

A tech company sued a software firm in a federal district court for allegedly violating federal antitrust laws.

The tech company employs a developer who regularly provides expert testimony for the company in litigation. The developer is advising the company in its suit against the firm, but the company is not going to call the developer as an expert witness in this case. Instead, the company hired an economist to testify as an expert witness about the economic impact caused by the software firm's anticompetitive behavior.

Whom must the tech company disclose to the software firm at least 90 days before trial without waiting for a discovery request?

- A. Neither the economist nor the developer.
- B. Only the economist.
- C. Only the developer.
- D. Both the economist and the developer.

Explanation:

Required discovery disclosures

(FRCP 26(a))

Type	Required disclosures	Time to disclose
Initial disclosures*	<ul style="list-style-type: none">• Persons with relevant information• Items in party's possession that support claim/defense• Computation of damages & supporting material• Relevant insurance policies	<ul style="list-style-type: none">• ≤ 14 days after initial planning conference• ≤ 30 days after post-conference service or joinder• As court orders or parties stipulate
Expert testimony	<ul style="list-style-type: none">• Identity of expert witnesses• Expert's written report• If no report, subject matter & summary of testimony	<ul style="list-style-type: none">• ≥ 90 days before trial• ≤ 30 days after disclosure to rebut evidence• As court orders or parties stipulate
Pretrial disclosures*	<ul style="list-style-type: none">• Testifying witnesses• Deposition testimony to be used at trial• Documents/exhibits to be used at trial	<ul style="list-style-type: none">• ≥ 30 days before trial• As court orders

FRCP = Federal Rule of Civil Procedure.

*Does not apply to evidence used solely for impeachment.

Parties must disclose certain information during discovery to facilitate litigation. Most of this information is disclosed in response to an opposing party's discovery requests. But three types of **disclosures are required** without such requests: initial disclosures, pretrial disclosures, and disclosure of **expert witness testimony**. This requires that the parties disclose the **identity** of all expert witnesses **expected to testify** at trial AND provide either:

- a [written report](#) for any witness who was specially hired to provide expert testimony or who regularly gives expert testimony as part of his/her employment duties with the party *or*
- a summary of the subject matter, facts, and opinions of the testimony for all other expert witnesses (eg, treating physicians).

A party must disclose this information at least **90 days before trial** unless otherwise ordered by the court or stipulated by the parties.*

Here, the tech company hired the economist to testify at trial as an expert witness about the economic impact of the software firm's anticompetitive behavior. As a result, the company must disclose the economist's identity at least 90 days before trial without waiting for a discovery request **(Choices A & C)**. A written report must also be included since the economist was specially hired to provide this expert testimony.

Since the developer regularly gives expert testimony as part of her employment with the tech company, she also would have needed to provide a written report if she was going to testify in this case. However, the developer is only advising the company and is not going to testify. Therefore, the company does not need to disclose the developer's identity **(Choices C & D)**.

*If a party intends to rebut an opposing party's expert witness, expert witness disclosure is required within 30 days after the opposing party discloses its expert witness information.

Educational objective:

A party must disclose the identity of an expert witness expected to testify at trial and provide a written report or summary to the opposing party at least 90 days before trial.

References

- Fed. R. Civ. P. 26(a)(2) (required disclosure of expert witnesses).