

The Future of Discovery

Federal Rules of Civil Procedure

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Presented By
Justin T. Toth, Shareholder

FRCP 1

- **Rule 1. Scope and Purpose**

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, **and employed by the court and the parties** to secure the just, speedy, and inexpensive determination of every action and proceeding

December 1, 2015 amendment.



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FRCP 16

- **Rule 16(a). Purpose of a Pretrial Conference.**

In any action, the court may order the attorneys and any unrepresented parties to appear for one or more pre-trial conferences for such purposes as:

- (1) Expediting disposition of the action;
- (2) Establishing early and continuing control so that the case will not be protracted because of lack of management;
- (3) Discouraging wasteful pre-trial activities;
- (4) Improving the quality of trial through more preparation; and
- (5) Facilitating settlement.

- **Rule 16(b)(3)(iii)-(iv). Contents of Pretrial Order**

(b)(3)(iii). Provide for the disclosure, discovery, or preservation of electronically stored information;

(b)(3)(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.



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FRCP 26(b)(1)

▪ Rule 26(b)(1). 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.* — 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).

FRCP/URCP 26(b)(1)

Proportional to the needs of the case

1. considering the importance of the issues at stake in the action,
2. the amount in controversy,
3. the parties' relative access to relevant information,
4. the parties' resources,
5. the importance of the discovery in resolving the issues, and
6. 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.

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How to Stay Out of Trouble

1. Understand that the "Old Rules" Do Not Apply
2. Understand The Sedona Conference Principles
 - ESI "Jumpstart" Outline
 - The Sedona Conference is cited by Nuffer, Benson and the 10th Circuit
3. Understand Local Rules/Client's ESI Architecture

RAY QUINNEY & NEBEKER



Contact

Justin T. Toth
Ray Quinney & Nebeker P.C.
36 South State, #1400
Salt Lake City, UT 84111
jtoth@rgn.com
(801) 323-3343



RAY QUINNEY & NEBEKER
