MARYLAND BAR EXAMINATION

BOARD'S WRITTEN TEST

July 26, 2016

EXTRACT FOR QUESTION 5

THIS EXTRACT IS TO BE USED FOR QUESTION 5 OF THE BOARD'S WRITTEN TEST. THIS EXTRACT CONTAINS SELECTED PROVISIONS OF THE MARYLAND RULES.

Note: Asterisks (* * *) indicate places where material contained in the Maryland Rules has been omitted from this extract.

MARYLAND RULES

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TITLE 2. CIVIL PROCEDURE -- CIRCUIT COURT

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CHAPTER 300. PLEADINGS AND MOTIONS

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Rule 2-321. Time for filing answer

(a) General rule. A party shall file an answer to an original complaint, counterclaim, cross-claim, or third-party claim within 30 days after being served, except as provided by sections (b) and (c) of this Rule.

(b) Exceptions.

(1) A defendant who is served with an original pleading outside of the State but within the United States shall file an answer within 60 days after being served.

(2) A defendant who is served with an original pleading by publication or posting, pursuant to Rule 2-122, shall file an answer within the time specified in the notice.

(3) A person who is required by statute of this State to have a resident agent and who is served with an original pleading by service upon the State Department of Assessments and Taxation, the Insurance Commissioner, or some other agency of the State authorized by statute to receive process shall file an answer within 60 days after being served.

(4) The United States or an officer or agency of the United States served with an original pleading pursuant to Rule 2-124 (m) or (n) shall file an answer within 60 days after being served.

(5) A defendant who is served with an original pleading outside of the United States shall file an answer within 90 days after being served.

(6) If rules for special proceedings, or statutes of this State or of the United States, provide for a different time to answer, the answer shall be filed as provided by those rules or statutes.

(c) Automatic extension. When a motion is filed pursuant to Rule 2-322 or when a matter is remanded from an appellate court or a federal court, the time for filing an answer is extended without special order to 15 days after entry of the court's order on the motion or remand or, if the court grants a motion for a more definite statement, to 15 days after the service of the more definite statement.

Rule 2-322. Preliminary motions

(a) Mandatory. The following defenses shall be made by motion to dismiss filed before the answer, if an answer is required: (1) lack of jurisdiction over the person, (2) improper venue, (3) insufficiency of process, and (4) insufficiency of service of process. If not so made and the answer is filed, these defenses are waived.

(b) Permissive. The following defenses may be made by motion to dismiss filed before the answer, if an answer is required: (1) lack of jurisdiction over the subject matter, (2) failure to state a claim upon which relief can be granted, (3) failure to join a party under Rule 2-211, (4) discharge in bankruptcy, and (5) governmental immunity. If not so made, these defenses and objections may be made in the answer, or in any other appropriate manner after answer is filed.

(c) Disposition. A motion under sections (a) and (b) of this Rule shall be determined before trial, except that a court may defer the determination of the defense of failure to state a claim upon which relief can be granted until the trial. In disposing of the motion, the court may dismiss the action or grant such lesser or different relief as may be appropriate. If the court orders dismissal, an amended complaint may be filed only if the court expressly grants leave to amend. The amended complaint shall be filed within 30 days after entry of the order or within such other time as the court may fix. If leave to amend is granted and the plaintiff fails to file an amended complaint within the time prescribed, the court, on motion, may enter an order dismissing the action. If, on a motion to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 2-501, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 2-501.

(d) Motion for more definite statement. If a pleading to which an answer is permitted is so vague or ambiguous that a party cannot reasonably frame an answer, the party may move for a more definite statement before answering. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 15 days after entry of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(e) Motion to strike. On motion made by a party before responding to a pleading or, if no responsive pleading is required by these rules, on motion made by a party within 15 days after the service of the pleading or on the court's own initiative at any time, the court may order any insufficient defense or any improper, immaterial, impertinent, or scandalous matter stricken from any pleading or may order any pleading that is late or otherwise not in compliance with these rules stricken in its entirety.

(f) Consolidation of defenses in motion. A party who makes a motion under this Rule may join with it any other motions then available to the party. No defense or objection raised pursuant to this Rule is waived by being joined with one or more other such defenses or objections in a motion under this Rule. If a party makes a motion under this Rule but omits any defense or objection then available to the party that this Rule permits to be raised by motion, the party shall not thereafter make a motion based on the defenses or objections so omitted except as provided in Rule 2-324.

