctuary Way  
Atlanta [Georgia] stateRepublic

Near; [30349]  
[yunisadonel@gmail.com](mailto:yunisadonel@gmail.com)



FEDERAL RULES  
OF  
CIVIL PROCEDURE

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DECEMBER 1, 2017



Printed for the use  
of  
THE COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES

115TH CONGRESS  
1st Session }

COMMITTEE PRINT

{ No. 3

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(II)



## FOREWORD

This document contains the Federal Rules of Civil Procedure together with forms, as amended to December 1, 2017. The rules have been promulgated and amended by the United States Supreme Court pursuant to law, and further amended by Acts of Congress. This document has been prepared by the Committee in response to the need for an official up-to-date document containing the latest amendments to the rules.

For the convenience of the user, where a rule has been amended a reference to the date the amendment was promulgated and the date the amendment became effective follows the text of the rule.

The Committee on Rules of Practice and Procedure and the Advisory Committee on the Federal Rules of Civil Procedure, Judicial Conference of the United States, prepared notes explaining the purpose and intent of the amendments to the rules. The Committee Notes may be found in the Appendix to Title 28, United States Code, following the particular rule to which they relate.



*Chairman, Committee on the Judiciary.*

DECEMBER 1, 2017.

(III)

**(d) FILING.**

(1) *Required Filings; Certificate of Service.* Any paper after the complaint that is required to be served—together with a certificate of service—must be filed within a reasonable time after service. But disclosures under Rule 26(a)(1) or (2) and the following discovery requests and responses must not be filed until they are used in the proceeding or the court orders filing: depositions, interrogatories, requests for documents or tangible things or to permit entry onto land, and requests for admission.

(2) *How Filing Is Made—In General.* A paper is filed by delivering it:

(A) to the clerk; or

(B) to a judge who agrees to accept it for filing, and who must then note the filing date on the paper and promptly send it to the clerk.

(3) *Electronic Filing, Signing, or Verification.* A court may, by local rule, allow papers to be filed, signed, or verified by electronic means that are consistent with any technical standards established by the Judicial Conference of the United States. A local rule may require electronic filing only if reasonable exceptions are allowed. A paper filed electronically in compliance with a local rule is a written paper for purposes of these rules.

(4) *Acceptance by the Clerk.* The clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice.

(As amended Jan. 21, 1963, eff. July 1, 1963; Mar. 30, 1970, eff. July 1, 1970; Apr. 29, 1980, eff. Aug. 1, 1980; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 23, 1996, eff. Dec. 1, 1996; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 23, 2001, eff. Dec. 1, 2001; Apr. 12, 2006, eff. Dec. 1, 2006; Apr. 30, 2007, eff. Dec. 1, 2007.)

**Rule 5.1. Constitutional Challenge to a Statute—Notice, Certification, and Intervention**

(a) **NOTICE BY A PARTY.** A party that files a pleading, written motion, or other paper drawing into question the constitutionality of a federal or state statute must promptly:

(1) file a notice of constitutional question stating the question and identifying the paper that raises it, if:

(A) a federal statute is questioned and the parties do not include the United States, one of its agencies, or one of its officers or employees in an official capacity; or

(B) a state statute is questioned and the parties do not include the state, one of its agencies, or one of its officers or employees in an official capacity; and

(2) serve the notice and paper on the Attorney General of the United States if a federal statute is questioned—or on the state attorney general if a state statute is questioned—either by certified or registered mail or by sending it to an electronic address designated by the attorney general for this purpose.

(b) **CERTIFICATION BY THE COURT.** The court must, under 28 U.S.C. §2403, certify to the appropriate attorney general that a statute has been questioned.

(c) INTERVENTION; FINAL DECISION ON THE MERITS. Unless the court sets a later time, the attorney general may intervene within 60 days after the notice is filed or after the court certifies the challenge, whichever is earlier. Before the time to intervene expires, the court may reject the constitutional challenge, but may not enter a final judgment holding the statute unconstitutional.

(d) NO FORFEITURE. A party's failure to file and serve the notice, or the court's failure to certify, does not forfeit a constitutional claim or defense that is otherwise timely asserted.

