

# Links to State Court and Local Federal eDiscovery Rules

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Data and Discovery Strategies

August 2018

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# STATES ADOPTING EDISCOVERY RULES AMENDMENTS PATTERNED AFTER THE FEDERAL RULES

## 1. Alabama (effective Nov. 18, 2009; Feb. 1, 2010; July 1, 2016)

Alabama [Rules of Civil Procedure](#) 16, 26, 33(c), 37 (effective Feb. 1, 2010), 34 (effective Nov. 18, 2009), and 45 (effective July 1, 2016) are patterned after the pre-Dec. 2015 federal rules, with the following exception:

- Rule 26(f) does not mandate a meeting of the parties to confer and consider ESI or other issues.

## 2. Alaska (effective Apr. 15, 2009)

Alaska [Rules of Civil Procedure](#) 16, 26, 33, 34, 37, and 45 are patterned after the pre- Dec. 2015 federal rules, with the following exceptions:

- Rule 16 does not specifically address privilege protection;
- Rule 26 does not specifically address privilege protection; and
- Rule 45 is less specific regarding objections to a subpoena for the production of ESI.

## 3. Arizona (effective Jan. 1, 2017)

Arizona [Rules of Civil Procedure](#) 16, 26, 26.1, 26.2, 33, 34, 37, 45 and 45.2 (effective July 1, 2018) incorporate the concepts of the post-Dec. 2015 federal rules, but they also include several provisions for which there are no federal equivalents, including:

- Rule 16 specifically incorporates the concept of proportionality (which is also included in Rule 26);
- Under Rules 16 and 26.1, the parties are required to address the preservation and discovery of ESI at early conferences;
- Rule 26 provides:
  - Specific limits relating to discovery of ESI "sought for purposes unrelated to the case";
  - An expedited procedure for resolving discovery and disclosure disputes;
  - Factors for determining whether ESI is reasonably accessible; and
  - That no discovery may be had before initial disclosures.
- Rule 26.2 imposes presumptive limits on the number of depositions and written discovery requests, as well as a presumptive timeframe in which discovery should be completed. A party moving for discovery beyond the presumptive limits must show the additional discovery to be "necessary and proportional.";



- Rules 26 and 45 specifically contemplate protective orders relating to a request to preserve ESI;
- Under Rules 26.1, 34 and 45, if the format of ESI is not specified by the requesting party, it must be produced “in native form or in another reasonably usable form that will enable the receiving party to have the same ability to access, search, and display the information as the producing party”; and
- Rule 37 identifies “[f]actors that a court should consider in determining whether a party took reasonable steps to preserve relevant” ESI.
- Rule 37(h) expressly permits the court to “make any order to require or prohibit disclosure or discovery to achieve proportionality”; and
- Rule 45.2 sets forth a dispute resolution procedure “concerning the scope of a party’s or nonparty’s duty to preserve” ESI. And allows a party or non-party to seek an ESI preservation order from the Court, the compliance with which precludes subsequent spoliation claims.

#### 4. Arkansas (effective Oct. 1, 2009)

Arkansas [Rules of Civil Procedure](#) include [optional Rule 26.1](#) (page 5 of 9). The rule is optional because the parties must agree to its application or the court must order that it will apply for good cause shown. Rule 26.1 is patterned after the pre-Dec. 2015 federal rules, with the following exceptions:

- The rule does not require preliminary disclosure of ESI;
- The rule requires—rather than merely permits—that ESI be addressed in a planning conference and that the parties submit a resulting plan to the court;
- The rule does not specifically address the production of ESI in records that are responsive to interrogatories; and
- The subsection regarding subpoenas mirrors the procedure to be used by the parties.

#### 5. California (various effective dates)

[Amendments](#) (effective June 29, 2009) to the California [Code of Civil Procedure](#) revised sections 2016.020, 2031.010, 2031.030, 2031.050, 2031.060, 2031.210, 2031.240, 2031.280, 2031.300, and 2031.310. They also added sections 1985.8 and 2031.285.

[Amendments](#) (effective Jan. 1, 2013) to the California Code of Civil Procedure revised sections 1985, 1985.3, 1985.8, 1987, 1987.1, 1987.2, 2017.010, 2017.020, 2020.020, 2020.220, 2020.410, 2020.510, 2023.030, 2025.220, 2025.280, 2025.410, 2025.420, 2025.450, 2025.460, 2025.480, 2026.010, 2027.010, and 2029.200. They also added section 2019.040.

These Code sections are patterned after the pre- Dec. 2015 federal rules, with the following exceptions:

- The amendments do not specifically address the production of ESI in records that are responsive to interrogatories;

- Sections 1985.8(g) and 2031.280(e) place the cost of translating data into reasonably usable form on the demanding party;
- Section 2031.060 (f) explicitly allows a court to limit discovery “even from a source that is reasonably accessible”; and
- Section 1985.6 incorporates ESI into a particular procedure to request employment records.

[California Rule of Court 3.724](#) (page 75 of 257) (effective Aug. 14, 2009) also addresses discovery procedures involving ESI. Rule 3.724(8) requires parties to discuss ESI in the initial meet-and-confer session.

[California Rule of Procedure 5.65](#) (page 51 of 205) (formally Rule 180) (effective Jan. 1, 2011) adds “electronically stored information” to information required to be provided to another party within the Scope of Discovery.

## 6. District of Columbia (current as of Nov. 2017)

The District of Columbia [Superior Court’s Rules of Civil Procedure](#) 16, 26, 33, 34, 37 and 45 are patterned after the post-Dec. 2015 federal rules, with the following exception:

- The rules do not require preliminary disclosure of ESI;
- The rules do not require the parties to develop a discovery plan or hold a 26(f) conference); and
- There is option for early Rule 34 requests because there is no discovery moratorium in the Superior Court.

## 7. Florida (effective Sep. 1, 2012)

Florida [Rules of Civil Procedure](#) 1.200, 1.201, 1.280, 1.340, 1.350, 1.380, and 1.410 are patterned after the pre-Dec. 2015 federal rules, with several exceptions, including:

- Discovery of ESI is expressly authorized;
- There is no requirement that meet-and-confers take place under all circumstances, rather only within complex litigation do the rules “require the parties in a complex civil case to address the possibility of an agreement between them addressing the extent to which electronic information should be preserved”;
- A party objecting to discovery requests must prove “the information sought or the format requested is not reasonably accessible because of undue burden or cost,” and courts have the right to shift costs between parties; and
- Absent exceptional circumstances, a court may not impose sanctions on a party for failing to provide electronically stored information that was lost as a result of the routine, good-faith operation of an electronic information system.

## 8. Hawaii (effective January 1, 2015)

Hawaii [Rules of Civil Procedure](#) 26, 30, 33, 34, 37 and 45 are patterned after the pre-Dec. 2015 federal rules, with the following exceptions:

- The rules do not require preliminary disclosure of ESI or an informal meet-and-confer session about ESI;
- The rules do not explicitly address ESI-related scheduling order provisions; and
- Rule 34 provides that a party need not produce ESI in more than one form “absent a showing of good cause.”

## 9. Idaho (effective July 1, 2016)

Idaho [Rules of Civil Procedure](#) 26, 30, 33, 34, 37 and 45 are patterned after the pre- Dec. 2015 federal rules, with the following exceptions:

- The rules do not require preliminary disclosure of ESI; a meeting of the parties to confer and consider ESI; or a discovery plan;
- Rule 34 permits the court to order the requesting party to pay “the reasonable expenses of any extraordinary steps required to retrieve and produce” ESI;
- Rule 45 requires the party serving the subpoena to pay the reasonable cost of producing ESI;
- Rule 45 specifically allows the court, upon motion, to condition compliance with a subpoena for ESI upon the advancement of reasonable costs; and
- Rule 45 includes provisions adopting the Uniform Interstate Depositions and Discovery Act.

## 10. Indiana (effective Jan. 1, 2008; Jan. 1, 2013)

[Indiana Rules of Trial Procedure](#) 26, 34 and 37 are patterned after the pre- Dec. 2015 federal rules, with the following exceptions:

- Rule 26 does not require preliminary disclosure of ESI;
- There is no specific requirement that ESI be addressed in an informal meet-and-confer session;
- Rule 26 does not provide specific limitations on ESI; and
- No other Indiana Rules have been amended to address the remaining issues regarding discovery of ESI that are addressed in the respective federal rules amendments.

## 11. Iowa (effective May 1, 2008; Oct. 9, 2009; Jan. 1, 2015)

Iowa [Rules of Civil Procedure](#) 1.602 (effective May 1, 2008), 1.500, 1.503, 1.504, 1.507, 1.509, 1.512, 1.517, (effective Jan. 1, 2015) and 1.1701 (effective Oct. 9, 2009) are patterned after the pre- Dec. 2015 federal rules, with the following exception:

- Rule 1.500 requires the parties to disclose ESI without an option to provide instead a description of the ESI by category and location unless good cause exists for nondisclosure.

