

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 (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 any designated documents or electronically stored information (including writings, drawings, graphs, charts, photographs, sound recordings, images, phono-records, 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 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.)

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).

34.02 Procedure

The request may, without leave of court, be served upon any party with or after service of the summons and complaint. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The request may specify the form or forms in which electronically stored information is to be produced.

The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, including an objection to the requested form or forms for producing electronically stored information, stating the reasons for objection. If objection is made to part of an item or category, that part shall be specified and inspection permitted of the remaining parts. If objection is made to the requested form or forms for producing electronically stored information - or if no form was specified in the request - the responding party must state the form or forms it intends to use. The party submitting the request may move for an order pursuant to Rule 37 with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

Unless the parties otherwise agree, or the court otherwise orders:

(a) A party who produces documents for inspection shall produce them as they are kept in the usual course of business at the time of the request or, at the option of the producing party, shall organize them to correspond with the categories in the request;

(b) If a request does not specify the form or forms 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 form or forms that are reasonably usable; and

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

(Amended effective July 1, 2007.)

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.

34.03 Persons Not Parties

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.