(As added Apr. 12, 2006, eff. Dec. 1, 2006; amended Apr. 30, 2007, eff. Dec. 1, 2007.)

**Rule 5.2. Privacy Protection For Filings Made with the Court**

(a) REDACTED FILINGS. Unless the court orders otherwise, in an electronic or paper filing with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, or a financial-account number, a party or nonparty making the filing may include only:

- (1) the last four digits of the social-security number and taxpayer-identification number;
- (2) the year of the individual's birth;
- (3) the minor's initials; and
- (4) the last four digits of the financial-account number.

(b) EXEMPTIONS FROM THE REDACTION REQUIREMENT. The redaction requirement does not apply to the following:

- (1) a financial-account number that identifies the property allegedly subject to forfeiture in a forfeiture proceeding;
- (2) the record of an administrative or agency proceeding;
- (3) the official record of a state-court proceeding;
- (4) the record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed;
- (5) a filing covered by Rule 5.2(c) or (d); and
- (6) a pro se filing in an action brought under 28 U.S.C. §§ 2241, 2254, or 2255.

(c) LIMITATIONS ON REMOTE ACCESS TO ELECTRONIC FILES; SOCIAL-SECURITY APPEALS AND IMMIGRATION CASES. Unless the court orders otherwise, in an action for benefits under the Social Security Act, and in an action or proceeding relating to an order of removal, to relief from removal, or to immigration benefits or detention, access to an electronic file is authorized as follows:

(1) the parties and their attorneys may have remote electronic access to any part of the case file, including the administrative record;

(2) any other person may have electronic access to the full record at the courthouse, but may have remote electronic access only to:

- (A) the docket maintained by the court; and
- (B) an opinion, order, judgment, or other disposition of the court, but not any other part of the case file or the administrative record.

(d) FILINGS MADE UNDER SEAL. The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the person who made the filing to file a redacted version for the public record.

## (c) SANCTIONS.

(1) *In General.* If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

(2) *Motion for Sanctions.* A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion must be served under Rule 5, but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. If warranted, the court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion.

(3) *On the Court's Initiative.* On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).

(4) *Nature of a Sanction.* A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.

(5) *Limitations on Monetary Sanctions.* The court must not impose a monetary sanction:

(A) against a represented party for violating Rule 11(b)(2); or

(B) on its own, unless it issued the show-cause order under Rule 11(c)(3) before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(6) *Requirements for an Order.* An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.

(d) INAPPLICABILITY TO DISCOVERY. This rule does not apply to disclosures and discovery requests, responses, objections, and motions under Rules 26 through 37.

(As amended Apr. 28, 1983, eff. Aug. 1, 1983; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 30, 2007, eff. Dec. 1, 2007.)

**Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing**

## (a) TIME TO SERVE A RESPONSIVE PLEADING.

(1) *In General.* Unless another time is specified by this rule or a federal statute, the time for serving a responsive pleading is as follows:

(3) *Method of Recording.*

(A) *Method Stated in the Notice.* The party who notices the deposition must state in the notice the method for recording the testimony. Unless the court orders otherwise, testimony may be recorded by audio, audiovisual, or stenographic means. The noticing party bears the recording costs. Any party may arrange to transcribe a deposition.

(B) *Additional Method.* With prior notice to the deponent and other parties, any party may designate another method for recording the testimony in addition to that specified in the original notice. That party bears the expense of the additional record or transcript unless the court orders otherwise.

(4) *By Remote Means.* The parties may stipulate—or the court may on motion order—that a deposition be taken by telephone or other remote means. For the purpose of this rule and Rules 28(a), 37(a)(2), and 37(b)(1), the deposition takes place where the deponent answers the questions.

(5) *Officer's Duties.*

(A) *Before the Deposition.* Unless the parties stipulate otherwise, a deposition must be conducted before an officer appointed or designated under Rule 28. The officer must begin the deposition with an on-the-record statement that includes:

- (i) the officer's name and business address;
- (ii) the date, time, and place of the deposition;
- (iii) the deponent's name;
- (iv) the officer's administration of the oath or affirmation to the deponent; and
- (v) the identity of all persons present.

