

**21.1 TRIAL WITNESS**

PART I: Expert Witness

- (A) Since Ohio Civil Rule 16 authorizes the Court to require counsel to exchange the reports of medical and expert witnesses expected to be called by each party, each counsel shall exchange with all other counsel written reports of medical and non-party expert witnesses expected to testify in advance of the trial. The parties shall submit expert reports in accord with the time schedule established at the Case Management Conference. The party with the burden of proof as to a particular issue shall be required to first submit expert reports as to that issue. Thereafter, the responding party shall submit opposing expert reports within the schedule established at the Case Management Conference. Upon good cause shown, the Court may grant the parties additional time within which to submit expert reports.
- (B) A party may not call a non-party expert witness to testify unless a written report has been procured from the witness and provided to opposing counsel. It is counsel's responsibility to take reasonable measures, including the procurement of supplemental reports, to insure that each report adequately sets forth the non-party expert's opinion. However, unless good cause is shown, all supplemental reports must be supplied no later than thirty (30) days prior to trial. The report of a non-party expert must reflect his opinions as to each issue on which the expert will testify. A non-party expert will not be permitted to testify or provide opinions on issues not raised in his report.
- (C) All non-party experts must submit reports. If a party is unable to obtain a written report from a non-party expert, counsel for the party must demonstrate that a good faith effort was made to obtain the report and must advise the Court and opposing counsel of the name and address of the expert the subject of the expert's expertise together with his qualifications and a detailed summary of his testimony. In the event the non-party expert witness is a treating physician, the Court shall have the discretion to determine whether the hospital and or office records of that physician's treatment which have been produced satisfy the requirements of a written report. The Court shall have the power to exclude testimony of the expert if good cause is not demonstrated.
- (D) If the Court finds that good cause exists for the non-production of a non-party expert's report, the Court shall assess costs of the discovery deposition of the non-complying expert against the party offering the testimony of the expert unless, by motion, the Court determines such payment would result in manifest injustice. These costs may include the expert's fee, the Court Reporter's charges and travel costs.
- (E) If the Court finds that good cause exists for the non-production of a report from a non-party treating physician, the Court shall assess costs of the discovery deposition of the physician equally between the plaintiff and the party or parties seeking discovery of the expert. These costs may include the physician's fee, the Court Reporter's charges and travel costs.
- (F) A party may take a discovery deposition of their opponent's non-party medical or expert witness only after the mutual exchange of reports has occurred. Upon good cause shown, additional time after submission of both sides' expert reports will be provided for these discovery depositions if requested by a party. If a party chooses not to hire an expert in opposition to an issue, that party will be

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permitted to take the discovery deposition of the proponent's expert. Except upon good cause shown, the taking of a discovery deposition of the proponent's non-party expert prior to the opponent's submission of an expert report constitutes a waiver of the right on the part of the opponent to call an expert at trial on the issues raised in the proponent's expert's report.

### PART II: Non-Expert Trial Witness

All parties are required to submit a trial witness list, including the full name and address of all witnesses expected to testify at the trial on their behalf, no later than seven (7) days prior to the final pretrial date. Thereafter, upon a showing of good cause, the opposing party may take the discovery deposition of any witness contained on the opposing trial witness list who has not been previously deposed during the normal discovery period. This extension of discovery cutoff is specifically restricted to depositions not previously taken of individuals listed on the opponent's trial witness list.

*Effective 09/01/02*