Rule 2-323. Answer

(a) Content. A claim for relief is brought to issue by filing an answer. Every defense of law or fact to a claim for relief in a complaint, counterclaim, cross-claim, or third-party claim shall be asserted in an answer, except as provided by Rule 2-322. If a pleading setting forth a claim for relief does not require a responsive pleading, the adverse party may assert at the trial any defense of law or fact to that claim for relief. The answer shall be stated in short and plain terms and shall contain the following: (1) the defenses permitted by Rule 2-322 (b) that have not been raised by motion, (2) answers to the averments of the claim for relief pursuant to section (c) or (d) of this Rule, and (3) the defenses enumerated in sections (f) and (g) of this Rule.

(b) Preliminary determination. The defenses of lack of jurisdiction over the subject matter, failure to state a claim upon which relief can be granted, failure to join a party under Rule 2-211, and governmental immunity shall be determined before trial on application of any party, except that the court may defer the determination of the defense of failure to state a claim upon which relief can be granted until the trial.

(c) Specific admissions or denials. Except as permitted by section (d) of this Rule, a party shall admit or deny the averments upon which the adverse party relies. A party without knowledge or information sufficient

to form a belief as to the truth of an averment shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. A party may deny designated averments or paragraphs or may generally deny all the averments except averments or paragraphs that are specifically admitted.

(d) General denials in specified causes. When the action in any count is for breach of contract, debt, or tort and the claim for relief is for money only, a party may answer that count by a general denial of liability.

(e) Effect of failure to deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damages, are admitted unless denied in the responsive pleading or covered by a general denial. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided. When appropriate, a party may claim the inability to admit, deny, or explain an averment on the ground that to do so would tend to incriminate the party, and such statement shall not amount to an admission of the averment.

(f) Negative defenses. Whether proceeding under section (c) or section (d) of this Rule, when a party desires to raise an issue as to (1) the legal existence of a party, including a partnership or a corporation, (2) the capacity of a party to sue or be sued, (3) the authority of a party to sue or be sued in a representative capacity, (4) the averment of the execution of a written instrument, or (5) the averment of the ownership of a motor vehicle, the party shall do so by negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge. If not raised by negative averment, these matters are admitted for the purpose of the pending action. Notwithstanding an admission under this section, the court may require proof of any of these matters upon such terms and conditions, including continuance and allocation of costs, as the court deems proper.

(g) Affirmative defenses. Whether proceeding under section (c) or section (d) of this Rule, a party shall set forth by separate defenses: (1) accord and satisfaction, (2) merger of a claim by arbitration into an award, (3) assumption of risk, (4) collateral estoppel as a defense to a claim, (5) contributory negligence, (6) duress, (7) estoppel, (8) fraud, (9) illegality, (10) laches, (11) payment, (12) release, (13) res judicata, (14) statute of frauds, (15) statute of limitations, (16) ultra vires, (17) usury, (18) waiver, (19) privilege, and (20) total or partial charitable immunity.

In addition, a party may include by separate defense any other matter constituting an avoidance or affirmative defense on legal or equitable grounds. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court shall treat the pleading as if there had been a proper designation, if justice so requires.

(h) Defendant's information report. The defendant shall file with the answer an information report substantially in the form included with the summons if (1) the plaintiff has failed to file an information report required by Rule 2-111(a), (2) the defendant disagrees with anything contained in an information report filed by the plaintiff, (3) the defendant disagrees with a differentiated case management track previously selected by the court, or (4) the defendant has filed or expects to file a counterclaim, cross-claim, or third-party claim. If the defendant fails to file a required information report with the answer, the court may proceed without the defendant's information to assign the action to any track within the court's differentiated case management system or may continue the action on any track previously assigned.

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Rule 2-325. Jury trial

(a) Demand. Any party may elect a trial by jury of any issue triable of right by a jury by filing a demand therefor in writing either as a separate paper or separately titled at the conclusion of a pleading and immediately preceding any required certificate of service.

(b) Waiver. The failure of a party to file the demand within 15 days after service of the last pleading filed by any party directed to the issue constitutes a waiver of trial by jury.

(c) Actions from district court. When an action is transferred from the District Court by reason of a demand for jury trial, a new demand is not required.

(d) Appeals from administrative agencies. In an appeal from the Workers' Compensation Commission or other administrative body when there is a right to trial by jury, the failure of any party to file the demand within 15 days after the time for answering the petition of appeal constitutes a waiver of trial by jury.