(B) *Conducting the Deposition; Avoiding Distortion.* If the deposition is recorded nonstenographically, the officer must repeat the items in Rule 30(b)(5)(A)(i)–(iii) at the beginning of each unit of the recording medium. The deponent's and attorneys' appearance or demeanor must not be distorted through recording techniques.

(C) *After the Deposition.* At the end of a deposition, the officer must state on the record that the deposition is complete and must set out any stipulations made by the attorneys about custody of the transcript or recording and of the exhibits, or about any other pertinent matters.

(6) *Notice or Subpoena Directed to an Organization.* In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. The named organization must then designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. A subpoena must advise a nonparty organization of its duty to make this designation. The persons designated must testify about information known or reasonably available to the organization. This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules.

## (c) EXAMINATION AND CROSS-EXAMINATION; RECORD OF THE EXAMINATION; OBJECTIONS; WRITTEN QUESTIONS.

(1) *Examination and Cross-Examination.* The examination and cross-examination of a deponent proceed as they would at trial under the Federal Rules of Evidence, except Rules 103 and 615. After putting the deponent under oath or affirmation, the officer must record the testimony by the method designated under Rule 30(b)(3)(A). The testimony must be recorded by the officer personally or by a person acting in the presence and under the direction of the officer.

(2) *Objections.* An objection at the time of the examination—whether to evidence, to a party's conduct, to the officer's qualifications, to the manner of taking the deposition, or to any other aspect of the deposition—must be noted on the record, but the examination still proceeds; the testimony is taken subject to any objection. An objection must be stated concisely in a nonargumentative and nonsuggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(3).

(3) *Participating Through Written Questions.* Instead of participating in the oral examination, a party may serve written questions in a sealed envelope on the party noticing the deposition, who must deliver them to the officer. The officer must ask the deponent those questions and record the answers verbatim.

## (d) DURATION; SANCTION; MOTION TO TERMINATE OR LIMIT.

(1) *Duration.* Unless otherwise stipulated or ordered by the court, a deposition is limited to one day of 7 hours. The court must allow additional time consistent with Rule 26(b)(1) and (2) if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.

(2) *Sanction.* The court may impose an appropriate sanction—including the reasonable expenses and attorney's fees incurred by any party—on a person who impedes, delays, or frustrates the fair examination of the deponent.

(3) *Motion to Terminate or Limit.*

(A) *Grounds.* At any time during a deposition, the deponent or a party may move to terminate or limit it on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party. The motion may be filed in the court where the action is pending or the deposition is being taken. If the objecting deponent or party so demands, the deposition must be suspended for the time necessary to obtain an order.

(B) *Order.* The court may order that the deposition be terminated or may limit its scope and manner as provided in Rule 26(c). If terminated, the deposition may be resumed only by order of the court where the action is pending.

(C) *Award of Expenses.* Rule 37(a)(5) applies to the award of expenses.

it is, or has been, otherwise furnished or made available for inspection and copying.

(3) *Time to Respond; Effect of Not Responding.* A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney. A shorter or longer time for responding may be stipulated to under Rule 29 or be ordered by the court.

(4) *Answer.* If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

(5) *Objections.* The grounds for objecting to a request must be stated. A party must not object solely on the ground that the request presents a genuine issue for trial.

(6) *Motion Regarding the Sufficiency of an Answer or Objection.* The requesting party may move to determine the sufficiency of an answer or objection. Unless the court finds an objection justified, it must order that an answer be served. On finding that an answer does not comply with this rule, the court may order either that the matter is admitted or that an amended answer be served. The court may defer its final decision until a pretrial conference or a specified time before trial. Rule 37(a)(5) applies to an award of expenses.

(b) **EFFECT OF AN ADMISSION; WITHDRAWING OR AMENDING IT.** A matter admitted under this rule is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended. Subject to Rule 16(e), the court may permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits. An admission under this rule is not an admission for any other purpose and cannot be used against the party in any other proceeding.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Mar. 30, 1970, eff. July 1, 1970; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 30, 2007, eff. Dec. 1, 2007.)

