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EXPERT EVIDENCE

ANTICIPATED AMENDMENTS TO THE
RULES OF CIVIL PROCEDURE

RULE 53.08

EVIDENCE ADMISSIBLE ONLY WITH LEAVE

53.08 (1) If evidence is admissible only with leave of the trial judge under a provision listed in subrule (2), leave ~~shall~~ **may** be granted on such terms as are just and with an adjournment if necessary, unless to do so will cause prejudice to the opposite party or will cause undue delay in the conduct of the trial.

RULE 53.08

2) Subrule (1) applies with respect to the following provisions:

. . . .

5. Subrule 53.03 (3) (failure to serve expert's report).

RULE 53.08

(3) In the case of a leave under subrule 53.03 (3) (failure to serve report in time) leave may be granted if the party responsible for the failure satisfies the trial judge that,

(a) there is a reasonable explanation for the failure to serve a report within the time specified by that subrule; and

(b) granting the leave would not,

(i) cause prejudice to the opposing party that could not be compensated for by costs or an adjournment, or

(ii) cause undue delay in the conduct of the trial.

RULE 53.03

Extension or Abridgment of Time

(4) The time provided for service of a report or supplementary report under this rule may be extended or abridged,

(a) by the judge or associate judge at the pre-trial conference or at any conference under Rule 77;

(b) by the court, on motion; **or**

RULE 53.03

(c) on written consent of the parties provided that such consent shall not affect the scheduled date of the trial.

RULE 50.03

Certificate of Readiness to be Filed (Actions)

50.03.1 (1) At least 30 days before a pre-trial conference in an action, each party shall deliver a certificate of readiness (Form 50A) indicating whether the party has served or intends to serve a report of an expert witness to which subrule 53.03(1) or (2) applies and, if so,

RULE 50.03

- (a) whether, in the case of any such report that has not already been served, the party intends to serve the report by the date by which a pre-trial conference brief must be filed under rule 50.04; and
- (b) if the party does not intend to serve a report by the date referred to in clause (a), the reason why.

RULE 50.03

Application

(2) Subrule (1) applies regardless of any extension made in accordance with rule 53.03 of the time to file the report or of any request in accordance with subrule 53.03(8) for a case conference, but, for greater certainty, if a pre-trial conference is rescheduled for the purposes of accommodating an extension of time for service of a report, subrule (1) applies with respect to the rescheduled pre-trial conference.

RULE 50.03

Costs of Pre-Trial Conference

(3) At the pre-trial conference, the presiding judge or associate judge may make an order for costs of the conference, including costs payable forthwith if the pre-trial conference is unproductive due to the failure of a party to file a necessary expert report, but in the absence of such an order the costs shall be assessed as part of the costs of the proceeding.