

A plaintiff filed a diversity action in federal district court against a defendant. The day after the defendant was served with process, the defendant filed and served an answer.

When must the parties confer to develop a discovery plan?

- A. At least 21 days before a scheduling conference is held or a scheduling order is due.
- B. At least 30 days before a scheduling conference is held or a scheduling order is due.
- C. Within 21 days after the defendant's answer was served.
- D. Within 30 days after the defendant's answer was served.

## Explanation:

### Initial conference

(FRCP 26(f))

<b>Timing</b>	<ul style="list-style-type: none"><li>• Confer at least 21 days before scheduling conference is held or scheduling order is due</li></ul>
<b>Conference content</b>	<ul style="list-style-type: none"><li>• Consider basis of claims &amp; defenses</li><li>• Consider settlement possibilities</li><li>• Make or arrange for required disclosures</li><li>• Discuss preservation of discoverable information</li><li>• Develop proposed discovery plan</li></ul>
<b>Discovery plan* content</b>	<ul style="list-style-type: none"><li>• What discovery may be needed</li><li>• Schedule for discovery</li><li>• Modifications to scope of discovery</li><li>• Timing of required disclosures</li><li>• Issues about electronically stored information or privilege</li><li>• Orders court should issue</li></ul>

**FRCP** = Federal Rule of Civil Procedure

\*Due within 14 days after conference

Under Federal Rule of Civil Procedure 26(f), the parties must hold an **initial conference to plan for discovery**. During the conference, the parties should:

- consider the nature and basis of their claims and defenses
- consider the possibilities for prompt settlement
- make or arrange for required disclosures
- discuss any issues about preserving discoverable information *and*
- develop a proposed discovery plan.

The initial conference **must be held** as soon as practicable, but **at least 21 days before** a **scheduling conference** is held or the judge's **scheduling order** is due (**Choice B**). If a party fails to confer in good faith, the court may order the party or his/her attorney to pay the opposing party's reasonable expenses, including attorney's fees.

**(Choices C & D)** A defendant may **amend** its answer once as a matter of course—ie, without the court's permission or the opposing party's written consent—within 21 days of serving it.

**Educational objective:**

The parties must hold an initial conference to plan for discovery. The conference must be held as soon as practicable and at least 21 days before a scheduling conference with the court is held or the judge's scheduling order is due.

**References**

- Fed. R. Civ. P. 26(f) (initial conference).

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