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

(a) **MOTION FOR AN ORDER COMPELLING DISCLOSURE OR DISCOVERY.**

(1) *In General.* On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action.

(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 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(a), 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. This motion may be made 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(a)(4);
- (iii) a party fails to answer an interrogatory submitted under Rule 33; or
- (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.

(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.

(4) *Evasive or Incomplete Disclosure, Answer, or Response.* For purposes of this subdivision (a), an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond.

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

(A) *If the Motion Is Granted (or Disclosure or Discovery Is Provided After Filing).* If the motion is granted—or if the disclosure or requested discovery is provided after the motion was filed—the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. But the court must not order this payment if:

- (i) the movant filed the motion 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 Is Denied.* If the motion is denied, the court may issue any protective order authorized under Rule 26(c) and must, after giving an opportunity to be heard, require the movant, the attorney filing the motion, or both to pay the party or deponent who opposed the motion its reasonable expenses incurred in opposing the motion, including attorney's fees. But the court must not order this payment if the motion was substantially justified or other circumstances make an award of expenses unjust.

(C) *If the Motion Is Granted in Part and Denied in Part.* If the motion is granted in part and denied in part, 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 for the motion.

(b) FAILURE TO COMPLY WITH A COURT ORDER.

(1) *Sanctions Sought in the District Where the Deposition Is Taken.* If the court where the discovery is taken orders a deponent to be sworn or to answer a question and the deponent fails to obey, the failure may be treated as contempt of court. If a deposition-related motion is transferred to the court where the action is pending, and that court orders a deponent to be sworn or to answer a question and the deponent fails to obey, the failure may be treated as contempt of either the court where the discovery is taken or the court where the action is pending.

(2) *Sanctions Sought in the District Where the Action Is Pending.*

(A) *For Not Obeying a Discovery Order.* If a party or a party's officer, director, or managing agent—or a witness designated under Rule 30(b)(6) or 31(a)(4)—fails to obey an order to provide or permit discovery, including an order under Rule 26(f), 35, or 37(a), the court where the action is pending may issue further just orders. They may include the following:

(i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;

(ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;

(iii) striking pleadings in whole or in part;

(iv) staying further proceedings until the order is obeyed;

(v) dismissing the action or proceeding in whole or in part;

(vi) rendering a default judgment against the disobedient party; or

(vii) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.

(B) *For Not Producing a Person for Examination.* If a party fails to comply with an order under Rule 35(a) requiring it to produce another person for examination, the court may issue any of the orders listed in Rule 37(b)(2)(A)(i)–(vi), unless the disobedient party shows that it cannot produce the other person.

(C) *Payment of Expenses.* Instead of or in addition to the orders above, the court must order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(c) FAILURE TO DISCLOSE, TO SUPPLEMENT AN EARLIER RESPONSE, OR TO ADMIT.

(1) *Failure to Disclose or Supplement.* If a party fails to provide information or identify a witness as required by Rule 26(a) or

(e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the court, on motion and after giving an opportunity to be heard:

- (A) may order payment of the reasonable expenses, including attorney's fees, caused by the failure;
- (B) may inform the jury of the party's failure; and
- (C) may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(2)(A)(i)–(vi).

(2) *Failure to Admit.* If a party fails to admit what is requested under Rule 36 and if the requesting party later proves a document to be genuine or the matter true, the requesting party may move that the party who failed to admit pay the reasonable expenses, including attorney's fees, incurred in making that proof. The court must so order unless:

- (A) the request was held objectionable under Rule 36(a);
- (B) the admission sought was of no substantial importance;
- (C) the party failing to admit had a reasonable ground to believe that it might prevail on the matter; or
- (D) there was other good reason for the failure to admit.

(d) **PARTY'S FAILURE TO ATTEND ITS OWN DEPOSITION, SERVE ANSWERS TO INTERROGATORIES, OR RESPOND TO A REQUEST FOR INSPECTION.**

(1) *In General.*

(A) *Motion; Grounds for Sanctions.* The court where the action is pending may, on motion, order sanctions if:

- (i) a party or a party's officer, director, or managing agent—or a person designated under Rule 30(b)(6) or 31(a)(4)—fails, after being served with proper notice, to appear for that person's deposition; or
- (ii) a party, after being properly served with interrogatories under Rule 33 or a request for inspection under Rule 34, fails to serve its answers, objections, or written response.

