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The 2015 Amendments to the Federal Rules of Civil Procedure:
What Changed and How the Changes Might Affect Your Practice

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Substantial new amendments to the Federal Rules of Civil Procedure became effective December 1, 2015. The following brief summary is intended to help you familiarize yourself with the new rules, which apply both to new and currently pending cases, and to prepare for the potential impact of the new rules on your day-to-day practice.

I. Background to the 2015 Amendments.

The 2015 amendments to the Federal Rules of Civil Procedure are the culmination of nearly four years of study by the Civil Rules Advisory Committee ("Rules Committee"). In 2010, the Rules Committee held a Conference at Duke University School of Law (commonly referred to as the "Duke Conference") to address growing concerns regarding the increasing costs of civil litigation, especially during the discovery process.[2]

Following the Conference, the Duke Conference Subcommittee compiled a package of proposed amendments that were approved for publication in August 2013 by the Judicial Conference's Committee on Rules of Practice and Procedure (the "Standing Committee").[3] After accepting public comments on the proposals and holding three different hearings, the Rules Committee adopted the proposals submitted by the Subcommittee, with some revisions, at a meeting in April 2014.[4] As revised, the proposed new rules were accepted and approved, without further revision, by the Standing Committee, the Judicial Conference, the United States Supreme Court, and Congress.[5] By Supreme Court Order dated April 29, 2015, the new rules "shall take effect on December 1, 2015 and shall govern in all proceedings in civil cases thereafter commenced and, insofar as just and practicable, all proceedings then pending."[6]

II. Summary of the 2015 Amendments.

There was near unanimous agreement among the 200 attendees of the Duke Conference that the resolution of civil actions could be greatly improved by emphasizing three goals: "advancing cooperation among the parties, proportionality in the use of available procedures, and early and active judicial case management."[7] With these goals in mind, the Rules Committee crafted a package of amendments that made changes to four primary areas: (1) timing requirements, (2) discovery provisions, (3) the scope of discovery, and (4) the preservation of electronically stored information ("ESI"). Key changes are discussed below, and a complete listing of the affected rules can be found in the chart on pages 40 - 42.

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A. Timing Requirements

Key changes were made to Rules 4 and 16 to further the goal of "early and active case management" by parties and the court.

First, Rule 4 was amended to reduce the time period in which to effectuate service of process. Rule 4(m) now provides that the summons and complaint must be served within 90 days of the filing of the complaint, down from 120 days under the previous rule.[8] However, this timing limitation does not apply to service in a foreign country or service of a notice under Rule 71.1 (condemnation proceedings).

Second, Rule 16 was amended to reduce the time to issue a scheduling order and to change the manner in which scheduling conferences are held. Under Rule 16(b)(2), as amended, unless good cause is found for delay, the judge must issue a scheduling order within 90 days of service of any defendant, or within 60 days after any defendant has appeared, whichever is earliest. Furthermore, the scheduling conference required under Rule 16 may no longer occur by email, mail, or other means. The committee notes emphasize that "[a] scheduling conference is more effective if the court and parties engage in direct simultaneous communication."[9] Therefore, as

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indicated in the committee notes, under the new rule, the scheduling conference "may be held in person, by telephone, or by more sophisticated electronic means."

B. Discovery Provisions

Key changes in discovery procedures are reflected in the following amendments to Rules 16, 26, and 34.

First, Rule 16 was amended to allow the parties to include terms in the scheduling order regarding preservation of ESI and agreements between the parties concerning the effect of disclosure of materials otherwise protected by the attorney-client privilege or work-product protections, pursuant to Federal Rule of Evidence 502.[10] Additionally, Rule 16 now authorizes the court to require the scheduling order to provide that a party seeking an order related to discovery, such as through a motion to compel, must first request a conference with the court before filing a motion. The committee notes emphasize that "[m]any judges who hold such conference find them an efficient way to resolve most discovery disputes without the delay and burdens attending a formal motion, but the decision whether to require such conferences is left to the discretion of the judge in each case."

