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Links to State Court and Local Federal eDiscovery Rules

Data and Discovery Strategies

October 2022

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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; December 21, 2018)

Alabama Rules of Civil Procedure 26(b)(1), 26(b)(2), 26(c), and 37(g) were revised on December 21, 2018. Rule 26 was revised to include proportionality and incorporate most of the 2015 FRCP amendments to Rule 26 into the Alabama rule. Rule 37(g) is now identical to FRCP 37(e), imposing a reasonableness analysis on the court when examining the preservation of ESI. Rule 16, 33(c) (effective Feb. 1, 2010), 34 (effective Nov. 18 2009), and 45 (effective July 1, 2016) incorporate most of the 2006 FRCP amendments. Alabama's rules still differ from their federal counterparts:

- Rule 16 does not require that the court enter a scheduling order. (The rule, however, identifies the discovery of ESI as among a scheduling order's permissible contents.); and
- Rule 26 does not require preliminary disclosures; does not require the parties meet and confer on discovery issues prior to the case's initial scheduling conference/order; and does not require that the parties develop a discovery plan.

2. Alaska (effective Oct. 15, 2014)

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:

- The examples for a scheduling order's permissible content listed in Rule 16 do not include the parties' agreements regarding production of privileged or work product protected information;
- Rule 26 does not address the production of privileged or work product protected information.; and
- Rule 45 is silent as to objections regarding the form of production for ESI and what form of production should be used if the requesting party fails to specify it in the subpoena.

3. Arizona (effective Jan. 1, 2021; Jan. 1, 2020; and Jul. 1,2018)

Arizona Rules of Civil Procedure 26 (effective Jan. 1, 2020), 26.2 (effective Jan. 1, 2021), 26.1, 16, 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";
- 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 (current to June 1, 2022)

Arkansas Rules of Civil Procedure include optional Rule 26.1. 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—two Senate bills passed in 2019 and effective January 1, 2020, SB 370 and SB 17—to the California Code of Civil Procedure revised section 2031.280 and added sections 2016.090 and 2023.050. Section 2031.280 now requires that documents produced in response to document requests "be identified with the specific request number to which the documents respond." 2031.280(a). Although the new rule applies to ESI, it does not specify precisely how ESI is to be linked to responsive requests. The two new sections provide for initial disclosures, if stipulated to by the parties, (See 2016.090) and sanctions if those initial disclosures are not made (see 2023.050). If the parties agree to initial disclosures, the new section, like its federal counterpart, requires that those disclosures be timely supplemented as necessary. 2016.090(3).

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.

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.

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 86 of 285) (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, a State Bar Court rule, (page 57 of 247) (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:

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- Rule 26 does not require initial disclosures or provide an option for early requests for production because the Superior Court rules allow parties to begin discovery at the filing of the complaint;
- There is likewise no requirement that the parties hold an initial discovery conference or develop a discovery plan.

7. Florida (current as of Aug. 26, 2022)

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:

- The rules do not require preliminary disclosures of ESI or other discovery and do not require the parties to meet early to discuss discovery issues. But the Committee Notes to the 2012 Amendment on Rule 1.280 encourage the parties to "consider conferring with one another at the earliest practical opportunity to discuss the reasonable scope of preservation and production of electronically stored information;"
- Expressly authorizes the discovery of ESI (Rule 1.280(b)(3));
- Does not require the parties to meet and confer prior to moving for a protective order (Rule 1.280(c);
- Rule 1.380, the FRCP 37 analog, was amended in 2019 to conform its subsection (e) with that federal rule and now mirrors the procedure in current FRCP 37(e) on handling a failure to preserve ESI;
- Expressly identifies ESI discovery - including possible agreements between the parties on its preservation, form of production, and permissible scope - as an appropriate topic for the court to consider during its case management conference (Rule 1.200(a)(7) and Rule 1.201(b)(1)(J));
- Expressly allows the court to allocate expenses for discovery of ESI that is not reasonably accessible (Rule 1.280(d)(1)); and
- Requires the parties to confer and develop a discovery plan only in complex actions (Rule 1.201(b)(1).

8. Hawaii (effective Jan. 1, 2022; and Jan. 1, 2015)

Hawaii Rules of Civil Procedure 16, 26, 30, 33, 34, 37 and 45 are patterned after the pre-Dec. 2015 federal rules but Rules 34 and 45 contain a good cause exception to the requirement that a party need not produce ESI in more than one form (Rule 34(d) and Rule 45(e)).

9. Idaho (effective July 1, 2016)

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

- Idaho rules do not require preliminary disclosures; do not require the parties meet and confer on discovery issues prior to the case's initial scheduling conference/order; and do not require that the parties develop a discovery plan (Rule 26);
- 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 34(b)(2)(E)(iv));
- Rule 45 specifically allows the court, upon motion, to condition compliance with a subpoena for ESI upon the advancement of reasonable costs (Rule 45(d)(2)); and

- Rule 45 includes provisions adopting the Uniform Interstate Depositions and Discovery Act (45(j)).

