

The Northern District of Illinois launched a Mandatory Initial Discovery Pilot (“MIDP”) on June 1, 2017. The three-year pilot has now been in effect for 18 months, and the judges of the district have decided to modify it slightly.

During the first 18 months, the MIDP has required parties in civil cases to file answers to complaints even when they file a Rule 12(b)(6) motion to dismiss or similar motion. Answers are not required if motions to dismiss assert jurisdictional or immunity defenses. As you know, answers trigger the 30-day period for the exchange of MIDP responses. The MIDP requires these early answers to ensure that MIDP responses are exchanged at the outset of the case.

Effective December 1, 2018, the MIDP will be amended to provide that answers are due under the time periods established by Rule 12(a). Rule 12(a)(4) provides that answers need not be filed while a Rule 12 motion is pending. As a result, answers no longer will be required -- and the MIDP response period will not be triggered -- while a motion is pending under Rule 12(b)(6) or any other provision of Rule 12. Under Rule 12(a)(4), even if a motion to dismiss is filed, the Court retains authority to order an answer and/or permit the parties to make Rule 26(a)(1) initial disclosures and commence discovery under the Federal Rules of Civil Procedure.

The District is making this change in response to comments suggesting that the early-answer requirement of the MIDP imposed unnecessary costs on parties who ultimately succeed on Rule 12 motions. Making the change midway through the MIDP will also allow the FJC to evaluate both approaches to mandatory disclosures.

The Standing Order Governing Mandatory Initial Discovery Pilot Project and related documents will be amended to reflect this change.