Second, Rules 26 and 34 were amended to allow parties to serve early requests for production. Under Rule 26(d)(2)(A), a request under Rule 34 may be delivered 21 days after service of the summons and complaint by any party to the party served, or by the party served to any plaintiff or any other party that has been served. For purposes of calculating the time to respond, however, subsection 26(d)(2)(B) provides that the early request is deemed to have been served at the first Rule 26(f) conference. Correspondingly, Rule 34(b)(2)(A) was amended to provide that a party receiving an early request for production must respond to the request, in writing, within 30 days of the initial Rule 26(f) conference.

Third, Rule 34 was amended to prevent parties from responding with general objections. Instead, Rule 34(b)(2)(B) now requires that the responding party "state with specificity the grounds for objecting to the request." Further, under subsection 34(b)(2)(C), the objection must also state whether the responding party is withholding responsive materials on the basis of the objection.

Fourth, a provision was added to subsection 34(b)(2)(B) allowing the responding party to "state that it will produce copies of documents or of [ESI] instead of permitting inspection."

Finally, Rule 26(c)(1)(B) was amended to expressly recognize the court's authority to specify the allocation of expenses for discovery or disclosure as a term in any protective order it issues. While the authority to do so already existed under the old rule, the committee notes state that the change "will forestall the temptation some parties may feel to contest" such authority.

C. Scope of Discovery/Proportionality

The 2015 amendments include key changes redefining the scope of discovery to incorporate a proportionality standard. Under the new Rule 26(b)(1):

> 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.

Fed. R. Civ. P. 26(b)(1) (emphasis added). Although the old rules provided that a court could impose proportional limitations on the scope of discovery based on these same factors, under former Rule 26(b)(2)(C)(iii), the clear consensus from those at the Duke Conference was that "greater emphasis on proportionality [was] needed."[11] Therefore, the proportionality requirement and related factors were moved to subsection 26(b)(1) in order to "make them more prominent, encouraging parties and courts alike to remember them and take them into account in pursuing discovery and resolving discovery disputes."[12]

Also significant in the amendment to Rule 26(b)(1) is the substitution of language regarding whether information that would be inadmissible at trial is within the scope of discovery. The old rule specified that "[r]elevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." The new rule has removed the "reasonably calculated" language. The Committee Report notes that the change "carries forward the central principle — nonprivileged information is discoverable so long as it is within the scope of discovery, even though the information is in a form that would not be admissible in evidence," but "is designed to curtail reliance on the 'reasonably calculated' phrase to expand discovery beyond the permitted scope."[13]

Finally, several other discovery provisions were amended to reflect the addition of the proportionality rule and the factors to consider in determining whether the discovery sought is proportional to the needs of the case. Rules 30, 31, and 33 were all amended to provide that the court must grant leave to take oral and written depositions, and may grant leave to serve additional interrogatories, "to the extent consistent with Rule 26(b)(1) and (2)."

D. Preservation of ESI

Rule 37(e) was amended to resolve significant disagreement among the circuit courts regarding the appropriate standards for imposing sanctions or curative measures on parties who fail to preserve electronically stored information. The committee notes to Rule 37 observe that this lack of consensus has "caused litigants to expend excessive effort and money on preservation in order to avoid the risk of severe sanctions if a court finds they did not do enough." Newly amended Rule 37(e) now expressly delineates the standards to be applied in determining whether sanctions are warranted when a party fails to preserve ESI.

Under the amended Rule 37(e):

> If electronic 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[,] upon finding prejudice to another party from loss of the information, may order measures no greater than necessary to cure the prejudice[.]

Fed. R. Civ. P. 37(e). Thus, remedial measures under subsection 37(e)(1) are available if (1) a party failed to take reasonable steps to preserve ESI that it had a duty to preserve, (2) the information lost is not available through additional discovery, and (3) the opposing party is prejudiced by the loss of information.[14] If all these requirements are met, the court may order remedial measures, but only to the extent necessary to cure the prejudice suffered by the requesting party.

As the committee notes state, Rule 37(e) "recognizes that 'reasonable steps' to preserve suffice; it does not call for perfection." Factors relevant to whether preservation efforts are "reasonable" include: (1) the "routine, good-faith operation of an electronic information system"; (2) a party's sophistication; and (3) proportionality.

As described in the committee notes, under this standard, a party would not be sanctioned where, for example, the information lost is not in the party's control, or the loss is caused by events outside the party's control, such as a flood in the computer room, a "cloud" service failure, or a software attack that disrupts the system where the information is stored. However, the committee notes further explain that "[c]ourts may . . . need to assess the extent to which a party knew of and protected against such risks" in determining whether a party's efforts are reasonable.