Iowa has the following standard forms:

- Iowa Court Rule 23.5 Forms:
  - [Form 2: Trial Scheduling Order and Discovery Plan](#)
  - [Form 3: Trial Scheduling and Discovery Plan for Expedited Civil Action](#)
- Iowa [Rule of Civil Procedure 1.1901 Forms](#)
  - Form 13: Subpoena Form to Testify at Deposition or Produce Documents (page 118 of 132)
  - Form 14: Subpoena Form to Testify at Hearing or Trial (page 120 of 132)

- Form 15: Subpoena Form to Produce Documents or Permit Inspection (page 122 of 132)

## 12. Kansas (effective July 1, 2010; July 1, 2011; July 1, 2012)

Kansas [Rules of Civil Procedure](#) §§ 60-216, 60-233, 60-234, 60-237, 60-245, 60-245a (effective July 1, 2010), 60-228a (effective July 1, 2011), and 60-226 (effective July 1, 2012) are patterned after the pre-Dec. 2015 federal rules, with the following exceptions:

- § 60-216 requires – rather than permits – that privilege issues and ESI issues, including the form of production, be addressed at a case management conference;
- § 60-226 does not require the parties to initially disclose a description of ESI within their possession, custody, or control;
- § 60-226 does not require the parties to meet and confer about ESI issues;
- § 60-228a (adopting the Uniform Interstate Depositions and Discovery Act) and § 60-245a (providing a separate procedure for subpoenas for nonparty business records) address similar issues but do not closely mirror Federal Rule 45.

## 13. Louisiana (effective Aug. 15, 2007; Jan. 1, 2009; Aug. 1, 2016)

Louisiana [Code of Civil Procedure](#) Articles 1424, 1460, 1461 (effective Aug. 15, 2007), 1354, 1425, 1471, 1551 (effective Jan. 1, 2009), and 1462 (effective Aug. 1, 2016) are patterned after the pre-Dec. 2015 federal rules, with the following exceptions:

- There is no specific requirement that ESI be addressed in initial disclosures or an informal meet-and-confer session;
- Article 1462, Louisiana’s analog to Federal Rule 34, specifically incorporates Federal Rule 26’s limit on the production of ESI because of undue burden or cost;
- Article 1462 expressly permits the court to order access to computers and other devices used for the storage of ESI for inspection, copying, testing, and sampling.

## 14. Maine (effective Aug. 1, 2008)

Maine [Rules of Civil Procedure](#) 16, 33, 34, and 37 (effective July 2008) and 26 (effective June 2014) are patterned after the pre-Dec. 2015 federal rules, with the following exceptions:

- There is no specific requirement that ESI be addressed in initial disclosures or at an informal meet-and-confer session; and
- Rule 26 requires the court to impose the reasonable expense of producing ESI on the requesting party if the court orders production of ESI.

According to the Advisory Committee Note to Rule 16, “Guidance in the interpretation of the Maine rules may be obtained from the federal amendments, their Advisory Committee’s Notes, and cases applying the federal rules.”

## 15. Maryland (various effective dates)

Maryland [Rules of Civil Procedure](#) 2-402, 2-421, 2-422, 2-424 (effective Jan. 1, 2008), 2-433 (effective Jan. 1, 2014), 2-504, 2-504.1 (effective July 1, 2016) and 2-510 (effective Jan. 1, 2016) are patterned after the pre-Dec. 2015 federal rules, with the following exceptions:

- Rule 2-401 explicitly permits courts to assess costs when ruling on a motion to compel discovery of ESI;
- Rule 2-424 specifically authorizes parties to seek an admission of the genuineness of ESI;
- There is no specific requirement that ESI be addressed in initial disclosures;
- Rule 2-504.1 permits – rather than requires – a meet-and-confer before the scheduling conference with the court; and
- Rule 2-510 specifically allows the court, upon motion, to condition compliance with a subpoena for ESI on the advancement of reasonable costs.

## 16. Massachusetts (effective various dates)

Massachusetts [Rules of Civil Procedure](#) 16 (effective Jan. 1, 2014), 26 (effective July 1, 2016), 34 (effective Aug. 1, 2016), 37 (effective Jan. 1, 2014) and 45 (effective April 15, 2015) are patterned after the pre-Dec. 2015 federal rules, with the following exceptions:

- Rule 26 does not require the initial disclosure of ESI;
- Rule 26 provides special procedures for discovery of ESI, including ESI conferences and ESI court orders;
- Rule 26 expressly permits courts to limit the discovery of ESI, “even from an accessible source, in the interests of justice”; and
- Rule 26(c) specifically identifies “factors bearing on the decision whether discovery imposes an undue burden or expense,” including factors mirroring the proportionality factors from post-Dec. 2015 Federal Rule 26(b)(1).

## 17. Michigan (current as of Sep. 1, 2016)

Michigan [Civil Procedure Court Rules](#) 2.302, 2.310, 2.313, 2.401, and 2.506 are patterned after the pre-Dec. 2015 federal rules, with the following exceptions:

- There is no specific requirement that ESI be addressed in initial disclosures or in an informal meet-and-confer session; and
- Rule 2.310 provides that document requests must specify the form of ESI production.

## 18. Minnesota (effective July 1, 2007; July 1, 2013; July 1, 2015)

Minnesota [Rules of Civil Procedure](#) 34 (effective July 1, 2007), 1, 37, (effective July 1, 2013), 16, 26 and 45 (effective July 1, 2015) are patterned after the pre-Dec. 2015 federal rules, with the following exceptions:

- Rule 1 incorporates a proportionality principle that applies to all discovery processes;
- Rule 26.02 resembles the post-Dec. 2015 Federal Rule 26(b)(1) in that the scope of discovery is defined by what is relevant to the claims and defenses and by factors of proportionality; and
- There is no specific requirement that ESI be addressed in an informal meet-and-confer session.

[General Rule of Practice 146](#) (effective July 1, 2015) also states that, in complex cases, the court shall enter a scheduling order outlining provisions for the disclosure of ESI and setting deadlines for a meet-and-confer session about ESI.

## 19. Montana (effective Oct. 1, 2011; July 31, 2012; Dec. 16, 2014)

Montana [Rules of Civil Procedure](#) 16, 34, 37 (effective Oct. 1, 2011), 45 (July 31, 2012) and 26 (effective Dec. 16, 2014) are patterned after the pre-Dec. 2015 federal rules, with the following exception:

- There is no specific requirement that ESI be addressed in initial disclosures or in an informal meet-and-confer session.

## 20. Nebraska (effective June 18, 2008)

Nebraska [Court Rules of Discovery](#) §§ 6-333, 6-334, and 6-334A are patterned after the pre-Dec. 2015 Federal Rules 33, 34, and 45.

## 21. Nevada (effective Mar. 1, 2014)

Nevada [Rule of Civil Procedure](#) 34 is patterned after the pre-Dec. 2015 Federal Rule 34.

## 22. New Jersey (effective Sep. 1, 2006; Sep. 1, 2016)

New Jersey [Court Rules](#) 1:9-2, 4:5B-2, 4:17-4, 4:23-6 (effective Sep 1, 2006), 4:18-1, and 4:10-2 (effective Sep. 1, 2016), are patterned after the pre-Dec. 2015 federal rules, with the following exceptions:

- There is no specific requirement that ESI be addressed in initial disclosures or in an informal meet-and-confer session;
- Rule 1:9-2 specifically allows the court, upon motion, to condition compliance with a subpoena for ESI upon the advancement of reasonable costs; and
- Rule 4:10-2 and the notes to Rule 4:18-1 specifically permit discovery of metadata.

## 23. New Mexico (effective May 15, 2009; Aug. 7, 2009)

New Mexico Rules of Civil Procedure for the District Courts (*see* [New Mexico Rules](#)) 1-016, 1-026, 1-033, 1-034, 1-037 (effective May 15, 2009) and 1-045 (effective Aug. 7, 2009) are patterned after the pre-Dec. 2015 federal rules, with the following exceptions:

- Rule 1-016 requires – rather than merely permits – a scheduling order include provisions for discovery of ESI;
- There is no requirement that the parties initially disclose ESI or discuss ESI at an informal meet-and-confer session;
- There is no specific limitation in Rule 1-026 for the production of ESI that is not reasonably accessible; and

- Rule 1-037 does not provide a safe harbor for destruction of ESI as a result of the routine, good-faith operation of an electronic information system.

## 24. North Carolina (effective Oct. 1, 2011; July 16, 2015)

North Carolina [Rules of Civil Procedure](#) 26 (effective July 16, 2015), 33, 34, 37 and 45 (effective Oct. 1, 2011) are patterned after the pre-Dec. 2015 federal rules, with the following exceptions:

- There is no requirement for initial disclosures of ESI;
- Rule 26 defines ESI to include “reasonably accessible metadata that will enable the discovering party to have the ability to access such information as the date sent, date received, author, and recipients”;
- Rule 26 explicitly allows the court to allocate costs for the production of ESI that is not reasonably accessible; and
- Rule 26(f) establishes procedures for permissive “discovery meetings” between the parties and/or “discovery conferences” held before the court.

