

# Federal Civil Rules Changes

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WHAT'S NEW AND WHY

# Summary

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Rule 1

Earlier Service & Case Management  
Discussions

Proportionality

Early Requests for Production

Objections to Requests for Production

Rule 37



# Rule 1

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Former Fed. R. Civ. P. 1:

These rules govern the procedure in all civil actions and proceedings in the United States district courts, except as stated in Rule 81. They should be construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding.

New Fed. R. Civ. P. 1:

These rules govern the procedure in all civil actions and proceedings in the United States district courts, except as stated in Rule 81. They should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.

# What Hasn't Changed

Number and length of depositions

Number of interrogatories

Number of requests for production

Number of requests for admission

Time to respond to discovery requests



KEEP

CALM

AND DO

ALMOST

NOTHING

# Rules 4, 26(f), 16

1. Discourage pretrial conferences held by mail and scheduling orders based solely on parties' Rule 26(f) discovery plan
2. Require earlier service of complaint and earlier pretrial conference
3. Address at Rule 26(f) and Rule 16 conferences:
  - preservation of electronically stored information;
  - protective orders; and
  - whether a conference should be requested before filing a discovery motion



# The Proportionality Requirement

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## Former Rule 26(b)(2)(C):

### (b) Discovery Scope and Limits.

#### (1) Scope in General. . .

#### (2) Limitations on Frequency and Extent.

(A) When Permitted.

(B) Specific Limitations on Electronically Stored Information.

(C) When Required. . . .

**(C) *When Required.*** On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that:

**(i)** the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;

**(ii)** the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or

**(iii)** the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

# The Proportionality Requirement

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Former Rule 26(b)(1):

## **(b) Discovery Scope and Limits.**

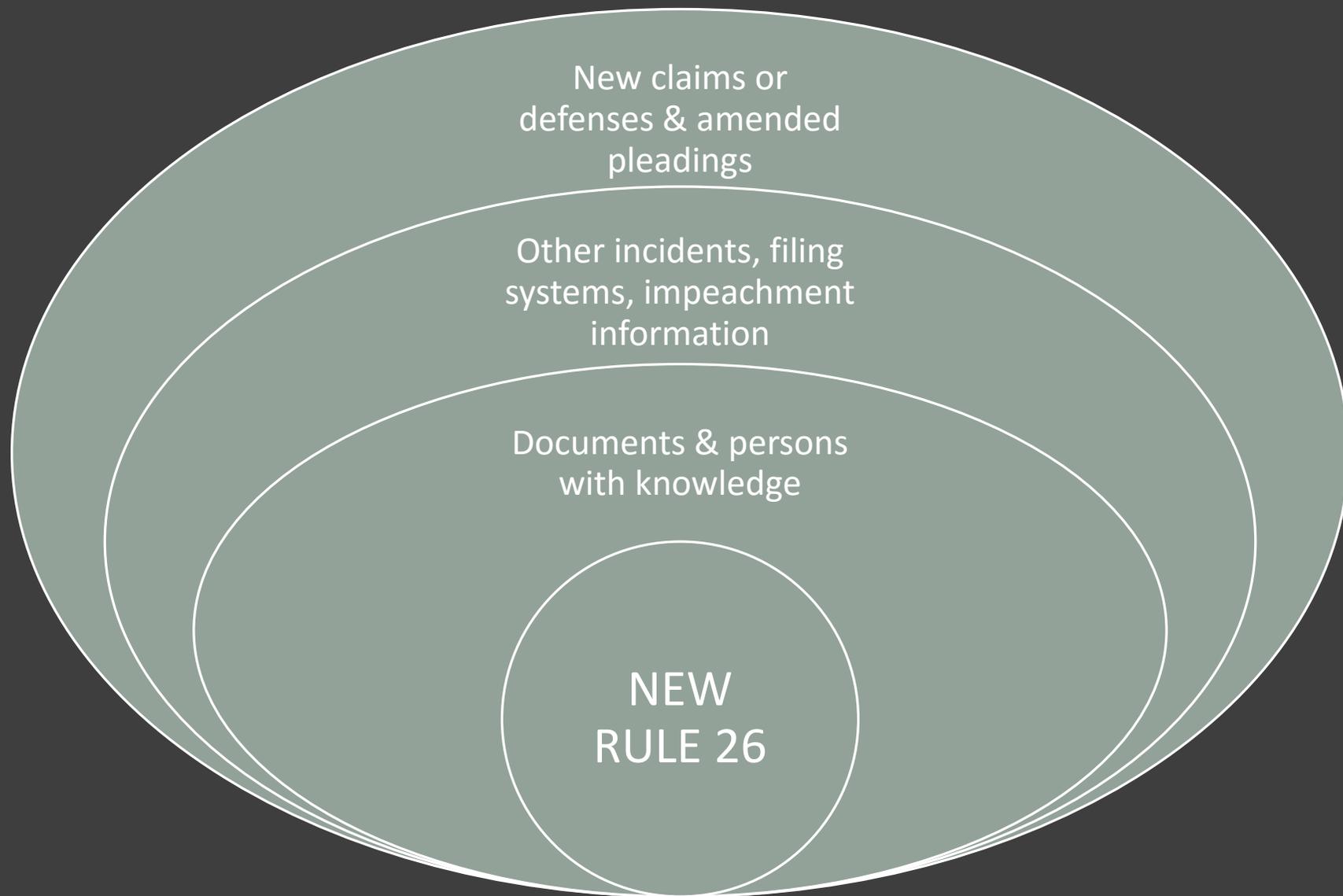
**(1) *Scope in General.*** Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense-- including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 26(b)(2)(C).