In addition, as to the proportionality factor, the committee notes recognize that "court[s] should be sensitive to party resources; aggressive preservation efforts can be extremely costly, and parties (including governmental parties) may have limited staff and resources to devote to those efforts." Thus, parties are free to choose a less costly form of preservation so long is it "substantially as effective" as more costly measures. That being said, the committee notes stress the importance of "counsel becom[ing] familiar with their clients' information systems and digital data — including social media — to address" issues regarding the scope of a party's duty to preserve, because "[a] party urging that preservation requests are disproportionate may need to provide specifics about these matters in order to enable meaningful discussion of the appropriate preservation regime."

Under Rule 37(e)(2), if the court finds that a party's loss of ESI was intentional, then the court 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." Importantly, the addition of subsection 37(e)(2) resolves a split in the circuits regarding the culpability required for an adverse inference instruction.[15] As the committee notes state,

> Adverse-inference instructions were developed on the premise that a party's intentional loss or destruction of evidence to prevent its use in litigation gives rise to a reasonable inference that the evidence was unfavorable to the party responsible for loss or destruction of the evidence. Negligent or even grossly negligent behavior does not logically support that inference.

Therefore, under Rule 37(e), an adverse inference instruction may only be issued if a party's conduct in failing to preserve ESI is intentional. Mere negligence or gross negligence is insufficient to warrant such instruction from the court.

III. How the Rule Changes May Affect Your Practice

Many of these rule changes are not intended to have a significant impact on current practices and procedures. For example, while Rule 26(c) was amended to allow a provision for cost allocation in a protective order, the committee was careful to note that doing so does not indicate that cost-shifting should become the norm. As the committee notes state, "Recognizing the authority does not imply that cost-shifting should become a common practice. Courts and parties should continue to assume that a responding party ordinarily bears the costs of responding." Similarly, according to the committee notes, the amendment to Rule 34(b)(2)(B) merely "reflect[s] the common practice of producing copies of documents or electronically stored information

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rather than simply permitting inspection." These changes will likely have little, if any, impact on your day-to-day practice, as intended by the committee and reflected in the committee notes.

Certain procedural changes, however, will inevitably affect how you manage your cases. First and foremost, the amendments to timing requirements will change the speed at which cases will progress during the early stages of litigation. As defense attorneys, the reduction to 90 days for service of process may have little impact on your practice, since you are often not the one effectuating service. However, earlier service and the shortened time for the issuance of a scheduling order will certainly speed up the early stages of a case. A Rule 26(f) conference must still be held at least 21 days before a scheduling order is due. Thus, an earlier deadline for a scheduling order consequently requires an earlier Rule 26(f) conference.

Yet, the committee notes to Rule 16 also recognize that in some cases, especially "[l]itigation involving complex issues, multiple parties, and large organizations, public or private," parties may need additional time to "establish meaningful collaboration between counsel and the people who can supply the information needed to participate [at the scheduling conference] in a useful way." To that end, the amendment to Rule 16(b)(2) allows the court upon a finding of good cause to extend the time to issue the scheduling order, which would, as a result, extend the time to hold the Rule 26(f) conference. However, the committee notes to Rule 16 emphasize that "in most cases it will be desirable to hold at least a first scheduling conference in the time set by the rule."

General, boilerplate objections are no longer sufficient under the Rule.

Additionally, you may see the discovery process begin earlier. The amended rules now allow early Rule 34 requests to be made prior to the Rule 26(f) scheduling conference. According to the committee notes to Rule 26, "[t]his relaxation of the discovery moratorium is designed to facilitate focused discussion during the Rule 26(f) conference." If you are served early, make sure you note that you must respond to early requests within 30 days after the Rule 26(f) conference, not within 30 days after service of the request. However, the committee notes further recognize that discussion at the Rule 26(f) conference may result in changes to requests, and the fact that a request is received early, and therefore subject to advanced scrutiny, "should not affect a decision whether to allow additional time to respond." Thus, the fact that a request is delivered early should not stop you from seeking an extension of time to respond if needed. Early requests for production may also be a tool you want to consider using to obtain early discovery from a party. Any time after 21 days from service, you may deliver an early Rule 34 request to any plaintiff or to any other party that has been served.