(B) *Certification.* A motion for sanctions for failing to answer or respond must include a certification that the movant has in good faith conferred or attempted to confer with the party failing to act in an effort to obtain the answer or response without court action.

(2) *Unacceptable Excuse for Failing to Act.* A failure described in Rule 37(d)(1)(A) is not excused on the ground that the discovery sought was objectionable, unless the party failing to act has a pending motion for a protective order under Rule 26(c).

(3) *Types of Sanctions.* Sanctions may include any of the orders listed in Rule 37(b)(2)(A)(i)–(vi). Instead of or in addition to these sanctions, the court must require the party failing to act, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(e) **FAILURE TO PRESERVE ELECTRONICALLY STORED INFORMATION.** If electronically stored information that should have been preserved in the anticipation or conduct of litigation is lost because

(As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

**Rule 39. Trial by Jury or by the Court**

(a) WHEN A DEMAND IS MADE. When a jury trial has been demanded under Rule 38, the action must be designated on the docket as a jury action. The trial on all issues so demanded must be by jury unless:

- (1) the parties or their attorneys file a stipulation to a nonjury trial or so stipulate on the record; or
- (2) the court, on motion or on its own, finds that on some or all of those issues there is no federal right to a jury trial.

(b) WHEN NO DEMAND IS MADE. Issues on which a jury trial is not properly demanded are to be tried by the court. But the court may, on motion, order a jury trial on any issue for which a jury might have been demanded.

(c) ADVISORY JURY; JURY TRIAL BY CONSENT. In an action not triable of right by a jury, the court, on motion or on its own:

- (1) may try any issue with an advisory jury; or
- (2) may, with the parties' consent, try any issue by a jury whose verdict has the same effect as if a jury trial had been a matter of right, unless the action is against the United States and a federal statute provides for a nonjury trial.

(As amended Apr. 30, 2007, eff. Dec. 1, 2007.)

**Rule 40. Scheduling Cases for Trial**

Each court must provide by rule for scheduling trials. The court must give priority to actions entitled to priority by a federal statute.

(As amended Apr. 30, 2007, eff. Dec. 1, 2007.)

**Rule 41. Dismissal of Actions**

(a) VOLUNTARY DISMISSAL.

(1) *By the Plaintiff.*

(A) *Without a Court Order.* Subject to Rules 23(e), 23.1(c), 23.2, and 66 and any applicable federal statute, the plaintiff may dismiss an action without a court order by filing:

- (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or
- (ii) a stipulation of dismissal signed by all parties who have appeared.

(B) *Effect.* Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal- or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.

(2) *By Court Order; Effect.* Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order

preserving any federal statutory right to a jury trial—when, to enter or effectuate judgment, it needs to:

- (A) conduct an accounting;
- (B) determine the amount of damages;
- (C) establish the truth of any allegation by evidence; or
- (D) investigate any other matter.

(c) **SETTING ASIDE A DEFAULT OR A DEFAULT JUDGMENT.** The court may set aside an entry of default for good cause, and it may set aside a final default judgment under Rule 60(b).

(d) **JUDGMENT AGAINST THE UNITED STATES.** A default judgment may be entered against the United States, its officers, or its agencies only if the claimant establishes a claim or right to relief by evidence that satisfies the court.

(As amended Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 29, 2015, eff. Dec. 1, 2015.)

### **Rule 56. Summary Judgment**

(a) **MOTION FOR SUMMARY JUDGMENT OR PARTIAL SUMMARY JUDGMENT.** A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

(b) **TIME TO FILE A MOTION.** Unless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.

(c) **PROCEDURES.**

(1) *Supporting Factual Positions.* A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

- (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

- (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) *Objection That a Fact Is Not Supported by Admissible Evidence.* A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(3) *Materials Not Cited.* The court need consider only the cited materials, but it may consider other materials in the record.

(4) *Affidavits or Declarations.* An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.