Rule 16 differs from its federal counterpart and is silent on whether scheduling orders may address the disclosure and discovery of ESI or privilege claw-back agreements.

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, but Indiana rules do not require preliminary disclosures; do not require the parties meet and confer on discovery issues prior to the case's initial scheduling conference/order; and do not require that the parties develop a discovery plan (Rule 26).

Rules 16, 33 and 45 are silent as to ESI.

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 exceptions:

- 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;
- While Rule 1.503, unlike its federal counterpart, does not limit the discovery of ESI to that which is reasonably accessible (*Compare* Rule 1.503(8) *with* FRCP26(b)(2)(B)), an identical limit to that contained in FRCP 26 appears in the Iowa rule governing protective orders, Rule 1.504(2).

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 115 of 129)
  - Form 14: Subpoena Form to Testify at Hearing or Trial (page 117 of 129)
  - Form 15: Subpoena Form to Produce Documents or Permit Inspection (page 119 of 129)

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 (Rule 60-216(b)(1)(E) and (F));

- Kansas rules do not require preliminary disclosures; do not require the parties to meet and confer on discovery issues prior to the case's initial scheduling conference/order; and do not require that the parties develop a discovery plan (Rule 60-226);
- Rule 60-228a codifies the Uniform Interstate Deposition and Discovery Act and governs service of a foreign subpoena (i.e. subpoena issued outside Kansas) in the state; and
- Rule 60-245a specifically provides for the issuance of a subpoena for non-party business records.

13. Louisiana (various effective dates)

Louisiana Code of Civil Procedure Articles 1354, 1422, 1424, 1425, 1426,1460, 1461, 1462, 1469, 1471, and 1551 are patterned after the pre-Dec. 2015 federal rules, with the following exceptions:

- Louisiana rules do not require preliminary disclosures; do not require the parties to meet and confer on discovery issues prior to the case's initial scheduling conference/order; and do not require that the parties develop a discovery plan (Articles 1422 and 1424 (scope of discovery));
- There is no requirement that the parties confer and attempt resolution prior to moving to compel or for a protective order (Articles 1469 (compelling discovery) and 1426 (protective orders));
- Article 1354, a rule governing the subpoena duces tecum, mirrors the language of FRCP 45 on ESI issues, but expressly provides for the allocation of costs for ESI that is shown not to be reasonably accessible;
- 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; and
- 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 (various effective dates)

Maine Rules of Civil Procedure 16, 33, 34, and 37 (effective July 2008), 26 (effective September 2014), and Rule 45 (effective December 2007) are patterned after the pre-Dec. 2015 federal rules, with the following exceptions:

- Maine rules do not require preliminary disclosures; do not require the parties to meet and confer on discovery issues prior to the case's initial scheduling conference/order; and do not require that the parties develop a discovery plan (Rule 26) (While preliminary disclosures are required on cases placed on the "Expedited Track" (See Rule 16C), those disclosures do not specifically address ESI);
- Rule 26 requires the court to impose the reasonable expense of producing ESI on the requesting party if the court orders production of ESI that is not reasonably accessible; and
- Rule 45, unlike its federal counterpart, does not specifically address the 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] 2-421, 2-424 (effective Jan. 1, 2008), 2-402, 2-422 (effective April 1, 2017), 2-433 (effective Jan. 1, 2014), 2-504 (effective April 1,2022), 2-504.1 (effective Oct. 1, 2021) and 2-510 (effective July 1, 2018) are patterned after the pre-Dec. 2015 federal rules, with the following exceptions:

- Maryland rules do not require preliminary disclosures, only encourage discovery plans (Rule 2-401(c)), and the parties are not required to meet and confer prior to the scheduling conference unless the court orders them to do so (Rule 2-504.1(c)(2)) (The Committee Note to Rule 2-504.1(c) lists specific issues that may be considered during a scheduling conference on ESI, including the form and manner of production, requests for metadata, and apportioning costs for the production of ESI that is not reasonably accessible);
- Rule 2-402 expressly permits the court to allocate costs when ordering the production of ESI that is not reasonably accessible (Rule 2-402(b)(2)) (ESI requested in a subpoena is subject to the same allocation (Rule 2-510(g)(2));
- Rule 2-510 elaborates on the proof required to show that ESI is not reasonably accessible (2-510(g)(2)) ("The statement of reasons shall provide enough detail to enable the demanding party to evaluate the burdens and costs of complying with the subpoena and the likelihood of finding responsive information in the identified sources") (That elaboration is also included in Rule 2-402 (See Rule 2-402(b)(2));
- Rule 2-424 specifically authorizes parties to seek an admission of the genuineness of ESI (Rule 2-424(a)).