(e) Effect of election. When trial by jury has been elected by any party, the action, including all claims whether asserted by way of counterclaim, cross-claim or third-party claim, as to all parties, and as to all issues triable of right by a jury, shall be designated upon the docket as a jury trial.

(f) Withdrawal of election. An election for trial by jury may be withdrawn only with the consent of all parties not in default.

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Rule 2-327. Transfer of action

(a) Transfer to District Court.

(1) If circuit court lacks jurisdiction. If an action within the exclusive jurisdiction of the District Court is filed in the circuit court but the court determines that in the interest of justice the action should not be dismissed, the court may transfer the action to the District Court sitting in the same county.

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(2) If circuit court has jurisdiction -- Generally. Except as otherwise provided in subsection (a)(3) of this Rule, the court may transfer an action within its jurisdiction to the District Court sitting in the same county if all parties to the action (A) consent to the transfer, (B) waive any right to a jury trial they currently may have and any right they may have to a jury trial following transfer to the District Court, including on appeal from any judgment entered, and (C) make any amendments to the pleadings necessary to bring the action within the jurisdiction of the District Court.

* * *

(b) Improper venue. If a court sustains a defense of improper venue but determines that in the interest of justice the action should not be dismissed, it may transfer the action to any county in which it could have been brought.

(c) Convenience of the parties and witnesses. On motion of any party, the court may transfer any action to any other circuit court where the action might have been brought if the transfer is for the convenience of the parties and witnesses and serves the interests of justice.

(d) Actions involving common questions of law or fact.

(1) If civil actions involving one or more common questions of law or fact are pending in more than one judicial circuit, the actions or any claims or issues in the actions may be transferred in accordance with this section for consolidated pretrial proceedings or trial to a circuit court in which (A) the actions to be transferred might have been brought, and (B) similar actions are pending.

(2) A transfer under this section may be made on motion of a party or on the transferor court's own initiative. When transfer is being considered on the court's own initiative, the circuit administrative judge having administrative authority over the court shall enter an order directing the parties to show cause on or before a date specified in the order why the action, claim, or issue should not be transferred for consolidated proceedings. Whether the issue arises from a motion or a show cause order, on the written request of any party the circuit administrative judge shall conduct a hearing.

(3) A transfer under this section shall not be made except upon (A) a finding by the circuit administrative judge having administrative authority over the transferor court that the requirements of subsection (d) (1) of this Rule are satisfied and that the transfer will promote the just and efficient conduct of the actions to be

consolidated and not unduly inconvenience the parties and witnesses in the actions subject to the proposed transfer; and (B) acceptance of the transfer by the circuit administrative judge having administrative authority over the court to which the actions, claims, or issues will be transferred.

(4) The transfer shall be pursuant to an order entered by the circuit administrative judge having administrative authority over the transferor court. The order shall specify (A) the basis for the judge's finding under subsection (d) (3) of this Rule, (B) the actions subject to the order, (C) whether the entire action is transferred, and if not, which claims or issues are being transferred, (D) the effective date of the transfer, (E) the nature of the proceedings to be conducted by the transferee court, (F) the papers, or copies thereof, to be transferred, and (G) any other provisions deemed necessary or desirable to implement the transfer. The transferor court may amend the order from time to time as justice requires.

(5) (A) If, at the conclusion of proceedings in the transferee court pursuant to the order of transfer, the transferred action has been terminated by entry of judgment, it shall not be remanded but the clerk of the transferee court shall notify the clerk of the transferor court of the entry of the judgment.

(B) If, at the conclusion of proceedings in the transferee court pursuant to the order of transfer, the transferred action has not been terminated by entry of judgment and further proceedings are necessary,

(i) within 30 days after the entry of an order concluding the proceeding, any party may file in the transferee court a motion to reconsider or revise any order or ruling entered by the transferee court,

(ii) if such a motion is filed, the transferee court shall consider and decide the motion, and

(iii) following the expiration of the 30-day period or, if a timely motion for reconsideration is filed, upon disposition of the motion, the circuit administrative judge having administrative authority over the transferee court shall enter an order remanding the action to the transferor court. Notwithstanding any other Rule or law, the rulings, decisions, and orders made or entered by the transferee court shall be binding upon the transferor and the transferee courts.