One amendment that requires an immediate change in practice is the amendment to Rule 34 regarding objections to requests for production. General, boilerplate objections are no longer sufficient under the Rule. Instead, the objection must be stated with specificity, and must also state whether you are withholding documents on the basis of that objection.[16] As an example, the committee notes state:

> An objection may state that a request is overbroad, but if the objection recognizes that some part of the request is appropriate the objection should state the scope that is not overbroad. Examples would be a statement that the responding party will limit the search to documents or electronically stored information created within a given period of time prior to the events in suit, or to specified sources. When there is such an objection, the statement of what has been withheld can properly identify as matters "withheld" anything beyond the scope of the search specified in the objection.

Furthermore, in responding to any discovery request, it is important to note that the language of Rule 26(b)(1) defining the scope of discovery has changed. Practically, this means that objections and responses you are accustomed to using will also need to change in order to mirror the new language of the amended rule. For example, an objection stating that a request is beyond the scope of discovery because it is not "reasonably calculated to lead to the discovery of admissible evidence" is no longer consistent with the language of Rule 26(b)(1). Instead, the objection should state that the request is not relevant to any claim or defense asserted in the case, or is not "proportional to the needs of the case," and should include information to substantiate the lack of relevance or proportionality.

Finally, one of the most significant changes to the rules was the amendment to Rule 37(e) concerning a party's duty to preserve ESI, and prescribing available remedies when a party fails to meet this duty.

No longer can you rely on state law or inherent authority in determining when the loss of ESI warrants remedial measures. This amendment provides clear guidelines regarding the scope of a party's duty to preserve information and the circumstances necessary to warrant sanctions when a party fails to do so. This guidance will allow you to better advise your clients regarding their duty to preserve ESI when litigation is reasonably anticipated, and to inform them of the potential consequences for failing to fulfill that duty.

IV. Conclusion

After years of discussion and comments, the Rules Committee proposed these amendments to the Federal Rules of Civil Procedure to improve cooperation among parties, emphasize proportionality in discovery procedures, and promote early and active judicial case management. Many of these changes might have little impact on your day-to-day practice, while some will require immediate changes to your current procedures. In either case, it is important to be aware of the changes and their practical application in order to better manage your cases and serve your clients.

Footnotes

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2 Thomas Y. Allman, *The 2015 Civil Rules Package as Transmitted to Congress,* at 2 (2015) [hereinafter Allman Summary], available at https://law.duke.edu/search/google/thomas%20allman/.

3 Report from Advisory Comm. on Civil Rules to Comm. on Rules of Practice and Procedure, at 3 (May 2, 2014) [hereinafter Comm. Rep.], available at http://www.uscourts.gov/rules-policies/archives/committee-reports/advisory-committee-rules-civil-procedure-may-2014.

4 Allman Summary, *supra* note 1, at 2, 3.

5 *Id*. at 2–3.

6 Supreme Court Order, April 29, 2015, available at www.supremecourt.gov.

7 Comm. Rep., *supra* note 3, at 3.

8 This 90 day time period was the result of compromise. The earlier proposal from the Rules Committee recommended a 60 day time limit for serving a summons and complaint. After receiving comments and testimony regarding the reduction, the Committee recommended the 90 day limit that was ultimately approved and implemented. *See id*. at 14.

9 For purposes of brevity and clarity, direct quotations from the rules or the accompanying committee notes will not be directly cited throughout this paper. The complete Federal Rules of Civil Procedure and committee notes, as amended, have been made available online by the Legal Information Institute, a non-profit group housed at Cornell Law School, which you can access the at https://www.law.cornell.edu/rules/frcp,

10 *See* FED. R. EVID. 502. Rule 26(f)(3)(D) was also amended to allow for the same provision in a discovery plan.

11 Comm. Rep., *supra* note 3, at 7.

12 *Id.* at 7–8.

13 *Id.* at 10.

14 In the event information is lost due to a party's failure to reasonably preserve ESI, the committee notes explain that the rule first emphasizes looking to other sources to determine if the "lost information can be restored or replaced through additional discovery." If information is stored in several locations, the loss of the information in one location is harmless if it can be retrieved from another location.