New Rule 26(b)(1):

## **(b) Discovery Scope and Limits.**

**(1) *Scope in General.*** Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

Read the Advisory  
Committee Notes



# What's Out

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## FORMER RULE

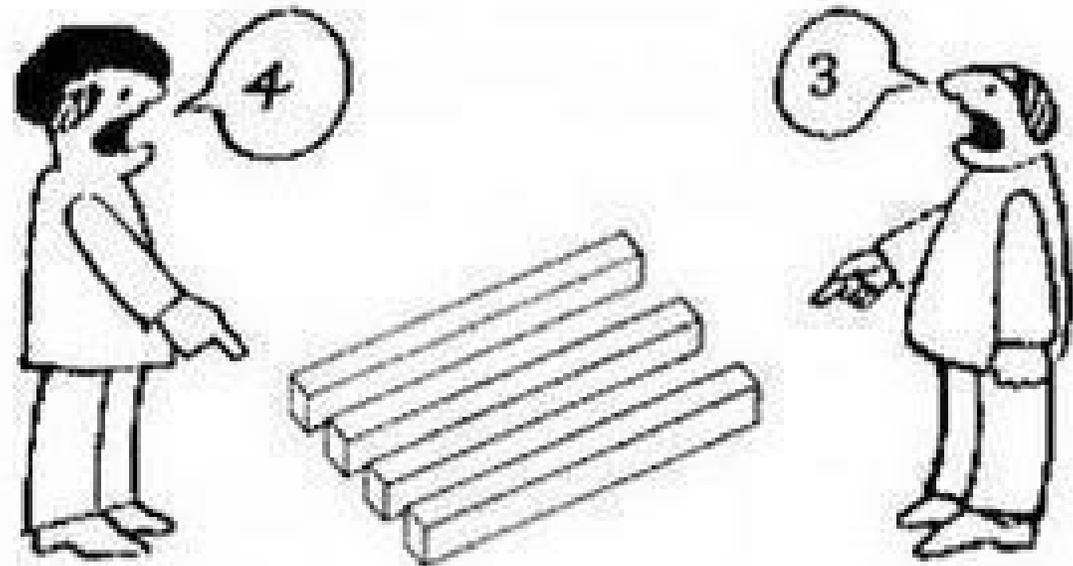
“For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action.”

## NEW RULE



# Early Requests for Production

1. Serve a Rule 34 Request for Production Before the Rule 26(f) Conference (but 21 days after service of complaint)
2. Time to Respond Runs from Date of Rule 26(f) Conference
3. Intended to Facilitate Discussion About Production, ESI, Cost, and Proportionality Between Parties and Among Parties and the Court



# Objections to Requests for Production

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## **(2) Responses and Objections.**

### **(A) Time to Respond. . . .**

**(B) Responding to Each Item.** For each item or category, the response must either state that inspection and related activities will be permitted as requested or state an objection to the request, including the reasons.

**(C) Objections.** An objection to part of a request must specify the part and permit inspection of the rest.

## **(2) Responses and Objections.**

### **(A) Time to Respond. . . .**

**(B) Responding to Each Item.** For each item or category, the response must either state that inspection and related activities will be permitted as requested or state with specificity the grounds for objecting to the request, including the reasons. The responding party may state that it will produce copies of documents or of electronically stored information instead of permitting inspection. The production must then be completed no later than the time for inspection specified in the request or another reasonable time specified in the response.

**(C) Objections.** An objection must state whether any responsive materials are being withheld on the basis of that objection. An objection to part of a request must specify the part and permit inspection of the rest.

# Objections to Requests for Production

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1. Objections must be stated “with specificity”
2. Must state whether any documents are withheld based on the objection
3. May provide copies instead of permitting inspection
4. Must meet deadline or specify alternate “reasonable” time at which documents will be produced
5. Rule 37 allows filing of motion to compel if copies are not produced when party says they will be

# Former Rule 37(e)

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**(e) Failure to Provide Electronically Stored Information.** Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.



# New Rule 37(e)

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**(e) Failure to Preserve Electronically Stored Information.** If electronically stored information that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery, the court:

- (1)** upon finding prejudice to another party from loss of the information, may order measures no greater than necessary to cure the prejudice; or
- (2)** only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation may:
  - (A)** presume that the lost information was unfavorable to the party;
  - (B)** instruct the jury that it may or must presume the information was unfavorable to the party; or
  - (C)** dismiss the action or enter a default judgment.

# Other Changes

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- Rule 4(d)
  - Eliminates reference to forms and incorporates Forms 5 and 6 into Rule 4
- Rule 4(m)
  - Time to serve complaint reduced from 120 days to 90 days
  - Note that this amendment also affects Rule 15(c)(1)(C) re: relation back of an amendment identifying a Doe defendant or a misnamed defendant
- Rule 55(c)
  - Clarifies that Rule 60(b) applies to final default judgments, not partial default judgments
- Rule 84
  - Rule containing forms is eliminated

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