North Carolina [Business Court Local Rules](#) (revised July 31, 2006) also address e-discovery but do not closely track the federal rules:

- Under Rule 17.1 (beginning at page 29 of 56), parties are to discuss in a case management meeting discovery of ESI, including its preservation, the possibility of cost-shifting and its production format.
- Rule 18.6(b) (page 26 of 56) requires that “[p]rior to filing motions and objections relating to discovery of information stored electronically, the parties shall discuss the possibility of shifting costs for electronic discovery, the use of Rule 30(b)(6) depositions of information technology personnel, and informal means of resolving disputes regarding technology and electronically stored information.”

Rule 6 of the [Rules for Civil Superior Court, Judicial District 15B](#) (Chatham County) (effective July 1, 2008) supplements the state-wide rules:

- Rule 6.6 addresses the form of production of ESI and is patterned after its federal rule counterpart; and
- Rule 6.8 addresses objections relating to ESI and is patterned after Rule 18.6(b) of the Business Court Local Rules.

## 25. North Dakota (various effective dates)

North Dakota [Rules of Civil Procedure](#) 16 (effective Dec. 1, 2011), 26 (effective Mar. 1, 2015), 33 (effective Mar. 1, 2016), 34, 37 (effective Mar. 1, 2011), and 45 (effective Mar. 1, 2014) are patterned after the pre-Dec. 2015 federal rules, with the following exceptions:

- Rule 16 does not require a scheduling order in all circumstances;
- Rule 16 does not address discussion of privilege protection in a pretrial conference; and
- Rules 26 and 45 explicitly define ESI to include reasonably accessible metadata that will enable the discovering party to have the ability to access information like the date sent, date received, author, and recipients (and other metadata is not discoverable absent agreement or court order).



## 26. Ohio (various effective dates)

Ohio [Rules of Civil Procedure](#) 16, 34 (effective July 1, 2008), 26 (effective July 1, 2012), 33, 45 (effective July 1, 2014) and 37 (effective July 1, 2016) are patterned after the pre-Dec. 2015 federal rules, with the following exceptions:

- There is no specific requirement that ESI be addressed in initial disclosures or in an informal meet-and-confer session;
- Rules 26 and 45 explicitly provide that a court ordering the production of ESI that is not reasonably accessible may specify the format, extent, timing and allocation of expenses;
- Rules 34 and 45 provides that, if a requesting party does not specify the forms for producing ESI, a party may produce ESI in the form in which the ESI is ordinarily maintained if that form is reasonably useable; and
- Rule 34 provides a procedure for obtaining discovery prior to filing an action;
- Rule 37 explicitly outlines five factors that a court may consider when deciding whether to impose sanctions for ESI lost as a result of the routine, good-faith operation of an electronic information system.

## 27. Oklahoma (various effective dates)

Oklahoma [Code of Civil Procedure](#) Discovery Code Chapter's 12 O.S. §§ 3226 (effective Nov. 1, 2014), 3233 (effective Nov. 1, 2015), 3234, 3237 and 2004.1 (effective Nov. 1, 2010) and [Rule 5 for District Courts of Oklahoma](#) (effective Aug. 1, 2013) are patterned after the pre-Dec. 2015 federal rules, with the following exception:

- There is no specific requirement that the parties initially disclose ESI or discuss ESI at an informal meet-and-confer session.

## 28. South Carolina (effective 2011; 2015)

South Carolina [Rules of Civil Procedure](#) 16, 26, 33, 34, 37 (effective 2011) and 45 (effective 2015) are patterned after the pre-Dec. 2015 federal rules, with the following exceptions:

- There is no requirement that the parties initially disclose ESI or address ESI at an informal meet-and-confer session;
- Instead of requiring an informal meet-and-confer session, Rule 26 permits the parties to move for a discovery conference in front of the court if the motion includes any statement of issues related to ESI; and
- Rule 26 specifically allows the court to allocate the expenses associated with discovery of ESI.

## 29. Tennessee

Tennessee [Rules of Civil Procedure](#) 16.01, 26.02, 26.06, 33.03, 34.01, 34.02, 37.06 and 45 are patterned after the pre-Dec. 2015 federal rules, with the following exceptions:

- There is no specific requirement that ESI be addressed in initial disclosures;
- Under Rule 26.02, if the requesting party shows good cause for the discovery of ESI that is not reasonably accessible, the court must (rather than may) specify conditions of discovery;

- Rule 26.06 states that the judge should “encourage” counsel to meet and confer about ESI and may order a conference, if necessary;
- Rule 26.06 contains cost-shifting provisions for when ESI is not reasonably accessible and when sampling of ESI is insufficient;
- In addition to providing a safe harbor for ESI lost as the result of the routine, good faith, operation of an electronic information system, Rule 37.06 outlines multiple factors the court should consider when ordering production of ESI; and
- Rule 45.07 specifically provides for the right to seek reasonable costs of production (even absent a timely objection).

### 30. Texas (effective Sep. 1, 2016)

In May 2017, the Supreme Court of Texas issued a decision clarifying that the proportionality standard of Texas [Rule of Civil Procedure](#) 192.4 (page 133 of 323) “expressly constrains the scope of discovery as to otherwise discoverable matters” in a manner that “aligns electronic-discovery practice” with the Federal Rules of Civil Procedure. *In re State Farm Lloyds*, 520 S.W.3d 595, 604-605, 612 (Tex. 2017).

Texas’ rules are not otherwise patterned after the federal rules. Texas Rule of Civil Procedure 192.3(b) (page 132 of 323) includes “electronic or videotape recordings, data, and data compilations” within its definition of “documents or tangible things” that are subject to discovery. Rule 196.4 (page 137 of 306) provides that, if desired, a party must specifically request production of “electronic or magnetic data” and specify the form of production. The responding party must produce responsive data that is reasonably available in its ordinary course of business. “If the responding party cannot - through reasonable efforts - retrieve the data or information requested or produce it in the form requested,” the court can nonetheless order its production but “must also order that the requesting party pay the reasonable expenses of any extraordinary steps required to retrieve and produce the information.”

### 31. Utah (effective Nov. 1, 2011; May 1, 2015)

Utah [Rule of Civil Procedure 26\(b\)](#) (effective May 1, 2015) resembles the current (i.e., post-Dec. 2015) Federal Rule 26(b) in that the scope of discovery is defined by what is relevant to the claims and defenses and by factors of proportionality. However, unlike its federal counterpart, Utah Rule of Civil Procedure 26(b):

- Specifically provides that a party seeking discovery has the burden of showing proportionality; and
- Requires that a party claiming that ESI is not reasonably accessible to “describe the source of the electronically stored information, the nature and extent of the burden, the nature of the information not provided, and any other information that will enable other parties to evaluate the claim.”

Utah [Rules of Civil Procedure](#) 16, 33, 34 (effective Nov. 1, 2011), 26(a) and (e), 37 and 45 (effective May 1, 2015) are patterned after the current (i.e., post-Dec. 2015) federal rules, with the following exceptions:

- Rule 16 provides that the court may, in its discretion or upon motion, direct the parties to appear to discuss the preservation, disclosure, or discovery of ESI;
- The rules do not allow for “early delivery” of requests for production;
- Rule 37 establishes a procedure whereby discovery disputes – other than requests for sanctions – are resolved by “statement of discovery issues” rather than motions practice;
- Rule 45 provides that the party issuing a subpoena must pay the reasonable cost of producing ESI;
- Rule 45 provides that an entity responding to a subpoena may object if a subpoena requests ESI in an objectionable form or ESI that is not reasonably accessible; and
- Rule 45 does not expressly provide that ESI need not be produced in more than one form.

### 32. Vermont (various effective dates)

Vermont Rules of Civil Procedure (*see* [Vermont Statutes and Court Rules](#)) 16.2 (effective July 6, 2009), 26, 33, 34 (effective Jan. 1, 2018), 37 (effective Sep. 18, 2017) and 45 (effective Feb. 13, 2015) are patterned after the post-Dec. 2015 federal rules, with the following exceptions:

- There is option for early Rule 34 requests; and
- Rule 37 applies to ESI and “other evidence” that should have been preserved. Sanctions are appropriate only upon a finding of prejudice; the Rule makes no mention of an “intent to deprive.”

### 33. Virginia

Virginia [Rules of Civil Procedure](#) (starting at page 302 of 611) 4:1, 4:4, 4:8, 4:9, 4:9A and 4:13 are patterned after the pre-Dec. 2015 federal rules, with the following exceptions:

- There is no specific requirement that ESI be addressed in initial disclosures or in an informal meet-and-confer session; and
- Rule 4:1 expressly provides that the court may order the allocation of costs for the production of ESI that is not reasonably accessible.

### 34. Virgin Islands

[Rule 39](#) of the Rules of the Superior Court of the Virgin Islands expressly adopts and follows “Rules 26 to 37” of the federal rules.

### 35. Washington (effective Sep. 1, 2013; Dec. 8, 2015)

Washington Superior Court Civil Rules [33](#) (effective Dec. 8, 2015) and [34](#) (effective Sep. 1, 2013) are patterned after the pre-Dec. 2015 federal rules.