15 As the committee notes state, the amendments to Rule 37(e) supersede any state law to the contrary: "New Rule 37(e) replaces the 2006 rule. It authorizes and specifies measures a court may employ if information that should have been preserved is lost, and specifies the findings necessary to justify these measures. It therefore forecloses reliance on inherent authority or state law to determine when certain measures should be used."

16 As the committee notes explain, "An objection that states the limits that have controlled the search for responsive and relevant materials qualifies as a statement that the materials have been 'withheld.'"

Federal Rule of Civil Procedure	Summary of Changes
Rule 1. Scope and Purpose.	Rule 1 was amended to expressly require that both the court and the parties construe, administer, and employ the rules "to secure the just, speedy, and inexepensive determination of every action and proceeding."
Rule 4. Summons. (d) (1) *Requesting a Waiver*. . . . The notice and request [for waiver of service of a summons] must: (C) be accompanied by a copy of the complaint, 2 copies of the waiver form appended to this Rule 4, and a prepaid means for returning the form; (D) inform the defendant, using the form appended to this Rule 4, of the consequences of waiving and not waiving service;	The 2015 amendments abrogated Rule 84 and the appendix of forms. Instead, forms for requesting a waiver of service (forms 5 and 6 under the old rules) are now expressly incorporated into Rule 4. Most notably, under amended Rule 4(m) the summons and complaint must be served within 90 days of the complaint being filed (down from 120 days under the old rules). The rule was also amended to specify that this timing requirement does not apply "to service of a notice under Rule 71.1(d)(3)(A)."
Rule 16. Pretrial Conferences; Scheduling; Management (b)(2) *Time to Issue*. The judge must issue the scheduling order as soon as practicable, but unless the judge finds good cause for delay, the judge must issue it within the earlier of 90 days after any defendant has been served with the complaint or 60 days after any defendant has appeared. (b)(3)(B) *Permitted Contents*. The scheduling order may: (iii) provide for disclosure, discovery, or preservation of electronically stored information; (iv) include any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation material after information is produced, including agreements reached under Federal Rule of Evidence 502; (v) direct that before moving for an order relating to discovery, the movant must request a conference with the court;	In accordance with the timing changes in Rule 4, the time to issue a scheduling order under the new rule has been reduced to within 90 days after any defendant has been served with the summons and complaint or 60 days after any defendant has appeared, whichever is earlier (reduced from 120 and 90 days, respectively). The judge may, however, delay such issuance upon a finding of good cause for delay. The old language of Rule 16 provided for the scheduling order to be issued at a scheduling conference "by telephone, mail, or other means." This quoted language has been deleted in the new rule. According to the committee notes, under the new rule, the scheduling conference "may be held in person, by telephone, or by more sophisticated electronic means." Rule 16(b)(3) was also amended to add the following three items to the list of contents that may be included in a scheduling order: (1) provisions for preservation of ESI; (2) agreements reached under Federal Rule of Evidence 502 (related to the inadvertent disclosure of privileged materials); and (3) a requirement that a party must request a conference with the court before moving for a discovery order, if the court chooses.
Rule 26. Duty to Disclose; General Provisions; Governing Discovery (b) (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	Rule 26(b)(1) has been amended to emphasize the role of proportionality in defining the scope of discovery. Further, several factors to consider in determining whether the discovery sought is proportional to the needs of the case, previously included in Rule 26(b)(2)(C)(iii), have now been moved under subsection (b)(1), with the addition of a one factor: the parties' relative access to relevant information. Rule 26(b)(2)(C)(iii) now provides that the court must limit discovery if it determines that "the discovery is outside the scope permitted by Rule 26(b)(1)." Rule 26(c) as amended expressly allows the court to provide for the allocation of expenses in a protective order. However, as the advisory committee notes state, "[r]ecognizing the

