

Rule 34. Production of Documents, Electronically Stored Information, and Things and Entry Upon Land for Inspection and Other Purposes**34.01 Scope**

Any party may serve on any other party a request within the scope of Rule 26.02:

(1) to produce and permit the party making the request, or someone acting on the requesting party's behalf, to inspect and copy, test, or sample:

(A) any designated documents or electronically stored information - including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained - translated, if necessary - by the respondent through detection devices into reasonably usable form, or,

(B) or to inspect and copy, test, or sample any designated tangible things that constitute or contain matters within the scope of Rule 26.02 and that are in the possession, custody or control of the party upon whom the request is served, or

(2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26.02.

(Amended effective July 1, 2007; amended effective July 1, 2018.)

Advisory Committee Comment - 2007 Amendment

Rule 34.01 is amended to make two changes. First, the rule explicitly applies to "electronically stored information" ("ESI") as well as other forms. A more important change is to add provisions allowing the discovering party to require production of information for the purposes of testing or sampling. Testing and sampling are important tools in managing discovery, particularly discovery of ESI. Testing and sampling allow a party to inspect a small subset of requested information to determine whether it is worth conducting additional or broader discovery. These tools may be useful to the court in determining whether to allow additional discovery or discovery of information that is not reasonably accessible, as defined in Rule 26.02(b)(2).

Advisory Committee Comment - 2018 Amendments

Rule 34.01 is amended to incorporate the scope of discovery set forth in Rule 26.02. This change is made to make that limitation on the scope of any Rule 34 discovery obligation clear to litigants, and is not intended to expand or narrow the scope of discovery.

34.02 Procedure

(a) Timing. The request may, without leave of court, be served upon any party with or after service of the summons and complaint.

(b) Contents of the Request. The request:

(1) must set forth with reasonable particularity each item or category of items to be inspected;

(2) must specify a reasonable time, place, and manner for the inspection and performing the related acts; and

(3) may specify the form or forms in which electronically stored information is to be produced.

(c) Responses and objections.

(1) **Time to Respond.** The party upon whom the request is served must serve a written response within 30 days after the party is served (or deemed served pursuant to Rule 26.04(b)). The court may allow a shorter or longer time.

(2) **Responding to Each Item.** The response shall state, with respect to each item or category, either 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.

(3) **Objections.** An objection must state whether any responsive materials are being withheld on the basis of that objection. If objection is made to part of an item or category, that part shall be specified and inspection permitted of the remaining parts.

(4) **Responding to a Request for Production of Electronically Stored Information.** The response may state an objection to a requested form for producing electronically stored information. If no form was specified in the request, the responding party must state the form or forms it intends to use.

(5) **Producing the Documents or Electronically Stored Information.** Unless otherwise stipulated or ordered by the court, these procedures apply to producing documents and electronically stored information:

(A) A party must produce documents as they are kept in the usual course of business at the time of the request and may organize them to correspond to the categories in the request;

(B) If a request does not specify the form for producing electronically stored information, a responding party must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form; and

(C) A party need not produce the same electronically stored information in more than one form.

(Amended effective July 1, 2007; amended effective July 1, 2018.)

Advisory Committee Comment - 2007 Amendment

Rule 34.02 is amended to establish presumptive rules for the procedural aspects of discovery of electronically stored information. These include allowing the party seeking discovery to specify the form or medium for response, providing a default rule that applies if the request does not specify a form, and making it clear that a party does not need to produce information in more than one form.

Advisory Committee Comment - 2018 Amendments

Rule 34.02 is amended to adopt the changes made to Federal Rule 34 in 2015. The most significant change is the provision in Rule 34.02(c)(3) that requires a party asserting an objection to a request for production to disclose whether any document is being withheld from production based on those objections. This rule change has curtailed one aspect of game-playing from federal practice and has worked well in federal court. It is adopted in state court practice to accomplish the same purpose. The rule does not require a detailed log of all documents withheld, but the objecting party must make it clear that documents are being withheld based on the objections

asserted. This disclosure can then support dialogue over the nature of withheld information and a motion to resolve the appropriateness of the objections asserted.

The rule is also reformatted to make it clearer and easier to use by adding subdivisions and headings. These formatting changes are not intended to affect the interpretation of the rule.

34.03 Persons Not Parties

(a) Subpoenas. As provided in Rule 45, a nonparty may be compelled to produce documents and electronically stored information and to permit an inspection.

(b) Independent Actions. This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land.

(Amended effective July 1, 2018.)

Advisory Committee Comment - 2018 Amendments

Rule 34.03(a) is a new section that makes clear that Rule 34 requests may be enforced against nonparties through use of subpoenas issued pursuant to Rule 45.