

Amendments to the Federal Rules of Civil Procedure

Effective December 1, 2015, Federal Rules of Civil Procedure 1, 4, 16, 26, 30, 31, 33, 34, 37, 55, and 84, and the Appendix of Forms are amended. Below is a brief summary of the key changes. Attorneys and parties should read the full text of the rules, and should not solely rely on this summary.

I. COOPERATION.

- a. **Rule 1** is amended to add “and employed by the court and parties.”
- b. Committee Note endorses cooperation but makes clear that no freestanding duty to cooperate is created.

II. GETTING THE CASE MOVING FASTER.

- a. **Rule 4(m)** period to serve is shortened from 120 to 90 days.
- b. **Rule 16(b)** period to issue case management order is shortened from 120 to 90 days.

III. EARLY, ACTIVE CASE MANAGEMENT.

- a. **Rule 16(b)(1)** language is changed to encourage “**live**” **case management conferences**.
- b. **Rule 16(b)(3)** is amended to:
 - i. add preservation and Rule 502 orders to the topics judges should consider addressing in their case management orders; and
 - ii. encourage **premotion conferences** for discovery disputes.

IV. PARTY PLANNING AND COMMUNICATION.

- a. **Rule 26(d)** is amended to allow parties to *deliver* Rule 34 requests before the Rule 26(f) discovery planning conference
 - i. Conforming changes also made to **Rule 34**.
- b. **Rule 26(f)** is amended to add preservation and Rule 502 orders to the topics parties should address at the discovery planning conference.
- c. **Rule 34** is amended to require responding parties to:
 - i. state objections “with specificity”;
 - ii. state specifically when materials will be made available; and

- iii. state clearly if materials are being withheld on the basis of an objection.

V. DISCOVERY SCOPE, LIMITS, AND PROTECTIONS.

- a. **Rule 26(b)(1)** is amended in four ways:
 - i. The “**proportionality**” factors that were in Rule 26(b)(2)(C)(iii) are altered slightly and moved to Rule 26(b)(1) to become part of the **scope of discovery**.
 - ii. The provision allowing the court to order “**subject matter**” **discovery** for good cause is deleted.
 - iii. The language explaining the relationship between admissibility and discoverability is rephrased to address a persistent misinterpretation.
 - iv. The language explicitly stating that the scope of discovery includes information about the existence and details of sources of relevant information is deleted as unnecessary.
- b. **Rule 26(b)(2)** is amended to reflect the relocation of the proportionality factors.
- c. **Rule 26(c)** is amended to explicitly reference **cost-sharing** (“allocation of expenses”) as a permissible protection against undue burden or expense.

VI. SANCTIONS FOR FAILURE TO PRESERVE ELECTRONICALLY STORED INFORMATION.

- a. **Rule 37(e)** is rewritten to place limits on spoliation sanctions:
 - i. Courts must first find the party breached a duty to preserve, but the rule leaves those questions to the evolving common law.
 - ii. Courts are instructed to first consider whether the information can be replaced through further discovery.
 - iii. Courts may order “**curative measures**” upon a finding of prejudice.
 - iv. Courts may order **adverse inference instruction, dismissal, or default** only upon a finding that the party who failed to preserve did so “with the intent to deprive another party of the information’s use in the litigation.”

VII. OTHER CHANGES.

- a. **Rule 55** is amended to make clear that the court can revisit entry of a *partial* default judgment until final judgment is entered (Rule 60 does not apply yet).
- b. **Rule 84** and Official Forms are abrogated.
 - i. Forms 4 and 5 are appended to **Rule 4**.
 - ii. Project underway to expand AO forms.