

Significant Changes to the Federal Rules of Civil Procedure – Effective December 1, 2015

The amendments to the Federal Rules of Civil Procedure (“Rules”) that took effect on December 1, 2015, are the most sweeping changes to the federal civil rules in years. Attorneys must adjust to a significant change in the basic discovery standard and adapt to changes in procedure for discovery matters, sanctions, service of process, default judgments, and court forms. The amendments apply to cases filed after December 1, 2015, as well as to pending cases “insofar as just and practicable.” A complete copy of the amendments and advisory notes can be found at [http://www.supremecourt.gov/orders/courtorders/frcv15\(update\)_1823.pdf](http://www.supremecourt.gov/orders/courtorders/frcv15(update)_1823.pdf). A comprehensive analysis of the amendments can be found on the PLF website at www.osbplf.org under Practice

Rule	Amendment
FRCP 1	Parties now share responsibility with the court to secure just, speedy, and inexpensive determination of action.
FRCP 4	Reduces time for service to be effected from 120 days to 90 days after the complaint is filed. Appends notice and waiver of service forms directly to FRCP 4 (formerly Forms 5 and 6).
FRCP 16(b)(1)	Encourages in-person scheduling conferences with the court (rather than by phone or mail).
FRCP 16(b)(2)	Reduces the time to issue scheduling order to the earlier of 90 days (down from 120 days) after any defendant is served or 60 days (down from 90 days) after any defendant appears. Recognizes that the court may find good cause to extend the time to issue scheduling order.
FRCP 16(b)(3); FRCP 26(f)(3)	Scheduling orders may (1) provide for preservation of ESI; (2) include agreements reached under Federal Rule of Evidence (FRE) 502; (3) direct parties to request a court conference before moving for a discovery order.
FRCP 26(b)(1)	Narrows scope of discovery by: <ul style="list-style-type: none"> • Providing that information is discoverable if it is relevant to a party’s claim or defense and proportional to the needs of the case. • Deleting language permitting discovery of information “reasonably calculated to lead to the discovery of admissible evidence.”

DISCLAIMER

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Rule	Amendment
FRCP 26(c)(1)(B)	Codifies use of protective orders to allocate discovery costs.
FRCP 26(d)(2)	Parties may deliver requests for production under FRCP 34 before the FRCP 26(f) conference. The requests will be deemed served at the first FRCP 26(f) conference.
FRCP 26(d)(3)	Parties may stipulate to sequencing of discovery.
FRCP 26(f)	Discovery plans must address issues regarding ESI preservation and may include agreements reached under FRE 502.
FRCP 30(a)(2)(A)(i); FRCP 30(d); FRCP 31(a)(2); FRCP 33(a)(1)	Amended to reflect the emphasis on proportionality.
FRCP 34(b)(2)	Parties must respond to requests for production made before the FRCP 26(f) conference within 30 days after the conference. Parties must make specific objections and state whether withholding any responsive documents on basis of objection. Amended to reflect the practice of producing copies rather than permitting inspection.
FRCP 37(a)(3)(B)(iv)	Amended to reflect the practice of producing copies rather than permitting inspection.
FRCP 37(e)	New standard for sanctions for failure to preserve ESI that permits relief only where ESI was lost because a party failed to take reasonable steps to preserve it and it cannot be replaced through additional discovery. The new rule allows the court to craft relief that is “no greater than necessary to cure” any prejudice suffered where there was no intent to deprive, and permits drastic sanctions only on finding that a party acted with intent to deprive.
FRCP 55(c)	Clarifies that FRCP 60(b) applies only when seeking relief from final default judgment.
FRCP 84	Eliminates sample forms in Appendix of Forms.

KATHRYN M. PRATT
PRATT LAW OFFICE LLC