16. Massachusetts (various effective dates)

Massachusetts [Rules of Civil Procedure] 16 (effective Jan. 1, 2014), 26 (effective September 1, 2017), 34 (effective Aug. 1, 2016), 37 (effective Jan. 1, 2014) and 45 (effective April 1, 2015) are patterned after the pre-Dec. 2015 federal rules, with the following exceptions:

- Massachusetts rules do not require preliminary disclosures;
- While Rule 26 does not require the parties to confer and develop a discovery plan, it does grant parties a right to conduct an ESI conference during the first 90 days following the first responsive pleading, and allows parties to agree to such a conference after that period, and if an agreement cannot be reached, move the court for a conference under Rule 16 (Rule 26(f)(A) and (B):
  - Rule 26 provides that the ESI conference is meant to facilitate development of a ESI discovery plan and requires the parties to file the plan with the court within 14 days of the conference and identify any issues that the parties could not reach agreement on (Rule 26(f)(C));
  - Rule 26 directs the parties to consider specific issues during the ESI conference, including whether allocation of costs between the parties is appropriate (Rule 26(f)(C)(i)-(viii));
  - Rule 26 allows the court to enter an ESI order and specifies the issues appropriate for that order, which issues include many of those the parties are directed to discuss during their ESI conference, including allocation of costs (Rule 26(f)(3)(A)-(J));
  - Rule 26 expressly allows the court to allocate the discovery costs of ESI (Rule 26(f)(4)(D)).
- Rule 26(c) does not require the parties to meet & confer prior to filing a motion for protective order and 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); and
- Rule 26 expressly permits courts to limit the discovery of ESI, "even from an accessible source, in the interests of justice"(Rule 26(f)(4)(E).

17. Michigan (June 1, 2019)

Michigan Civil Procedure Court Rules* 2.302, 2.310, 2.313, 2.401, and 2.506 largely mirror the 2015 amendments to the FRCP. The new rules, effective January 1, 2020, now require that parties serve initial disclosures, including ESI-related disclosures (Rule 2.301) and limit the scope of discovery to the proportionality standard identified in the federal rule (Rule 2.302(B)). Some of the ESI-related changes, however, are unique to the Michigan rules:

- Michigan rules do not require the parties to meet and confer on discovery issues prior to the case's initial scheduling conference/order; and do not require that the parties develop a discovery plan (See Rule 2.302). But Rule 2.401 provides that courts, in cases likely to include the discovery of ESI, can order the parties to participate in an "ESI conference" and develop an "ESI Discovery Plan." And if not so ordered, a party can file a motion seeking such a conference. The court may enter an order implementing the ESI Discovery Plan on its own initiative, on motion of a party, or on stipulation of the parties. The rule expects that counsel participating in ESI conferences be well versed in their clients' technological systems. Rule 2.401(J)(1-4);
- Rule 2.302(C) does not require the parties to meet & confer prior to filing a motion for protective order and does not expressly authorize the court to allocate discovery expenses when issuing protective orders; and
- Rule 2.310 does not require that objections to document requests be stated with "specificity" or disclose whether documents are being withheld pursuant to those objections. (See Rule 2.310(C)(2)) But unlike its federal analog, the rule requires document requests to specify the form of ESI production (Rule 2.310(C)(1)).

18. Minnesota (effective July 1, 2013; July 1, 2015, July 1, 2018)

Minnesota Rules of Civil Procedure Rules 26, 34, and 37 were revised in 2018 (effective July 1, 2018) to mirror their federal counterparts and fully incorporate the ESI-related changes made to those rules in the 2015 amendments, including the prominence of proportionality in the scope of discovery. Like FRCP 26, Minnesota Rule 26 requires initial ESI disclosures and that the parties confer and develop a discovery plan encompassing ESI. And, like its federal counterpart, new Rule 34 requires that objections be stated with specificity and that objecting parties disclose whether they are withholding documents under an objection. Rule 37 contains the identical procedure for dealing with the loss of ESI as contained in the federal rule. The Minnesota rules, however, do differ from the post-Dec. 2015 federal rules:

- Rule 26.03 does not require the parties to meet & confer prior to filing a motion for protective order;
- Rule 16 does not require that the court enter a scheduling order unless one is specifically requested by a party; and
- Rule 16, unlike Rules 26,34, and 37, was not revised in 2018 to mirror the 2015 FRCP amendments, so there is no provision specifically identifying the preservation of ESI as suitable content for the scheduling order.

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 (Rule 146.05)

19. Missouri (effective August 28, 2019)

Missouri revised Rule 56.01, effective August 28, 2019, to incorporate many of the ESI-related amendments made to FRCP 26, including limiting the scope of discovery to the proportionality standard (56.01(b)(1)) and limiting the discovery of ESI to only that which is reasonably accessible (56.01(b)(3)). The revised Rule 56.01 also provides a procedure for clawing back privileged or work-product protected information that mirrors that included in the federal rule. 56.01(b)(9). And Rule 58.01 now expressly allows requests to produce ESI (Rule 58.01(a)(1)(A)), including requests to produce in native format (Rule 58.01(b)(1)(C)). On March 2, 2021, the Missouri Supreme Court issued an order formally adopting these revisions, effective September 2, 2021. Missouri discovery rules still differ from their federal counterparts in significant ways, including:

- Missouri rules do not require preliminary disclosures; do not require the parties to meet and confer on discovery issues prior to the case's initial scheduling conference/order; and do not require that the parties develop a discovery plan;
- Missouri rules do not provide a procedure for handling a party's failure to preserve ESI like FRCP 37(e) does; and
- While Rule 58.01 does require that objections to document requests "be stated in detail," the objecting party is not required to disclose whether documents are being withheld due to an objection.