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CHAPTER 400. DISCOVERY

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Rule 2-403. Protective orders

(a) Motion. On motion of a party, a person from whom discovery is sought, or a person named or depicted in an item sought to be discovered, and for good cause shown, the court may enter any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had, (2) that the discovery not be had until other designated discovery has been completed, a pretrial conference has taken place, or some other event or proceeding has occurred, (3) that the discovery may be had only on specified terms and conditions, including an allocation of the expenses or a designation of the time or place, (4) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery, (5) that certain matters not be inquired into or that the scope of the discovery be limited to certain matters, (6) that discovery be conducted with no one present except persons designated by the court, (7) that a deposition, after being sealed, be opened only by order of the court, (8) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way, (9) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

(b) Order. If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery.

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Rule 2-421. Interrogatories to parties

(a) Availability; number. Any party may serve written interrogatories directed to any other party. Unless the court orders otherwise, a party may serve one or more sets having a cumulative total of not more than 30 interrogatories to be answered by the same party. Interrogatories, however grouped, combined, or arranged and even though subsidiary or incidental to or dependent upon other interrogatories, shall be counted separately. Each form interrogatory contained in the Appendix to these Rules shall count as a single interrogatory.

(b) Response. The party to whom the interrogatories are directed shall serve a response within 30 days after service of the interrogatories or within 15 days after the date on which that party's initial pleading or motion is required, whichever is later. The response shall answer each interrogatory separately and fully in writing under oath, or shall state fully the grounds for refusal to answer any interrogatory. The response shall set forth each interrogatory followed by its answer. An answer shall include all information available to the party directly or through agents, representatives, or attorneys. The response shall be signed by the party making it.

(c) Option to produce business records. When (1) the answer to an interrogatory may be derived or ascertained from the business records, including electronically stored information, of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of those business records or a compilation, abstract, or summary of them, and (2) the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, and (3) the party upon whom the interrogatory has been served has not already derived or ascertained the information requested, it is a sufficient answer to the interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect the records and to make copies, compilations, abstracts, or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

(d) Use. Answers to interrogatories may be used at the trial or a hearing to the extent permitted by the rules of evidence.

Rule 2-422. Discovery of documents, electronically stored information, and property

(a) Scope. Any party may serve one or more requests to any other party (1) as to items that are in the possession, custody, or control of the party upon whom the request is served, to produce and permit the party making the request, or someone acting on the party's behalf, to inspect, copy, test or sample designated documents or electronically stored information (including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form) or to inspect and copy, test, or sample any designated tangible things which constitute or contain matters within the scope of Rule 2-402 (a); or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection, measuring, surveying, photographing, testing, or sampling the property or any designated object or operation on the property, within the scope of Rule 2-402 (a).

(b) Request. A request shall set forth the items to be inspected, either by individual item or by category; describe each item and category with reasonable particularity; and specify a reasonable time, place, and manner of making the inspection and performing the related acts. The request may specify the form in which electronically stored information is to be produced.

(c) Response. The party to whom a request is directed shall serve a written response within 30 days after service of the request or within 15 days after the date on which that party's initial pleading or motion is required, whichever is later. The response shall state, with respect to each item or category, that (1) inspection and related activities will be permitted as requested, (2) the request is refused, or (3) the request for production in a particular form is refused. The grounds for each refusal shall be fully stated. If the refusal relates to part of an item or category, the part shall be specified. If a refusal relates to the form in which electronically stored information is requested to be produced (or if no form was specified in the request) the responding party shall state the form in which it would produce the information.

* * *

(d) Production.

(1) A party who produces documents or electronically stored information for inspection shall (A) produce the documents or information as they are kept in the usual course of business or organize and label them to correspond with the categories in the request, and (B) produce electronically stored information in the form specified in the request or, if the request does not specify a form, in the form in which it is ordinarily maintained or in a form that is reasonably usable.

(2) A party need not produce the same electronically stored information in more than one form.

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Rule 2-424. Admission of facts and genuineness of documents

(a) Request for admission. A party may serve one or more written requests to any other party for the admission of (1) the genuineness of any relevant documents or electronically stored information described in or exhibited with the request, or (2) the truth of any relevant matters of fact set forth in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Each matter of which an admission is requested shall be separately set forth.

(b) Response. Each matter of which an admission is requested shall be deemed admitted unless, within 30 days after service of the request or within 15 days after the date on which that party's initial pleading or motion is required, whichever is later, the party to whom the request is directed serves a response signed by the party or the party's attorney. As to each matter of which an admission is requested, the response shall set forth each request for admission and shall specify an objection, or shall admit or deny the matter, or shall set forth in detail the reason why the respondent cannot truthfully admit or deny it. The reasons for any objection shall be stated. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and deny or qualify the remainder. A respondent may not give lack of information or knowledge as a reason for failure to admit or deny unless the respondent states that after reasonable inquiry the information known or readily obtainable by the respondent is insufficient to enable the respondent to admit or deny. A party who considers that a matter of which an admission is requested presents a genuine issue for trial may not, on that ground alone, object to the request but the party may, subject to the provisions of section (e) of this Rule, deny the matter or set forth reasons for not being able to admit or deny it.

