

Disclosure and Discovery

US Federal Rules of Civil Procedure (FRCP)

Title V (Depositions and Discovery)

Rules 26 to 37

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US Disclosure and Discovery Rules

- **Federal Rules governed by the Federal Rules of Civil Procedure (FRCP)**
- **Last updated December 2007**
- **Title V (Depositions and Discovery)**
- **Rules 26 to 37**



Rule 26

- **Duty to disclose and general provisions governing discovery**



Rule 26(a): Required Disclosures

• **Without awaiting a discovery request (or within 14 days of a scheduling conference), and unless specifically exempted, parties must**

disclose:

- **all individuals likely to have discoverable information**
- **copy (or description by category and classification) of all docs, ESI and other tangible things**
- **computation of damages**
- **relevant insurance agreements**



Rule 26(a): Required Disclosures...(cont)

- All disclosure must be in writing and signed



Rule 26(f):Conference of Parties

- Parties must confer as soon as practicable, or at least 21 days before a scheduling conference
- Scheduling conference involves:
 - considering nature and basis of claims
 - discuss issues regarding preservation of discoverable information
 - develop a discovery plan, including the form or forms in which ESI is to be produced



Rule 30

- **Deposition of parties**



Rule 30(f): Certification and Delivery

- Documents produced for a deposition must be marked for identification and attached to the deposition
- Any party may inspect and copy them



Rule 33

- **Interrogatories to Parties**



Rule 33(d): Option to produce records

- If the answer to an interrogatory may be determined by examining, auditing, compiling, abstracting or summarising records (including ESI) and if the burden of ascertaining the answer is substantially the same for both parties, the responding party may:
 - Specify the records to be viewed in sufficient detail to allow the interrogating party to locate them as readily as the responding party and allow copying, compiling, abstracting and summarising



Rule 34

- Producing documents, ESI etc.



Rule 34(a): In general

- Any party may request the other party to permit inspection, copying or sampling of any:
 - designated documents
 - ESI (writings, drawings, graphs, charts, photographs, sound recordings and images)



Rule 34(b): Procedure

- **A request for documents must:**
 - **describe accurately each item or category of items to be inspected**
 - **inspection must done at a reasonable time, place and manner**
 - **specify the form or forms in which ESI is to be produced**



Rule 34(e): Producing docs or ESI

- Parties must produce documents / ESI as they are kept in the normal course of business or organise and label them to correspond to categories in the request



Rule 36

- **Requests for Admission**



Rule 36(a): Scope and Procedure

- Requests to admit the genuineness of a document must be accompanied by a copy of the document unless it is otherwise made available for inspection and copying



Rule 37

- Failure to make disclosures



Rule 37(a): Incomplete disclosure

- **Incomplete disclosures are treated as failures to disclose**



Rule 37(b): Sanctions

- If a party, party's officer, director or managing agent fails to comply with a discovery order it may lead to:
 - dismissal of action
 - rendering of default judgement
 - be treated as contempt of court
- Disobedient party may be liable for expenses and other appropriate sanctions



Rule 37(e): Failure to provide ESI

- **A court may not impose sanction under Rule 37 on a party failing to provide ESI lost as a result of the routine, good-faith operation of an electronic information system**



Rule 37(f): Participation in Discovery plan

- If a party or its attorney fails to participate in developing and submitting a discovery plan as required in Rule 26(f), court may order that party or attorney to pay any other party the reasonable expenses caused by the failure



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