

Whether Parties in Federal Court have a Mandatory Duty to Update Discovery Responses.

Yes, under FRCP Rule 26(e) Duty to Supplement: Discovery, if a party acquires material additional information or learns that information was materially incorrect after serving discovery responses, the responding party has a duty to supplement or amend their response in a timely manner.

PROCEDURE

FRCP 26(e)

If a party acquires material additional information or learns that information submitted was materially incorrect after submitting answers, and that additional information is not otherwise known to the propounding party, the responding party has a duty to supplement or amend its responses [Fed R Civ P 26(e); see *R & R Sails, Inc. v. Ins. Co. of the Pa.* (9th Cir. 2012) 673 F.3d 1240. (Fed R Civ P 26 requires party to supplement discovery answer when materially new information is available or prior disclosed information is no longer true.)].

Sanctions

The court may impose sanctions for failure to supplement interrogatory responses [see Fed R Civ P 37(c)(1)]. The party facing sanctions bears the burden of proving that its failure to disclose the required information was substantially justified or is harmless. (*R & R Sails, Inc. v. Ins. Co. of the Pa.* (9th Cir. 2012) 673 F.3d 1240, 1242.) Furthermore, In the ordinary case, violations of Fed. R. Civ. P. 26 may warrant evidence preclusion. Yet evidence preclusion is, or at least can be, a harsh sanction. (*Id.* at 1242.)

Sanctions by means of Witness Exclusion

District court did not abuse its discretion by striking declarations as a sanction because declarations offered by plaintiffs to support their motion for summary judgment came from witnesses who had not been listed as witnesses and plaintiffs had not shown that their failure to disclose was substantially justified or harmless. (*Benjamin v. B & H Educ., Inc.* (9th Cir. 2017) 877 F.3d 1139.)

Late “Supplemental” Discovery

Although plaintiffs suggested that late declarations as well as late submission of blood test results were supplemental to their prior response which they had right to do under Fed. R. Civ. P. 26(e), they did not claim that these submissions were meant to correct or complete prior disclosure and district court found to contrary that new reports were not merely refinements of previous reports, but were entirely new. With trial approaching, the court found it could not be argued that changing course at such a late stage would not be harmful, so appellate court could not fault district court’s exercise of discretion in finding declarations and test results untimely and thus, inadmissible. (*Avila v. Willits Envtl. Remediation Trust* (9th Cir. 2011) 633 F.3d 828.)