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

Montana Rules of Civil Procedure 16, 33, 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 exceptions:

- Rule 16 does not require the court to issue a scheduling order after a scheduling conference unless a party requests that it do so. Rule 16(b)(1); and
- Montana rules do not require preliminary disclosures; do not require the parties to meet and confer on discovery issues prior to the case's initial scheduling conference/order; and do not require that the parties develop a discovery plan. The court is not required to hold a discovery conference unless a party moves the court to do so and includes a proposed discovery plan in its motion that addresses any ESI-related issues (Rule 26).

21. Nebraska (effective June 18, 2008)

Nebraska Court Rules of Discovery § 6-333 § 6-334 and § 6-334(A) are patterned after their pre-Dec. 2015 federal counterparts, FRCP 33, 34 and 45, with the following exception:

- Rules § 6-334(A), the FRCP 45 analog, does not incorporate the "reasonably accessible" limit of FRCP 26 or specifically address ESI form of production issues as FRCP 45 does.

22. Nevada (effective Mar. 1, 2019)

Nevada Rule of Civil Procedure 16, 26, 33, 34, 37, and 45 were amended, effective March 1, 2019, and are now patterned after the post-2015 federal rules. The amended Rule 26, like its federal counterpart, ties relevancy to the claims and defenses of the case, rather than its subject matter, and confines discovery to proportionality, evaluating that concept with the same federal factors. Rule 26, like the federal rule, also abandoned the "reasonably calculated" language. Still the rule differs from its federal counterpart in a couple of respects:

- Rule 16.1 contains the initial disclosure, early discovery conference and discovery plan requirements contained in FRCP 26 (but those requirements contain identical ESI provisions as contained in the federal rule); and
- Rule 26 does not provide for early document requests as FRCP 26 does.

23. New Jersey (various effective dates)

New Jersey Court Rules 4:17, 4:23 (effective Sept. 1, 2014), 4:10, 4:18 (effective Sept. 1, 2016), 1:9 (effective Sept. 1, 2017) and 4:5B (effective Sept. 1, 2018) are patterned after the pre-Dec. 2015 federal rules, with the following exceptions:

- New Jersey rules do not require preliminary disclosures; do not require the parties to meet and confer on discovery issues prior to the case's initial scheduling conference/order; and do not require that the parties develop a discovery plan;
- Rule 4:18-1, the state counterpart to FRCP 34, contains no provision regarding objections made to a requested form of ESI production like that contained in FRCP 34(b)(2)(D) but the other federal provisions related to the form of ESI production are fully incorporated;
- Rule 1:9-2, the New Jersey counterpart to FRCP 45, does not incorporate the ESI procedures identified in FRCP 34 or the "reasonably accessible" limit of FRCP 26; 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.

24. New Mexico (various effective dates)

New Mexico Rules of Civil Procedure for the District Courts (*see* New Mexico Rules) 1-016, 1-026, 1-033, 1-037 (effective May 15, 2009), 1-034 (effective Dec. 31, 2021), and 1-045 (effective Dec. 31, 2020) are patterned after the pre-Dec. 2015 federal rules, with the following exceptions:

- New Mexico rules do not require preliminary disclosures; do not require the parties to meet and confer on discovery issues prior to the case's initial scheduling conference/order; and do not require that the parties develop a discovery plan. (If the court conducts a discovery conference, Rule 1-026(F) requires it to also establish a discovery plan but the rule does not specify whether that plan is to address ESI issues.);
- Rule 1-016 does not require the court to enter a scheduling order after holding a scheduling conference but if the court does enter a scheduling order it must address ESI issues (ESI issues are addressed as permissible content under the federal counterpart);
- There is no specific limitation in Rule 1-026 for the production of ESI that is not reasonably accessible;

- 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; and
- Rule 1-045 contains no provision regarding objections made to the requested form of ESI production as that contained in FRCP 45 (FRCP 45(c)(2)(B)).