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within this scope of discovery need not be admissible in evidence to be discoverable. (d) (2) Early Rule 34 Requests. Time to Deliver. More than 21 days after the summons and complaint are served on a party, a request under Rule 34 may be delivered: (i) to that party by any other party, and (ii) by that party to any plaintiff or to any other party that has been served. (B) When Considered Served. The request is considered to have been served at the first Rule 26(f) conference.	authority does not imply that cost-shifting should become a common practice. Courts and parties should continue to assume that a responding party ordinarily bears the costs of responding." The amendments also added a provision in Rule 26(d)(2) to allow parties to deliver early Rule 34 requests for production any time more than 21 days after service of the summons and complaint. However, the request is not considered served until the first Rule 26(f) conference. Rule 26(d)(3) was also amended to expressly allow parties to stipulate to the sequence of discovery. Absent such stipulation or a court order, "methods of discovery may be used in any sequence" and "discovery by one party does not require any other party to delay its discovery." Finally, Rule 26(f)(3) was amended to reflect the changes in Rule 16(b)(3), and now provides that a discovery plan must include the parties' views and proposals on preservation of ESI and agreements under Federal Rule of Evidence 502.
Rule 30. Depositions by Oral Examination **Rule 31. Depositions by Written Questions.** **Rule 33. Interrogatories to Parties.**	Rules 30, 31, and 33 were all amended to reflect the incorporation of the proportionality rule and factors into Rule 26(b)(1). The rules as amended provide that the court must grant leave to take oral and written depositions, and may grant leave to serve additional interrogatories, "to the extent consistent with Rule 26(b)(1) and (2)." Further, under Rule 30(d)(1) the court must allow additional time beyond the 1 day, 7 hour limit for oral depositions "consistent with Rule 26(b)(1) and (2) if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination."
Rule 34. Producing Documents, Electronically Stored Information, and Tangible Things, or Entering onto Land, for Inspection and Other Purposes. (b)(2) *Responses and Objections.* (A) *Time to Respond.* The party to whom the request is directed must respond in writing within 30 days after being served or — if the request was delivered under Rule 26(d)(2) — within 30 days after the parties' first Rule 26(f) conference. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court. (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	As previously discussed, Rule 26(d)(2) now allows parties to serve early requests for production. Rule 34(b)(2) has been amended to reflect this change, providing that an answer to an early Rule 34 request for production must be delivered in writing within 30 days after the first Rule 26(f) conference. Rule 34(b)(2)(B) has been amended to require greater specificity in objections. Under subsection (C) as amended, an objecting party must also state whether responsive documents are being withheld on the basis of the objection. Rule 34(b)(2)(B) was further amended to expressly allow parties to produce copies of requested documents and ESI in lieu of permitting inspection. If a party has chosen to produce documents instead of allowing inspection, the production must be completed "no later than the time for inspection specified in the request, or another reasonable time specified in the response."

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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.	
Rule 37. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions. (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.	Rule 37(a) was amended to reflect the change to Rule 34(b)(2)(B), which allows parties to produce documents and ESI in lieu of permitting inspection. Under Rule 37(a)(3)(B)(iv), a party may file a motion to compel production if a responding party fails to produce documents or fails to permit inspection, as requested under Rule 34. Rule 37(e) was amended to provide a new provision directly addressing the duty to preserve ESI and specifying consequences for failure to do so. (Previously, Rule 37(e) provided that a party could not be sanctioned for failing to provide ESI if it was lost as the result of routine, good faith operation of an electronic information system.) As the committee notes state, the new rule "authorizes and specifies measures a court may employ if information that should have been preserved is lost, and specifies the findings necessary to justify these measures." Under Rule 37(e), if a party negligently loses ESI by failing to take reasonable steps to preserve it, and the opposing party is prejudiced by the loss, the court may order remedial measures to the extent necessary to cure the prejudice. Additionally, if a party's loss of ESI is intentional, the court may provide an adverse inference instruction or dismiss the case in its entirety. Importantly, the amendments to Rule 37(e) supersede any state law to the contrary, as the committee notes specifically state that the rule "forecloses reliance on inherent authority or state law to determine when certain measures should be used."
Rule 55. Default; Default Judgment. (c) Setting Aside a Default or a Default Judgment. The court may set aside an entry of default for good cause, and it may set aside a final default judgment under Rule 60(b).	According to the committee notes, the amendment to Rule 55(c) clarifies that "[t]he demanding standards set by Rule 60(b) apply only in seeking relief from a final judgment." A default judgment is not final unless it "dispose[s] of all of the claims among all parties" or "the court directs entry of final judgment under Rule 54(b)."
Rule 84. Forms.	The 2015 amendments abrogated Rule 84 and the appendix of forms. Forms for requesting waiver of service are now expressly incorporated into Rule 4.