### 36. Wisconsin (effective Apr. 5, 2018)

- [Wisconsin Statutes](#) §§ 802.10, 804.08, 804.09, 804.12, 804.01, 805.07 (effective Apr. 5, 2018) incorporate aspects of the post-Dec. 2015 federal rules on electronic discovery. For example, § 804.01(2)(a) on the scope of discovery incorporates the proportionality concept contained in the current federal rules, including the identical proportionality factors enunciated in FRCP 26(b). Wisconsin’s rules, however, do vary from the current federal rules:

- § 804.01(2)(e) requires the parties to confer about the following before seeking discovery of ESI: subjects on which the discovery of ESI may be needed, preservation of ESI, forms of production, methods for asserting privilege, costs of ESI discovery and the need for a referee to supervise discovery of ESI; and
- There is no requirement for the initial disclosure of ESI.
- § 804.01(2)(e)1g, like FRCP 26(b)(2)(B), proscribes discovery of ESI that is not easily retrievable due to “undue burden or cost” absent a showing of “substantial need and good cause,” but, unlike the federal rule, it identifies specific categories of ESI subject to this proscription, including backup data and legacy data on obsolete systems.
- § 804.09(2)(a)3 establishes 5 years before the cause of action’s accrual as the reasonable look back period for RFPs.

### 37. Wyoming (various effective dates)

Wyoming [Rules of Civil Procedure](#) 16 (effective July 1, 2010), 26 (effective Oct. 1, 2014), 33, 34, 37 (effective July 1, 2008) and 45 (effective Oct. 1, 2009) and are patterned after the pre-Dec. 2015 federal rules, with the following exception:

- There is no specific requirement that ESI be addressed in an informal meet-and-confer session.

Wyoming [Rules of Civil Procedure for Circuit Courts](#) contain additional rules aimed at “enhance[ing] the provision of just, speedy, and inexpensive determination of civil actions; . . . provid[ing] expedited trial dates; and . . . focus[ing] discovery towards resolution of the issues.” Rule 1 applies a “proportionality rule . . . to every aspect of these Rules.”

## STATES ADOPTING INDEPENDENT EDISCOVERY RULES

### 1. Colorado (effective Jan. 1, 2012; July 1, 2015)

The Colorado [Civil Access Pilot Project](#) (CAPP) applies to cases filed in participating jurisdictions between January 1, 2012 and June 30, 2015. The goal of the pilot program was to “address the growing concern that the civil pretrial process is unnecessarily complex, lengthy, and expensive.” Among other changes, the [CAPP rules](#) (mandatory in participating jurisdictions) establish that:

- “Within 14 days after the filing of an answer, the parties shall meet and confer concerning reasonable preservation of all relevant documents and things, including any electronically stored information” (PPR 6.1)
- “The court may shift any or all costs associated with the preservation, collection and production of electronically stored information as the interests of justice and proportionality so require.” (PPR 6.2)

Applying learnings from CAPP, Colorado Rules of Civil Procedure were amended (effective July 1, 2015 – see [redlined changes](#)).<sup>1</sup> Notably, the scope of discovery under Colorado’s Rule 26(b)(1) incorporates proportionality in a manner nearly identical to post-Dec 2015 Federal Rule 26(b)(1). The key provisions of Rule 16 include:

- Parties must file a Proposed Case Management Order addressing “information relevant to the evaluation of proportionality as well as how the case should be handled.”
- If the parties anticipate needing to discover a “significant amount” ESI, the parties must discuss and include in their Proposed Case Management Order agreements concerning ESI search terms to be used, if any, and the production, continued preservation and restoration of ESI, including forms of production and cost estimates.
- Lead counsel for each counsel must attend in person an initial case management conference with the judge.
- The court is permitted to dispense with the initial case management conference only if “there appear to be no unusual issues, that counsel appear to be working together collegially, and that the information on the proposed order appears to be consistent with the best interests of all parties and is proportionate to the needs of the case.”

## 2. Connecticut (effective Jan. 1 2012; Jan. 1, 2014)

Connecticut’s [Rules for the Superior Court](#) include several provisions relating to eDiscovery that do not directly parallel the federal rules:

- Rule 13-1 (page 217 of 645) (effective Jan. 1, 2014) specifies that a request for production of “documents” includes ESI and the responding party should act accordingly “unless otherwise specified by the requesting party”;
- Rule 13-5 (page 222 of 645) (effective Jan. 1, 2012) acknowledges that a protective order may be used to specify “terms and conditions” – including cost allocation – relating to the discovery of ESI;
- Rule 13-9 (page 223 of 645) (effective Jan. 1, 2014) provides that ESI need not be produced in more than one form and that, if a request for ESI does not specify the form of production, the responding party must produce the data “in a form in which it is ordinarily maintained or in a form that is reasonably usable”;
- Rule 13-14(d) (page 227 of 645) (effective Jan. 1, 2012) forecloses sanctions when information – including ESI – is “lost as the result of the routine, good-faith operation of a system or process in the absence of a showing of intentional actions designed to avoid known preservation obligations.”

## 3. Illinois (effective July 1, 2014)

Illinois [Rules of Civil Procedure](#) 201, 214, and 218 address matters relating to e-discovery.

- Rule 210 defines ESI as “any writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations in any medium from which

<sup>1</sup> Colorado Rules of Civil Procedure do not appear to be available free of charge on the state court’s website. A free version of the rules (current as of May 1, 2016) is provided by [a local law firm](#). Otherwise, Lexis subscribers can access the rules [here](#).

electronically stored information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form.”

- Rule 214 allows parties to serve written requests for materials, including ESI. The rule borrows several concepts from Federal Rule 34, including that “if a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.” Moreover, Rule 214 incorporates the post-Dec. 2015 federal rules’ proportionality concept by allowing a responding party to object to a request “on the basis that the burden or expense of producing the requested materials would be disproportionate to the likely benefit.”
- Rule 218 requires consideration at a case management conference of “any other matters which may aid in the disposition of the action including but not limited to issues involving electronically stored information and preservation.”

#### 4. Delaware

Delaware [Court of Chancery<sup>2</sup> Rules](#) 26, 30, 34, and 45 include ESI within their scope. In January 2011, the Delaware Court of Chancery issued [guidelines](#) for preservation of ESI.

The Superior Court of Delaware’s [Complex Commercial Litigation Division](#) (CCLD) has [E-Discovery Plan Guidelines](#), which require the parties to meet and confer to discuss issues related to ESI, including preservation, form and scope of production (“including the custodians, time period, file types and search protocol to be used to identify which ESI will be produced”), the methods for asserting and preserving privilege and confidentiality and “whether allocation among the parties of the expense of preservation and production is appropriate.” The parties then must develop an e-discovery plan for submission to the court, which will enter an order governing discovery of ESI.

The Delaware Supreme Court has created the [Delaware Commission on Law & Technology](#) (DECLT) “to develop and publish guidelines and best practices regarding the use of technology and the practice of law.” The DECLT offers various materials relating to eDiscovery, including a collection of “[Leading Practice](#)” publications and a CLE presentation titled [Best Practices in Electronic Discovery](#).

#### 5. Georgia (effective June 4, 2015)

Georgia Superior Court [Uniform Rule 5.4](#) (page 23 of 117) establishes a process whereby parties may submit to the court a discovery plan. Included among the topics that such a plan might

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<sup>2</sup> Delaware’s Court of Chancery has exclusive jurisdiction to hear and determine all matters and causes in equity. Delaware’s Superior Court has jurisdiction over all criminal and non-equity civil cases except domestic relation matters (in which jurisdiction is vested with Delaware’s Family Court). The Superior Court’s CCDL handles large and complex business or commercial cases.

address are: the schedule for discovery, including ESI; the format in which ESI will be produced; and any sources of information that are “not reasonably accessible.”<sup>3</sup>

## 6. Mississippi (effective May 29, 2003; July 1, 2013)

Mississippi [Rules of Civil Procedure](#) 34 and 45 (effective July 1, 2013) address the production of ESI and mirror the pre-Dec. 2015 federal rules.

Mississippi’s other Rules of Civil Procedure predate the 2006 federal rules amendments. Rule 26 (effective May 29, 2003) includes “electronic or magnetic data” in the scope of discovery and as to such data, requires that a requesting party specify a form of production, allows the producing party to object if the data is not reasonably available, and includes a cost-shifting provision for any extraordinary steps required to produce the data.

Mississippi’s Supreme Court’s Rules Committee on Civil Practice and Procedure is conducting a comprehensive review of the Mississippi Rules of Civil Procedure. The Committee invited attorneys and judges to submit proposed revisions through August 31, 2016. Some of the proposed revisions relate to Mississippi’s discovery-related rules. *See generally* [Mississippi Rules of Civil Procedure Revision Project](#).

## 7. New Hampshire

New Hampshire [Superior Court<sup>4</sup> Rules](#) 21, 22, 23 and 24 include ESI within the scope of discovery, require the initial disclosure of ESI and allow for requests for production of ESI.