25. North Carolina (effective Oct. 1, 2011; June 12, 2018)

North Carolina Rules of Civil Procedure 26 (effective June 12, 2018), 33, 34, 37 and 45 (effective Oct. 1, 2011) are patterned after the pre-Dec. 2015 federal rules, with the following exceptions:

- North Carolina rules do not require preliminary disclosures; do not require the parties to meet and confer on discovery issues prior to the case's initial scheduling conference/order; and do not require that the parties develop a discovery plan;
- 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(b)(1));
- Rule 26 explicitly allows the court to allocate costs for the production of ESI that is not reasonably accessible (Rule 26(b)(1b));
- Rule 26(f) does provide for permissive "discovery meetings" between the parties and/or "discovery conferences" before the court. The rule requires the parties to develop a discovery plan if such a meeting or conference is held, and that such plan must consider ESI issues, including its discovery, preservation and form of production (Rule 26(f)(2)-(3)); and
- North Carolina's Rule 45, unlike its federal counterpart, is silent on making objections to the requested form of ESI production (See FRCP 45(c)(2)(B)).

North Carolina Business Court Local Rules (effective July 1, 2022) also address e-discovery and incorporate the proportionality concept of the post-Dec. 2015 federal rules:

- Rule 9.1 requires the parties to participate in a Case Management Meeting, the topics of which are to consider discovery issues, including the development of an ESI protocol and agreements preventing waiver of inadvertently produced privileged documents. Rule 9.1(c)(2);
- Rule 10.2 requires counsel, prior to the Case Management Meeting, to consult with their clients on ESI issues, including custodians who may have discoverable ESI and the sources and location of discoverable ESI;
- Rule 10.3 provides that the parties should focus on specific topics when discussing discovery management during the Case Management Meeting, including proportionality, gauged by the same factors enunciated in FRCP 26 (Rule 10.3(a)) and the development of an ESI protocol, specifying the precise topics that the protocol is to consider (Rule 10.3(c)); and
- Rule 16.2 encourages counsel to consider the appointment of discovery referees in cases that "involve large amounts of ESI or when there may be differing views regarding the use of keyword searches, utilization of predictive coding, or the shifting or sharing of costs associated with large-scale or costly discovery."

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 (Rule 6.6.2-3) and is patterned after its federal rule counterpart (Rule 34(b)(2)(E)(ii)-(iii)); and
- Rule 6.8 addresses objections relating to ESI and 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.".

26. North Dakota (various effective dates)

North Dakota Rules of Civil Procedure 33 (effective Mar. 1, 2016), 16, 34 (effective Mar. 1, 2017), 45 (effective May 5, 2021) and 26 (effective Mar. 16, 2022) are patterned after the post-Dec. 2015 federal rules with exceptions as identified below, the most important of which is that North Dakota Rule 26 does not emphasize proportionality like its federal counterpart does. Rule 37 (effective Mar. 1, 2011) is still patterned after the pre-Dec. 2015 federal rules and does not contain the detailed procedure for dealing with a failure to preserve ESI as contained in the post-Dec. 2015 version of FRCP 37.

- Rule 16 does not require a scheduling order in all circumstances and non-waiver agreements are not specifically identified as appropriate topics for scheduling orders;
- Although Rule 26(b), like its federal counterpart, ties relevancy to the claims and defenses of the case, not its subject matter, the rule does not emphasize proportionality and retains the "reasonably calculated" language;
- Rule 26 also does not expressly authorize courts to allocate discovery expenses in protective orders or allow for early requests for production;
- Rule 26(f) does not require the parties to confer on discovery issues, but if the parties participate in a discovery meeting they must work towards developing a discovery plan and, if unsuccessful in that effort, may move the court to develop a discovery plan. Rules 26(f)(1), (4)(A) and (5);
- Rule 26(f) not only requires the discovery plan to address the preservation and discovery of ESI, it also lists the precise ESI-related details that the plan should consider, including "the media form, format, or procedures by which such information will be produced, the allocation of the costs of preservation, production, and, if necessary, restoration, of such information, the method for asserting or preserving claims of privilege or of protection of the information as trial-preparation materials ... [and] the method for asserting or preserving confidentiality and proprietary status ...." Rule 26(f)(4)(B)(iii); 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—other metadata is not discoverable absent agreement or court order.

27. Ohio (various effective dates)

Ohio revised its Rules of Civil Procedure in July 2020 and closely aligned several of those rules to their federal counterparts. Ohio Rule 26, like the federal rule, now emphasizes proportionality in confining the scope of discovery (Rule 26(B)(1), generally limits the discovery of ESI to only that which is reasonably accessible (Rule 26(B)(5), limits the frequency and extent of discovery that is cumulative or duplicative (Rule 26(B)(6), and allows courts to allocate discovery expenses to curb parties from seeking disproportionate or unduly burdensome discovery ((Rule 26(C)). Additionally, Ohio Rule 26 now requires parties in most cases to make initial disclosures, including a categorical description and location of all relevant ESI (Rule 26(B)(3)), and requires parties to confer "as soon as practicable" to discuss development of a discovery plan (Rule

26(F)(1)-(2)), which plan is to include issues regarding the disclosure, discovery, or preservation of ESI (Rule 26(F)(3)). Ohio Rule 16, like its federal counterpart, specifies that ESI—its disclosure, discovery, or preservation—is a suitable topic for the scheduling order, as is a modification to the extent of discovery (Rule 16(B)(3)). And Rule 16 requires that courts holding pretrial conferences consider the preservation of ESI and the timing, method of production, and limitations to be applied to the discovery of ESI (Rule 16(C)(2)). Rules 33, 34 (July 1, 2019), 45 (effective July 1, 2014) and 37 (effective July 1, 2016) are patterned after the pre-Dec. 2015 federal rules, with the following exceptions:

