



Revisions to FRCP Create New Disclosure Requirements for Non-Retained Expert Witnesses

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Effective December 1, 2010, FRCP 26(a)(2)(C), a new rule governing non-retained experts, has changed the scheme of FRCP 26(a)(2), which governs disclosure of expert testimony. This new rule adds requirements for disclosures regarding non-retained experts. Examples of a non-retained expert include a treating physician or the CFO of a company, who does not routinely testify as an expert.

FRCP 26(a)(2)(A) requires that counsel must disclose any witness providing expert testimony under Federal Rule of Evidence 702, 703, or 705, which rules govern expert testimony. FRCP 26(a)(2)(B) then requires that experts, specifically retained to testify or those employed by a party who routinely testify for the party, must provide a written report as described in the Rule.

FRCP 26(a)(2)(C) now adds requirements for disclosures for non-retained experts. For these experts, counsel must disclose: (1) “the subject matter on which the witness is expected to present evidence,” and (2) “a summary of facts and opinions to which the witness is expected to testify.”

These additions to FRCP 26(a)(2) provide a framework for disclosure of all forms of expert testimony and require a party to provide an effective disclosure of the anticipated testimony of non-retained experts.