Rule 25 addresses solely the discovery of ESI and includes the following provisions:

- Parties must meet and confer about the preservation of ESI;
- A duty to preserve “all potentially relevant ESI” is triggered “once the party is aware that the information may be relevant to a potential claim;
- “Requests for ESI shall be made in proportion to the significance of the issues in dispute” and cost-shifting may be appropriate for any disproportionate requests;

<sup>3</sup> In July 2015, Georgia’s Council of Superior Court Judges approved a proposed amendment to the state’s Uniform Superior Court Rules that would add a provision governing spoliation of ESI closely tracking amended FRCP 37(e). *See* [Proposed Amendments to the Uniform Rules of Superior Court](#) (Aug. 3, 2015); [Proposed Amendments to the Uniform Rules For Superior Court, Approved For First Reading](#), July 29, 2015, at 3. This proposed rule change is not part of the current Georgia Rules, but it is unclear whether the proposal has been considered and rejected or remains pending. *See generally* [Georgia Uniform Superior Court Rules](#) (updated Sep. 22, 2016).

<sup>4</sup> New Hampshire’s Superior Court is the only forum in the court for jury trials and has jurisdiction over certain criminal, domestic relations and civil cases. In comparison, New Hampshire’s District Courts have jurisdiction over cases involving families, juveniles, small claims, landlord-tenant matters, minor crimes and violations, and civil cases in which the amount in dispute does not exceed \$25,000. New Hampshire also has a Family Division and Probate Court.

- A party may request ESI “stored in any medium from which information could be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form,” including “back-up and archived copies of ESI”;
- The party requesting ESI must state the form in which it is to be produced, but the same ESI need not be produced in more than one form; and
- “A party may also serve on another party a request to permit the requesting party and or its representatives to inspect, copy, test or sample the ESI in the responding party’s possession or control.”



## 8. New York

New York has no e-discovery rules that apply to all trial courts, but certain courts within the New York State Unified Court System address e-discovery:

- [Section 202.12](#) of the Uniform Civil Rules for the Supreme Court and the County Court requires parties who attend a preliminary conference to be prepared to discuss electronic discovery. After the conference, the court may establish the method and scope of discovery of ESI.
- [Appendix A](#) to the Uniform Rules sets forth guidelines for the discovery of ESI from nonparties in Commercial Division cases.
- [Section 202.70](#), which applies to the Commercial Division of the Supreme Court, requires the parties to meet and confer about ESI before the preliminary conference.
- The Commercial Division in Nassau County has adopted [guidelines](#) for the discovery of ESI.
- [Rule 5\(b\)](#) of the Commercial Division in Queens County requires the parties to confer about anticipated e-discovery issues prior to the preliminary conference held with the court.

## 9. Oregon (effective January 1, 2012)

Oregon [Rule of Civil Procedure](#) 43 defines “documents” to include ESI and provides that, if a requesting party does not specify a form of production for ESI, the responding party may produce ESI in the form in which it is ordinarily maintained or in a reasonably useful form.

## 10. Pennsylvania (effective August 1, 2012)

Pennsylvania [Rules of Civil Procedure](#) 4009.1, 4009.11, 4009.12, 4009.21, 4009.23 and 4011 address the discovery of ESI. But as stated in the Explanatory Comment: “[t]hough the term ‘electronically stored information’ is used in these rules, there is no intent to incorporate the federal jurisprudence surrounding the discovery of electronically stored information. The treatment of such issues is to be determined by traditional principles of proportionality under Pennsylvania law . . . .”

## 11. Rhode Island (effective November 5, 2014)

Rhode Island [Superior Court<sup>5</sup> Rule of Civil Procedure](#) 34 (page 47 of 115) provides for requests for production of “documents or electronically stored information . . . stored in any medium from which information can be obtained either directly or, if necessary, after translation by the

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<sup>5</sup> Rhode Island’s Superior Court has jurisdiction in all felony proceedings, in civil cases where the amount in controversy exceeds \$10,000, and in equity matters. The District Court has exclusive jurisdiction of all civil actions at law wherein the amount in controversy is less than \$5,000. The Superior and District Courts have concurrent jurisdiction of all civil actions at law in which the amount in controversy exceeds \$5,000 and does not exceed \$10,000. The Family court has jurisdiction over matters involving domestic relations and juveniles.

responding party into a reasonably usable form.” Similar rules apply in [Family Court](#) (page 45 of 90) and in [District Court](#) (page 49 of 109).

## STATES NOT ADOPTING EDISCOVERY RULES AMENDMENTS

1. Kentucky
2. Missouri
3. South Dakota
4. West Virginia
5. Guam

## STATES ADOPTING RULES AFFECTING WAIVER OF PRIVILEGE AND WORK PRODUCT PROTECTION

1. Alabama (effective Oct. 1, 2013)

[Rule 510](#) of the Alabama Rules of Evidence largely mirrors Federal Rule of Evidence 502.

2. Alaska (effective July 15, 1994)

Rule 510 of the [Alaska Rules of Evidence](#) (page 15 of 26) defines waiver of privilege as voluntary disclosure or consent for disclosure of any significant part of the matter or communication.

3. Arizona (effective Jan. 1, 2012)

[Rule 502](#) of the Arizona Rules of Evidence mirrors Federal Rule of Evidence 502.

4. Arkansas

[Arkansas Rule of Evidence 502](#) addresses the effect of inadvertent disclosure on claims of privilege as well as selective waiver for information produced to government agencies.

5. California (effective Jan. 1, 2015)

[Section 912](#) of the California Evidence Code defines waiver of privilege as disclosure or consent to disclosure, without coercion, of a significant part of the communication.

California Code of Civil Procedure Section [2031.285](#), sets forth a process by which a party can claw back privileged or protected ESI that has been inadvertently disclosure. The code implicitly recognizes that such inadvertent production does not, by itself, constitute waiver.

## 6. Delaware

Delaware [Rule of Evidence](#) 510 (page 8 of 22) mirrors federal Rule of Evidence 502.

The CCDL's [Protocol for the Inadvertent Production of Documents](#) establishes a claw-back procedure and states that “[i]nadvertent production of privileged material, the return of which is requested in accordance with this [protocol], shall not be considered a waiver of any claim of privilege.”

## 7. Florida (effective July 10, 1995)

[Section 90.507](#) of the Florida Statutes defines waiver of privilege as consent to disclosure or voluntary disclosure without the expectation of privacy.

## 8. Hawaii

Hawaii [Rule of Evidence](#) 511 (page 17 of 32) defines waiver of privilege as voluntary disclosure or consent to disclosure of any significant part of the privileged matter.

## 9. Illinois (effective Jan. 1, 2013)

Illinois [Rule of Evidence 502](#) mirrors Federal Rule of Evidence 502 in addressing the inadvertent disclosure of privileged materials.

## 10. Indiana (current as of Jan. 1, 2014)

Indiana [Rule of Evidence 502](#) mirrors Federal Rule of Evidence 502 in addressing the inadvertent disclosure of privileged materials.

## 11. Iowa (effective June 1, 2009)

Iowa [Rule of Evidence 5.502](#) (page 7 of 19) mirrors Federal Rule of Evidence 502.

## 12. Kansas (effective Jan. 1, 1964)

[Kansas Statutes Annotated § 60-437](#) defines waiver of privilege as disclosure of information with knowledge of the privilege and without coercion, trickery, deception, or fraud.

## 13. Kentucky (effective 1990)

Kentucky [Rule of Evidence 509](#) defines waiver of privilege as voluntary disclosure or consent to disclosure of any significant part of the privileged matter.

#### 14. Louisiana (effective Jan. 1, 1993; Aug. 15, 2007)

Louisiana [Code of Evidence Article 502](#) (effective Jan. 1, 1993) defines waiver of privilege as voluntary disclosure or consent for disclosure. Louisiana [Code of Civil Procedure Article 1424\(D\)](#) (effective Aug. 15, 2007) provides that inadvertent disclosure of privileged materials does not operate as a waiver if “reasonably prompt measures” were taken to assert privilege “once the holder knew of the disclosure.”

#### 15. Maine (effective Jan. 1, 2015)

Maine’s [Rule of Evidence 510](#) (page 91 of 186) defines waiver of privilege as voluntary disclosure or consent to disclosure.

#### 16. Maryland (effective Jan. 1, 2008)

Maryland [Rules of Procedure 2-402\(e\)\(3\) and \(4\)](#) mirror Federal Rule of Evidence 502(b) and (e).

#### 17. Massachusetts

[The Massachusetts Guide to Evidence \(2016 Ed.\)](#)<sup>6</sup> Section 523 (page 126 of 408) defines waiver of privilege as voluntary disclosure, consent for disclosure, or introduction of privileged communications as part of a claim or defense. The Note to this Section includes a thorough explanation of FRE 502 and its effect on state law. Section 524 (page 128 of 408) states simply that “[a] claim of privilege is not defeated by a disclosure erroneously made without an opportunity to claim the privilege.”

#### 18. Montana (effective June 7, 1990)

Montana [Rule of Evidence 503](#) defines waiver of privilege as voluntary disclosure or consent to disclosure.

#### 19. Nebraska (effective 1975)

[Nebraska Revised Statute 27-511](#) defines waiver of privilege as voluntary disclosure or consent to disclosure of any significant part of the matter or communication.