- Rule 45 explicitly provides that a court ordering the production of ESI that is not reasonably accessible may specify the format, extent, timing and allocation of expenses (Rule 45(D)(3)). And the rule directs the court to consider the proportionality factors when determining whether good cause exists to compel the production of ESI that is not reasonably accessible (Rule 45(D)(3));
- Rules 34 and 45 require that ESI whose production form is not specified be produced in a reasonably useable form, even if a party decides to produce it as it is ordinarily maintained;
- 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; and
- Ohio's Rule 45, unlike its federal counterpart, is silent on making objections to the requested form of ESI production (See FRCP 45(c)(2)(B)).

28. Oklahoma (effective Nov. 1, 2017, Jan. 1, 2019)

Oklahoma Code of Civil Procedure Discovery Code Chapter's 12 O.S. §§ 3225, 3226, 3233, 3237 (effective Nov. 1, 2017) and 3234 (effective Jan. 1, 2019) include many of the same concepts as contained in the post-Dec. 2015 federal rules, including construing the discovery rules to promote a "just, speedy, and inexpensive" resolution (12 O.S. § 3225), setting proportionality (determined by the same factors as enunciated in FRCP 26(b)) as the standard for discovery's scope (12 O.S. § 3226(B)(1)(a)), specifying the form of production for ESI (12 O.S. § 3234(B)(2)(d) and (e)), requiring specificity in objections to discovery requests (12 O.S. § 3234(B)(2)(b) and (c)), and allowing the court to allocate expenses to protect parties and non-parties from burdensome discovery (12 O.S. § 3226(C)(1)). But Oklahoma's rules differ from their federal counterparts in a number of ways:

- Although proportionality now appears to govern discovery's scope, Oklahoma chose to keep the "reasonably calculated" standard that the post-Dec. 2015 federal rules abandoned:
    - "Parties may obtain discovery regarding any matter, not privileged, which is relevant to any party's claim or defense, *reasonably calculated to lead to the discovery of admissible evidence* and proportional to the needs of the case." 12 O.S. § 3226(B)(1)(a) (emphasis added)
- Rule 3237 is still patterned after the pre-Dec. 2015 federal rules and does not contain the detailed procedure for dealing with a failure to preserve ESI as contained in the post-Dec. 2015 version of FRCP 37. 12 O.S. § 3237(G).

- Oklahoma's rules do not require a discovery conference or discovery plan and provide no guidance on a discovery plan's content, including whether it should address the disclosure, discovery, and preservation of ESI. 12 O.S. § 3226(F).
- Oklahoma's rules also do not require initial disclosures on the location and categories of ESI. 12 O.S. § 3226(A)(2)(a).

29. South Carolina (effective 2011; 2020)

South Carolina Rules of Civil Procedure 16, 26, 33, 34, 37 (effective 2011) and 45 (effective 2020) are patterned after the pre-Dec. 2015 federal rules, with the following exceptions:

- South Carolina rules do not require preliminary disclosures; do not require the parties to meet and confer on discovery issues prior to the case's initial scheduling conference/order; and do not require that the parties develop a discovery plan;
- 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 (Rule 26(f)(5);
- Rule 26 specifically allows the court to allocate the expenses associated with discovery of ESI (Rule 26(b)(6)(A)); and
- South Carolina rules do not require parties to meet and confer prior to moving for a protective order or compelled discovery.

30. Tennessee (effective 2003; 2009; 2011; 2019)

Tennessee Rules of Civil Procedure 16 (effective 2003), 26 (effective 2011), 33, 37 and 45 (effective 2009) are patterned after the pre-Dec. 2015 federal rules, with the following exceptions:

- Tennessee rules do not require preliminary disclosures; do not require the parties to meet and confer on discovery issues prior to the case's initial scheduling conference/order; and do not require that the parties develop a discovery plan;
- 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); and
- Tennessee rules do not require parties to meet and confer prior to moving for a protective order or compelled discovery.

Tennessee Rule 34 (effective 2019), however, is patterned after the post-Dec 2015 federal rules and like its post-2015 federal counterpart, Tennessee Rule 34 requires that objections to requests for production be stated with specificity and that those objections specify whether any documents are being withheld on the basis of the objection.

31. Texas (effective Jan. 1, 2021)

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 114 of 313) "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). And the Texas rules were recently amended, effective January 1, 2021, to require initial disclosures, including the disclosure of any ESI that will be used to support a party's claims or defenses. Rule 194.2(b)(6) (page 123 of 313).

Texas' rules are not otherwise patterned after the federal rules. Texas Rule of Civil Procedure 192.3(b) (page 112 of 313) 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 131 of 313) 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."