(c) Determination of sufficiency of response. The party who has requested the admission may file a motion challenging the timeliness of the response or the sufficiency of any answer or objection. A motion challenging the sufficiency of an answer or objection shall set forth (1) the request, (2) the answer or objection, and (3) the reasons why the answer or objection is insufficient. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this Rule, it may order either that the matter is admitted or that an amended answer be served. If the court determines that the response was served late, it may order the response stricken. The court may, in place of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial.

(d) Effect of admission. Any matter admitted under this Rule is conclusively established unless the court on motion permits withdrawal or amendment. The court may permit withdrawal or amendment if the court finds that it would assist the presentation of the merits of the action and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits. Any admission made by a party under this Rule is for the purpose of the pending action only and is not an admission for any other purpose, nor may it be used against that party in any other proceeding.

(e) Expenses of failure to admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under this Rule and if the party requesting the admissions later proves the genuineness of the document or the truth of the matter, the party may move for an order requiring the other party to pay the

reasonable expenses incurred in making the proof, including reasonable attorney's fees. The court shall enter the order unless it finds that (1) an objection to the request was sustained pursuant to section (c) of this Rule, or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to expect to prevail on the matter, or (4) there was other good reason for the failure to admit.

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Rule 2-431. Certificate requirement

A dispute pertaining to discovery need not be considered by the court unless the attorney seeking action by the court has filed a certificate describing the good faith attempts to discuss with the opposing attorney the resolution of the dispute and certifying that they are unable to reach agreement on the disputed issues. The certificate shall include the date, time, and circumstances of each discussion or attempted discussion.

Rule 2-432. Motions upon failure to provide discovery

(a) Immediate sanctions for certain failures of discovery. A discovering party may move for sanctions under Rule 2-433 (a), without first obtaining an order compelling discovery under section (b) of this Rule, if a party or any officer, director, or managing agent of a party or a person designated under Rule 2-412 (d) to testify on behalf of a party, fails to appear before the officer who is to take that person's deposition, after proper notice, or if a party fails to serve a response to interrogatories under Rule 2-421 or to a request for production or inspection under Rule 2-422, after proper service. Any such failure may not be excused on the ground that the discovery sought is objectionable unless a protective order has been obtained under Rule 2-403.

(b) For order compelling discovery. (1) When Available. A discovering party, upon reasonable notice to other parties and all persons affected, may move for an order compelling discovery if

(A) there is a failure of discovery as described in section (a) of this Rule,

(B) a deponent fails to answer a question asked in an oral or written deposition,

(C) a corporation or other entity fails to make a designation under Rule 2-412 (d),

(D) a party fails to answer an interrogatory submitted under Rule 2-421,

(E) a party fails to comply with a request for production or inspection under Rule 2-422,

(F) a party fails to supplement a response under Rule 2-401 (e), or

(G) a nonparty deponent fails to produce tangible evidence without having filed written objection under Rule 2-510 (f).

(2) Contents of Motion. A motion for an order compelling discovery shall set forth: the question, interrogatory, or request; and the answer or objection; and the reasons why discovery should be compelled. Instead of setting forth the questions and the answers or objections from a deposition, the relevant part of the transcript may be attached to the motion. The motion need not set forth the set of interrogatories or requests when no response has been served. If the court denies the motion in whole or in part, it may enter any protective order it could have entered on a motion pursuant to Rule 2-403. For purposes of this section, an evasive or incomplete answer is to be treated as a failure to answer.

(c) By nonparty to compel production of statement. If a party fails to comply with a request of a nonparty made pursuant to Rule 2-402 (f) for production of a statement, the nonparty may move for an order compelling its production.

(d) Time for filing. A motion for an order compelling discovery or for sanctions shall be filed with reasonable promptness.

(e) Appropriate court. A motion for an order compelling discovery or for sanctions shall be filed with the court in which the action is pending, except that on matters relating to a deposition, the motion may be filed either with the court in which the action is pending or with the court in the county in which the deposition is being taken.

(END OF EXTRACT)