#### 20. Nevada (effective 1995)

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<sup>6</sup> An online supplement to this Guide, offering “summaries of important opinions of the Supreme Judicial Court and Appeals Court relating to the development and evolution of Massachusetts evidence law,” is available at <http://www.mass.gov/courts/case-legal-res/guidelines/mass-guide-to-evidence/supplement.html>.

[Nevada's Revised Statute 49.385](#) defines waiver of privilege as voluntary disclosure or consent to disclosure of a significant part of the matter.

## 21. New Hampshire

Under New Hampshire [Superior Court Rule 25\(i\)](#) the inadvertent disclosure of ESI does not waive privilege.

## 22. New Jersey (effective July 1, 1993)

New Jersey [Rule of Evidence 530](#) defines waiver of privilege as (a) contracting to not claim the privilege, or (b) disclosing or consenting to disclosure without coercion and with knowledge of the privilege.

## 23. New Mexico (effective Dec. 31, 2013)

New Mexico Rule of Evidence 11-511 (effective Dec. 31, 2013) defines waiver of privilege as voluntary disclosure or consent to disclosure of any significant part of the matter or communication. (See [New Mexico Rules](#).)

## 24. North Dakota (effective Mar. 1, 2014)

North Dakota [Rule of Evidence 510](#) (effective Mar. 1, 2014) defines waiver of privilege as voluntary disclosure of or consent to disclose any significant part of the privileged matter.

## 25. Oklahoma (effective Nov. 1, 2002)

Oklahoma [Evidence Code 12 O.S. § 2511](#) (effective Nov. 1, 2002) defines waiver of privilege as voluntary disclosure or consent to disclose any significant part of the privileged matter.

## 26. Oregon (enacted 2003)

Oregon [Rule of Evidence 511](#) defines waiver of privilege as voluntary disclosure or consent to disclose any significant part of the matter or communication.

## 27. South Dakota

South Dakota [Rule of Evidence 510](#) defines waiver of privilege as voluntary disclosure or consent to disclosure of any significant part of the privileged matter.

## 28. Tennessee (effective July 1, 2010)

Tennessee [Rule of Evidence 502](#) (effective July 1, 2010) addresses waiver and mirrors Federal Rule of Evidence 502(b).

## 29. Texas

Texas [Rule of Civil Procedure](#) 193.3(d) (page 137 of 323) states that inadvertent disclosure of privileged materials does not waive privilege “if - within ten days or a shorter time ordered by the court, after the producing party actually discovers that such production was made - the producing party amends the response, identifying the material or information produced and stating the privilege asserted.”

Texas [Rule of Evidence](#) 511(a) (page 31 of 58) defines waiver of privilege as (1) voluntary disclosure or consent to disclose any significant part of the privileged matter or (2) the calling of a character witness to whom privileged communications have been made to testify as to a person’s character insofar as the privileged communications are relevant to character. Rule 511(b) largely mirrors Federal Rule of Evidence 502.

### **30. Utah**

Utah [Rule of Evidence 510](#) defines waiver of privilege as (1) the voluntary disclosure or consent to disclosure of any significant part of the matter, or (2) failure to take reasonable precautions against inadvertent disclosure.

### **31. Vermont (effective Jan. 23, 2012)**

Vermont Rule of Evidence 510 (*see* [Vermont Statutes and Court Rules](#)) mirrors Federal Rule of Evidence 502.

### **32. Washington (Sep. 1, 2010)**

Washington [Rule of Evidence 502](#) mirrors Federal Rule of Evidence 502.

### **33. West Virginia**

West Virginia [Rule of Evidence 502](#) largely mirrors Federal Rule 502.

### **34. Wisconsin (effective 1993; Jan. 1, 2013)**

Under [Wisconsin Statute § 804.01](#) (effective Jan. 1, 2013), work product protection is waived “if the disclosure was not inadvertent.” [§ 905.03\(5\)\(a\)](#) (effective Jan. 1, 2013) mirrors Federal Rule of Evidence 502(b) as it pertains to attorney-client privilege. [§ 905.11](#) (effective 1993) defines waiver of privilege as voluntary disclosure or consent to disclose any significant part of the matter or communication.

# FEDERAL DISTRICT COURT LOCAL EDISCOVERY RULES, ORDERS, AND FORMS<sup>7</sup>

## 1. M.D. Ala.

[Guidelines to Civil Discovery Practice](#) (see Section III.D – Electronically Stored Information, page 18 of 27; Appendix II – Ask the Right Questions, page 25 of 27) (effective Feb. 9, 2015)

## 2. S.D. Ala.

[Local Rules](#) (effective Aug. 1, 2015)

- Civil L.R. 16(a) – Preliminary Pretrial Conferences (page 40 of 155)
- Civil L.R. 26(a) – Conference of the Parties; Planning for Discovery (page 44 of 155)
- Local Form for Report of Parties’ Planning Meeting (page 88 of 155) (see ¶ 12, page 89 of 155)

## 3. D. Alaska

[Local Rule 16.1\(b\) – Pre-Trial Scheduling and Planning Conference](#) (page 28 of 70) (effective Dec. 1, 2011)

[Local Civil Form 26\(f\) – Scheduling and Planning Conference Report](#) (see ¶ 4(C), page 2 of 4)

## 4. Ariz.

[General Order 17-08](#) – regarding the MIDP (see [below](#))

## 5. E.D. and W.D. Ark.

[Local Rule 26.1 – Outline for Fed.R.Civ.P.26\(f\) Report](#) (effective May 1, 2002)

## 6. N.D. Cal.

[Standing Order for All Judges of the Northern District of California](#) (revised Nov. 1, 2014)

[Guidelines for the Discovery of Electronically Stored Information](#) (revised Dec. 1, 2015)

[ESI checklist for use during the Rule 26\(f\) meet and confer process](#) (revised Dec. 1, 2015)

[\[Model\] Stipulated Order Re: Discovery of Electronically Stored Information for Standard Litigation](#)

[\[Model\] Stipulation & Order Re: Discovery of Electronically Stored Information for Patent Litigation](#)

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<sup>7</sup> This section identifies only court-wide rules, orders and forms. To the extent that individual judges have additional or different standing orders governing discovery, these are not compiled here.



## 7. S.D. Cal.

### Local Rules (current as of Feb. 9, 2016)

- Patent Local Rule 2.1.a – Early Neutral Evaluation Conference (page 81 of 130)
- Patent Local Rule 2.6 – Model Order for Electronically Stored Information (page 84 of 130)
- Model Order Governing Discovery of Electronically Stored Information in Patent Cases (page 106 of 130)

## 8. D. Colo.

Guidelines Addressing the Discovery of Electronically Stored Information (effective Sep. 1, 2014)

Checklist for Rule 26(f) Meet-and-Confer Regarding Electronically Stored Information (effective Apr. 24, 2015)

LCivR 16.2 – Scheduling Order (page 19 of 82) (effective Dec. 1, 2015)

Proposed Scheduling Order and Instructions (revised Dec. 1, 2011)

## 9. D. Conn.

### Local Rules (revised Apr. 1, 2016)

- Rule of Civil Procedure 16(b) – Scheduling Orders (page 32 of 159)
- Civil Appendix, Form 26(F) Report of Parties' Planning Meeting (page 105 of 159) (*see* ¶ V.E.j., page 108 of 159)

## 10. D. Del.

Default Standard for Discovery, Including Discovery of Electronically Stored Information (“ESI”)

Default Standard for Access to Source Code

Local Bankruptcy Rule 7026-3 – Discovery of Electronic Documents (page 109 of 170) (Effective Feb. 1, 2016)

## 11. M.D. Fla.

Handbook on Civil Discovery Practice (*see* ¶ VII – E-Discovery, page 24 of 28) (revised Jun. 5, 2015)

## 12. N.D. Fla.

### Local Rules (effective Nov. 24, 2015)

- 2.1 – Definitions (page 8 of 82)
- 26.2(E) – Discovery in Criminal Cases (page 26 of 82)

**13. S.D. Fla.**

[Local Rules](#) (revised Dec. 1, 2017)

- 16.1(b)(2)(K) – Scheduling Conference Report (page 31 of 124)
- 16.1(b)(3)(C) – Joint Proposed Scheduling Order (page 31 of 124)
- 26.1(e) – Interrogatories and Production Requests (page 43 of 124)

[ESI Checklist](#)

**14. N.D. Ga.**

[LR 16.2 – Joint Preliminary Report and Discovery Plan](#) (page 26 of 80) (updated Mar. 31, 2016)

[Appendix B, II. Joint Preliminary Report and Discovery Plan](#) (page 9 of 31) (see ¶ 11(b), page 15 of 31) (revised Mar. 11, 2011)

**15. S.D. Ga.**

[Local Rule 26.1\(b\)](#)

[Form – Rule 26\(f\) Report](#) (page 17 of 22) (see ¶ 9, page 20 of 22)

**16. D. Guam**

[RN Civil Attachment 5 – Scheduling and Planning Conference Report](#)<sup>8</sup> (page 42 of 50 see ¶ V.C.) (revised Dec. 12, 2014)

**17. D. Haw.**

[General and Civil Rule LR16.3 – Scheduling Conference Order](#) (page 28 of 100) (updated June 29, 2016)

**18. D. Idaho**

[Local District Civil Rule 16.1 – Scheduling Conference, Litigation Plan, Voluntary Case Management Conference and Electronically Stored Information](#) (page 30 of 82) (revised Jan. 1, 2016)

**19. N.D. Ill.**

[General Order 17-0005](#) – implementing the MDIP program (see [below](#))  
[Standing Order Regarding MIDP](#)

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<sup>8</sup> The link provided will take you to the “Draft of Proposed Civil Local Rules.” This is offered because the final (i.e., adopted), online version of the rules do not include the attachments. The referenced form should be available on the Court’s Civil Forms page ([http://www.gud.uscourts.gov/civil\\_forms?page=1](http://www.gud.uscourts.gov/civil_forms?page=1)), but the link to the zipped attachments is ineffective.