32. 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 it's federal counterpart, Utah Rule of Civil Procedure 26(b):

- Specifically provides that a party seeking discovery has the burden of showing proportionality (Rule 26(b)(3)); and
- Requires that a party claiming that ESI is not reasonably accessible "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" (Rule 26(b)(4)).

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 does not require the court to enter a scheduling order after holding a scheduling conference but allows the court, upon its discretion or upon motion, to direct the parties to appear to discuss the preservation, disclosure, or discovery of ESI (Rule 16(a)(12));
- Rule 26 does 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 a streamlined procedure, referred to as "statement of discovery issues," rather than lengthy motion practice (Rule 37(a));

- Rule 45 provides that the party issuing a subpoena must pay the reasonable cost of producing ESI (Rule 45(d));
- Rule 45 provides that an entity responding to a subpoena may object if a subpoena requests ESI in an objectionable form (Rule 45(e)(3)(G)) or ESI that is not reasonably accessible (Rule 45(e)(3)(H)); and
- Rule 45 does not expressly provide that ESI need not be produced in more than one form.

33. Vermont (various effective dates)

Vermont Rules of Civil Procedure (*see* Vermont Statutes and Court Rules) 16.2 (effective May 7, 2009), 26 (effective Dec. 7, 2020), 33, 34 (effective Jan. 1, 2018), 37 (effective Sep. 18, 2017) and 45 (effective Mar. 2, 2020) are patterned after the post-Dec. 2015 federal rules, with the following exceptions:

- Vermont rules do not require preliminary disclosures; do not require the parties to meet and confer on discovery issues prior to the case's initial scheduling conference/order; and do not require that the parties develop a discovery plan;
- The rules do not provide an option for early Rule 34 requests; and
- Rule 37(f) is broader than its federal counterpart and applies to both ESI and "other evidence" that should have been preserved. The court, on a finding of prejudice, may only take such actions as are necessary to cure the prejudice. Unlike its federal counterpart, the Vermont rule does not allow additional sanctions on a finding of an "intent to deprive" (Rule 37(f)).

34. Virginia (various effective dates)

Virginia Rules of Civil Procedure (starting at page 338 of 644) 4:1 (effective Jan. 1, 2019), 4:8 (effective May 2, 2011), 4:9, 4:9A and 4:12 (effective Apr. 1, 2018) are patterned after the pre-Dec. 2015 federal rules, with the following exceptions:

- Virginia rules do not require preliminary disclosures; do not require the parties to meet and confer on discovery issues prior to the case's initial scheduling conference/order; and do not require that the parties develop a discovery plan;
- Rule 4.1, Virginia's counterpart to federal Rule 26, allows a receiving party to propose an "ESI protocol" when a discovery request requires the production of ESI—the protocol "should address: (A) an initial list of custodians or the person(s) with knowledge of the party's custodians and the location of ESI, (B) a date range, (C) production specifications, (D) search terms, and (E) the identification and return of inadvertently revealed privileged materials." (Rule 4:1(b)(7));
- Rule 4:1 expressly provides that the court may order the allocation of costs for the production of ESI that is not reasonably accessible (Rule 4:1(b)(7));
- Rule 4:9, Virginia's counterpart to federal Rule 34, like the current federal rule, requires that objections state whether responsive materials are being withheld on the basis of the objection (Rule 4:9(b)(2));
- Rule 4:9A, governing the subpoena duces tecum, expressly allows for the court to allocate costs when ordering the production of ESI that is not reasonably accessible (Rule 4:9A(c)(2)(A)); and
- Rule 4:12, Virginia's counterpart to federal Rule 37, does not specifically address the loss of ESI.

35. Virgin Islands

The Virgin Islands Rules of Civil Procedure 16, 26, 33, 34 and 45 are closely patterned after the post-Dec. 2015 federal rules, with the following exception:

- Rule 26, like its current federal counterpart, ties relevancy to the parties' claims and defenses rather than subject matter, but the VI rule is silent as to proportionality.

36. 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.

37. Wisconsin (effective Apr. 5, 2018)

Wisconsin Statutes §§ 801.01, 802.10, 804.08, 804.09, 804.12, 804.01, 805.07 (effective Apr. 5, 2018) include many of the same concepts as contained in the post-Dec. 2015 federal rules on electronic discovery, including directing both the court and the parties to construe and administer the rules "to secure the just, speedy and inexpensive determination of every action and proceeding" (§ 801.01(2)), setting proportionality (determined by the same factors as enunciated in FRCP 26(b)) as the standard for discovery's scope (§ 804.01(2)(a)), requiring specificity in objections to discovery requests (§ 804.09(2)(b)1.), and allowing the court to allocate expenses to protect parties and non-parties from burdensome discovery (§ 804.01(3)(a)2.). Wisconsin's rules, however, do vary from the current federal rules:

- There is no requirement for the initial disclosure of ESI but § 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.
- § 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.
- The rule on sanctions prohibits a court from imposing sanctions on a party for failure to provide ESI lost as a result of the "routine, good-faith operation of an electronic information system" but is silent on ESI lost due to a party's failure to take reasonable preservation steps. § 804.12(4m)).