**20. S.D. Ill.**

[Local Rules](#) (effective Dec. 1, 2009)

- 16.2(a) – Initial Conferences of the Parties; Submission of Report (page 18 of 63)
- 23.1 – Class Actions / Scheduling and Discovery Conference (page 20 of 63)

[Joint Report of Parties and Proposed Scheduling and Discovery Order](#) (see ¶ 7, page 2 of 3) (revised Mar. 2016)

[Joint Report of Parties and Proposed Scheduling and Discovery Order \(Class Action\)](#) (see ¶ 8, page 2 of 4) (revised Mar. 2016)

**21. N.D. Ind.**

[Local Rules](#) (effective Jan. 19, 2016)

- L.R. 16.1(d) – Planning-Meeting Report (page 24 of 130)
- L.P.R. 2-1(b) – Discovery Plan (page 99 of 130)

[Report of Parties' Planning](#) (see ¶ 4, page 2 of 3)

**22. S.D. Ind.**

[Local Rule 16.1\(b\) – Case Management Plan](#) (effective Sep. 1, 2016)

[Uniform Case Management Plan](#) (see ¶ III(K), page 5 of 11) (revised Dec. 10, 2013)

[Uniform Patent Case Management Plan](#) (see ¶ IV(G), page 4 of 10)

[ESI Supplement to Case Management Plan](#)

**23. N.D. Iowa**

[Instructions and Worksheet for Preparation of Scheduling Order and Discovery Plan](#) (effective Jan. 1, 2007)

**24. S.D. Iowa**

[Order for Status Report on ESI](#) (revised Mar. 2, 2015)

[Instructions and Worksheet for Preparation of Scheduling Order and Discovery Plan](#) (revised May 1, 2013)

**25. D. Kan.**

[Guidelines for Cases Involving Electronically Stored Information \(ESI\)](#)

[Report of Parties' Planning Conference](#) (see page 2 and ¶5.e., page 5 of 10) (revised Dec. 3, 2015)

[Initial Order Regarding Planning and Scheduling](#) (see page 5 and ¶5.e., page 8 of 13) (revised Dec. 1, 2015)

[Scheduling Order](#) (see ¶2.f, page 6 of 13) (revised Dec. 1, 2015)

**26. D. Md.**

[Local Rules](#) (effective July 1, 2016)

- Section VIII. Patents; Rule 802 – Scheduling Conference (page 96 of 162)
- Appendix D; Standard Requests for Production of Documents (page 148 of 162)

[Discovery Guidelines](#)

[Principles for the Discovery of Electronically Stored Information in Civil Cases](#)

[Suggested Protocol for Discovery of Electronically Stored Information](#)

[Local Bankruptcy Rules](#)

- 2004-1(d) – Examination Guidelines (page 21 of 189)
- 7026-1(j) – Discovery Guidelines (page 70 of 189)
- Appendix C – Discovery Guidelines (page 156 of 189)

**27. D. Mass.**

[Local Rule 16.6 – Scheduling and Procedures in Patent Infringement Cases](#) (*see* ¶ (A)(7), page 37 of 173) (updated May 6, 2016)

**28. E.D. Mich.**

[Model Order Relating to the Discovery of ESI](#) (effective Sep. 20, 2013)

[Local Bankruptcy Rule 7026-4 – Discovery of Electronically Stored Information](#) (page 62 of 101) (effective Feb. 1, 2016)

Bankruptcy Court [Report of Parties' Rule 26\(f\) Conference](#) (revised Apr. 19, 2016)

**29. D. Minn.**

[Local Rule 37.1\(e\)](#) – form of discovery motion concerning failure to preserve ESI (page 77 of 167) (effective May 16, 2016)

[Form 3 – 26\(f\) Report and Proposed Scheduling Order](#) (*see* ¶ (e)(2), page 3 of 5)

[Form 4 – 26\(f\) Report and Proposed Scheduling Order \(Patent Cases\)](#) (*see* ¶ (h)(4), page 8 of 10)

[Discussion of Electronic Discovery at Rule 26\(f\) Conferences: A Guide for Practitioners](#)

**30. N.D. and S.D. Miss.**

[Local Uniform Civil Rules](#) (effective Dec. 1, 2015)

- 26(f) – Fed. R. Civ. P. 26(f) Conference of the Parties (page 34 of 122)
- 45(d) – Non-Party ESI (page 39 of 122)

[Form 1 – Case Management Order](#) (*see* ¶ 6.E., page 3 of 5) (updated Feb. 2016)

**31. E.D. Mo.**

[Local Rule 26 - 3.01\(A\)](#) – Disclosure Pursuant to Rule 26(a)(1) and (2) (page 39 of 141) (effective Dec. 1, 2009)

**32. D.N.H.**

[Local Rules](#) (amended June 6, 2016)

- 26.1 – Discovery Plan (page 47 of 159)
- Civil Form 2 – Discovery Plan (page 88 of 159)
- Supplemental Patent Rule 3.1 – Scheduling Conference, Discovery Plan and Discovery Order (page 151 of 159)

**33. D.N.J.**

[Local Civil Rules](#) (updated Apr. 20, 2014)

- 26.1(b) – Meeting of Parties, Discovery Plans, and Initial Disclosures (page 60 of 143)
- 26.1(d) – Discovery of Digital Information Including Computer-Based Information (page 61 of 143)

[Joint Proposed Discovery Plan](#)

[Proposed Discovery Plan \(CAMDEN only\)](#)

[Local Bankruptcy Rule 7016-1 – Pretrial Procedure](#) (page 62 of 95) (current as of August 1, 2016)

**34. E.D.N.Y**

[Local Civil Rules](#) (updated Sep. 3, 2015)

- 26.2 – Assertion of Claim of Privilege (*see* Committee Note, page 31 of 127)
- 26.3(c)(2) – Uniform Definitions in Discovery Requests / Document (page 33 of 127)
- 54.1 – Taxable Costs (*see* Committee Note, page 44 of 127)

[Local Bankruptcy Rule 7033-1\(f\) – Reference to Records](#) (revised Jan. 10, 2013)

**35. N.D.N.Y.**

[Civil Case Management Plan](#) (*see* ¶ 12.G., page 5 of 7) (effective Nov. 4, 2013)

**36. S.D.N.Y**

[Local Civil Rules](#) (updated Sep. 3, 2015)

- 26.2 – Assertion of Claim of Privilege (*see* Committee Note, page 31 of 127)
- 26.3(c)(2) – Uniform Definitions in Discovery Requests / Document (page 33 of 127)
- 54.1 – Taxable Costs (*see* Committee Note, page 44 of 127)

[Standing Order – Pilot Program to Improve the Quality of Judicial Case Management Techniques for Complex Civil Cases](#) (effective Nov. 14, 2014)

[Discovery Guide for Pro Se Litigants](#)

[Local Bankruptcy Rule 7033-1\(f\) – Reference to Records](#) (page 65 of 92) (effective Dec. 1, 2015)

**37. W.D.N.Y.**

[Local Rules of Civil Procedure](#) (effective Jan. 1, 2016)

- 16(b) – Initial Pretrial Conference (page 24 of 65)
- 26(e) – Electronically Stored Information (page 32 of 65)

**38. M.D.N.C.**

[Local Rule of Practice and Procedure 16.1\(f\)](#) – Meeting on the Scope of Retention of Potentially Relevant Documents (page 26 of 76) (effective Mar. 1, 2014)

**39. W.D.N.C.**

[Local Rule of Civil Procedure 16.1\(G\)](#) – Initial Pretrial Conference (page 20 of 83) (effective Jan. 1, 2012)

**40. N.D. Ohio**

Local Civil Rules

- [16.3\(b\)](#) – Case Management Conference (effective Feb. 2, 2009)
- [Appendix K](#) – Default Standards for Discovery of Electronically Stored Information

**41. S.D. Ohio**

[Rule 26\(f\) Report of Parties](#) (Western Division, Dayton only) (*see* ¶ 6.h., page 4 of 6)

[Rule 26\(f\) Report of Parties](#) (Eastern Division only) (*see* ¶ 6.c., page 2 of 4)

**42. E.D. Okla.**

[Recommendations for Electronically Stored Information Discovery Production in Federal Criminal Cases](#) (effective Feb. 2012)

**43. W.D. Okla.**

[Local Court Rules](#) (revised May 10, 2016)

- Civil Rule 16.1(a)(1) – Parties' Initial Conference (page 27 of 106)
- Civil Rule 26.1 – Discovery Plan (page 33 of 106)
- Appendix II – Joint Status Report and Discovery Plan (page 74 of 106) (*see* ¶ 8.D., page 75 of 106)
- Criminal Rule 16.1(a) (page 61 of 106)

[General Order Regarding Best Practices for Electronic Discovery of Documentary Materials in Criminal Cases](#) (effective Aug. 20, 2009)

**44. D. Or.**

[Local Rule of Civil Procedure 26](#)

- LR 26-1(2) – Electronically Stored Information (effective Mar 1, 2016)

- LR 26-6 – E-Discovery in Patent Cases (effective Mar. 1, 2014)
- LR 26-7 – Initial Discovery Protocols for Employment Cases Alleging Adverse Action (effective Mar. 1, 2014)

#### 45. M.D. Penn.

[Local Rules of Court](#) (effective Dec. 1, 2014)

- LR 26.1 – Duty to Investigate and Disclose (page 30 of 107)
- Appendix A – Joint Case Management Plan (page 83 of 107)

#### 46. W.D. Penn.

[Local Rules](#) (effective Feb. 1, 2013)

- LCvR 26.2 – Discovery of Electronically Stored Information (page 35 of 130)
- Appendix LCvR 16.1A – Fed. R. Civ. Pr. 26(f) Report of the Parties (page 104 of 130)

[Electronic Discovery Information](#)

Administrative Orders

- [Establishment of a Panel of Special Masters for Electronic Discovery](#) (amended Feb 26, 2016)
- [Establishment of a Panel of Mediators for Electronic Discovery](#) (filed Dec. 16, 2015)
- [Use of Special Masters for Electronic Discovery By United States Bankruptcy Judges](#) (filed Mar. 30, 2011)

[Local Bankruptcy Rules](#) (effective Apr. 1, 2016)

- 7026-1 – Discover of Electronic Documents (page 110 of 158)
- 7026-2 – Electronic Discovery Special master (page 113 of 158)

#### 47. P.R.

[Local Civil Rule 16\(a\) – Scheduling Conference](#) (page 22 of 141) (current as of Sep. 2, 2010)

#### 48. M.D. Tenn.

[Administrative Order No. 174 – Default Standard E-Discovery](#) (effective July 9, 2007)

#### 49. W.D. Tenn.

[Local Rule 26.1\(e\) – E-Discovery](#) (page 24 of 173) (revised Nov. 13, 2015)

[Standard Track Scheduling Order](#)

[Expedited Track Scheduling Order](#)

[Complex Track Scheduling Order](#)

[Local Patent Rules](#) (effective Jan. 1, 2014), Appendix B – Joint Planning Report and Proposed Schedule (page 30 of 38) (*see* ¶ 5(b), page 31 of 38)

#### 50. E.D. Tex.

[\[Model\] Order Regarding E-Discovery in Patent Cases](#)

**51. N.D. Tex.**

[Miscellaneous Order No. 62](#) (Dallas Division, Patent Cases) (filed Nov. 17, 2009) (see ¶ 2-1(a) – Initial Case Management Conference, page 2 of 23)

**52. S.D. Tex.**

[Local Rule of Practice for Patent Cases 2-1\(a\) – Parties’ Preparation for Initial Case Management Conference](#) (page 2 of 14) (effective Jan. 1, 2008)

**53. D. Utah**

Bankruptcy Court [Form 35: Report of Parties’ Planning Meeting Pursuant to Local Rule 7016-1\(b\)](#)

**54. D. Vt.**

[Local Rule of Procedure 26\(a\) – Discovery Schedule](#) (page 28 of 60) (effective Mar. 1, 2017)

**55. W.D. Wash.**

[Local Civil Rules](#) (updated Jan. 21, 2016 to conform to post Dec.-2015 federal rules; redlined version available [here](#))

[Model Agreement re: Discovery of Electronically Stored Information](#) (updated Mar. 12, 2015)  
[Best Practices for Electronic Discovery in Criminal Cases](#) (adopted Mar. 21, 2013)

**56. S.D. W. Va.**

[Report of Parties’ Planning Meeting](#) (required by [Local Rule 16.1](#) (page 25 of 92) (current as of Nov. 18, 2013))

In June 2016, an Advisory Committee for the Study of Local Rules of Civil Procedure was appointed “to propose new rules where appropriate.” (See [Order](#).)

**57. E.D. Wis.**

[Civil Local Rules](#) (current as of Sep. 9, 2015)

- 16(a) – Preliminary Pretrial Conferences (page 29 of 64)
- 26(a) – Conference of the Parties; Planning for Discovery (page 33 of 64)



## 58. D. Wyo.

[Local Civil Rules](#) (current as of Mar. 4, 2015)

- 26.1(c) – Discovery of Electronically Stored Information (page 32 of 105)
- Appendix A – Rule 26(f) Conference Checklist<sup>9</sup> (page 101 of 105)

## 59. U.S. Court of Federal Claims

[Rules of the United States Court of Federal Claims](#) (effective Aug. 1, 2016), Title V (page 48 of 229)

# FEDERAL COURT EDISCOVERY AND RELATED INITIATIVES

## 1. Seventh Circuit

The [Seventh Circuit Electronic Discovery Pilot Program](#) is a multi-year, multi-phase project begun in 2009 to develop, implement, evaluate, and improve pretrial litigation procedures. The program committee has published [Principles Relating to the Discovery of Electronically Stored Information \(rev. 08/01/2010\)](#), which are designed to “provide incentives for the early and informal information exchange on commonly encountered issues relating to evidence preservation and discovery,” and a [Model Standing Order](#) for use by courts participating in the program. Phase One was completed in May 2010 ([Report on Phase One](#)). Phase Two was completed in May 2012 ([Report on Phase Two](#)). Phase Three began in May 2012 ([Interim Report on Phase Three](#)).

## 2. Federal Circuit

The Federal Circuit Advisory Council has drafted and adopted a [Model Order](#) governing e-discovery. As stated on the Federal Circuit’s website: “This Model Order is offered to aid trial courts in the exercise of their discretion in crafting orders tailored to the facts and circumstances of each case. The Court of Appeals for the Federal Circuit has not approved the specific language of the posted Model Order.”

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<sup>9</sup> Appendix A’s reference to Local Rule 26.1(d)(3) appears to be an outdated reference that was not amended to reflect the most recent (Mar. 2014) changes to the rules.

### 3. S.D.N.Y.

The [Pilot Program to Improve the Quality of Judicial Case Management](#) was implemented in response to the federal bar's concern over the high costs of litigating complex cases and was designed to reduce costs and delay by improving judicial case management of such matters. The program was in effect Nov. 1, 2011 through Oct. 31, 2014. Since then, "the Bench and the Bar are urged to consider the provisions of the Pilot Project as best practices and to use them in particular cases as they see fit."

### 4. Federal Criminal Cases

The Department of Justice / Administrative Office Joint Electronic Technology Working Group published [Recommendations for ESI Discovery Production in Federal Criminal Cases](#) in Feb. 2012.

### 5. Federal Employment Cases Alleging Adverse Action

In Nov. 2011, the Federal Judicial Center launched the [Pilot Project Regarding Initial Discovery Protocols for Employment Cases Alleging Adverse Action](#). United States District Court judges across the country were invited to participate in the project, which seeks to encourage the exchange of "the most relevant information and documents" – specifically defined to include ESI – "early in the case, to assist in framing the issues to be resolved and to plan for more efficient and targeted discovery."

### 6. Mandatory Initial Discovery Pilot Project – Ariz. & N.D. Ill.

In May 2017, some district courts began participating in the [Mandatory Initial Discovery Pilot Project](#) ("MIDP"), a 3-year project to study "whether requiring parties in civil cases to respond to a series of standard discovery requests before undertaking other discovery will reduce the cost and delay of civil litigation." Except in exempted cases, the mandatory initial discovery replaces the initial disclosures otherwise required by Rule 26(a)(1) and require, *inter alia*, that the parties:

- make initial disclosures of "both favorable and unfavorable information that is relevant to their claims or defenses regardless of whether they intend to use the information in their cases"; and
- "address certain issues relating to [ESI] and produce ESI by the deadline set in the Standing Order."

Currently two district courts – Ariz. and N.D. Ill. – are participating in the program.

## MODEL UNIFORM LAWS

### 1. Conference of Chief Justices

In Aug. 2006, the Conference approved the [Guidelines for State Trial Courts Regarding Discovery of Electronically-Stored Information](#) “as a reference tool” and urged “the highest appellate court of each jurisdiction to distribute the Guidelines to the trial judges in its state as appropriate.”

### 2. National Conference of Commissioners of Uniform State Laws (approved Aug. 2007)

In Aug. 2007, the Uniform Law Commission (ULC, also known as National Conference of Commissioners on Uniform State Laws) approved the [Uniform Rules Relating to the Discovery of Electronically-Stored Information](#).