38. Wyoming (Mar. 1, 2017; Dec. 1, 2019)

Wyoming Rules of Civil Procedure 16, 33, 34, 37, 45 (effective March 1, 2017), and 26 (effective Dec. 1, 2019) are patterned after the post-Dec. 2015 federal rules. Wyoming amended Rule 26 late in 2019, and that rule now closely mirrors its federal counterpart, specifically requiring that the proportionality factors be applied to limit the scope of discovery and completely abandoning the "reasonably calculated" language contained in the former rule. Wyoming's new rules do differ from their federal counterparts however:

- Rule 16 does not require the court to issue a scheduling order after holding a scheduling conference;

- Rule 26(f) does not require the parties to meet and confer on discovery issues prior to the case's initial scheduling conference/order and does not require the parties to develop a discovery plan; and
- Rule 26(d) does not allow for the early service of document requests.

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).[1] 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; Jan. 1, 2018)

Connecticut's Rules for the Superior Court include several provisions relating to eDiscovery that do not directly parallel the federal rules:

[1] 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.

- Rule 13-1 (page 223 of 653) (effective Jan. 1, 2014) specifies that a request for production of "documents" includes ESI and the responding party should include ESI "unless otherwise specified by the requesting party" (Rule 13-1(c)(2));
- Rule 13-5 (page 227 of 653) (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 13-5(9));
- Rule 13-9 (page 229 of 653) (effective Jan. 1, 2018) 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 13-9(e));
- Rule 13-14(d) (page 233 of 653) (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; July 1, 2018)

Illinois Rules of Civil Procedure 201, 214, and 218 address matters relating to e-discovery.

- Rule 201 specifies that "documents" include ESI (Rule 201(b)(1)) and defines ESI as "any writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations in any medium from which electronically stored information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form" (Rule 201(b)(4)).
- 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." Rule 214(b). 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 214(c).
- Rule 218 requires the court to hold a case management conference and consider, among other things, "any other matters which may aid in the disposition of the action including but not limited to issues involving electronically stored information and preservation." Rule 218(a)(10).

4. Delaware

Delaware Court of Chancery[2] Rules 26, 30, 34, and 45 expressly include ESI within their scope. And Rule 45, following its federal counterpart, limits the production of ESI that is not "reasonably accessible." Rule 45(d)(1). In January 2011, the Delaware Court of Chancery issued guidelines for preservation of ESI.

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[2] 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.

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 25 of 137) allows for an "early planning discovery conference" culminating in a discovery plan, the permissible topics of which include: a schedule for the discovery of ESI (Rule 5.4(2)(b)); the format for which ESI will be produced (Rule 5.4(2)(d)); and sources of ESI that are not "reasonably accessible" (Rule 5.4(2)(e)).

6. Mississippi (effective July 1, 2013; Jan. 1, 2020)

Mississippi Rules of Civil Procedure 34 and 45 (effective July 1, 2013) address the production of ESI and mirror the federal rules as amended in 2006. Rule 26 (effective Jan. 1, 2020) includes ESI in the scope of discovery and limits the discovery of ESI that is "not reasonably accessible" in the same manner as the federal rule. But the rule also lists specific conditions that the court can apply to the discovery of such ESI:

> (i) limiting the frequency or extent of electronic discovery; (ii) requiring the discovery to be conducted in stages with progressive showings by the requesting party of a need for additional information; (iii) limiting the sources of electronically stored information to be accessed or searched; (iv) limiting the amount or type of electronically stored information to be produced; (v) modifying the form in which the electronically stored information is to be produced; (vii) requiring a sample production of some of the electronically stored information to determine whether additional production is warranted; and (vii) allocating to the requesting party some or all of the cost of producing electronically stored information that is not reasonably accessible because of undue burden or cost.

Rule 26(b)(5).

Mississippi's Rule 16. 33 and 37 predate the 2006 federal rule amendments and do not contain specific ESI-related provisions.

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[3] Rules include ESI within the scope of discovery (Rule 21), require the initial disclosure of ESI (Rule 22) and allow for requests for production of ESI (Rules 23 and 24).

Rule 25, meant to "codif[y] electronic discovery in New Hampshire," includes the following provisions:

- Parties must meet and confer on the preservation of ESI (Rule 25(a));
- 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" (Rule 25(b));
- "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 (Rule 25(c));
- 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" (Rule 25(d));
- The party requesting ESI must state the form in which it is to be produced (Rule 25(e), but the same ESI need not be produced in more than one form (Rule 25(h));
- The inadvertent production of privileged ESI does not effect a waiver (Rule 25(i)) and the responding party can "claw-back" such ESI (Rule 25(j)); 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" (Rule 25(k)).

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.

[3] 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.

- Appendix A to the Uniform Rules sets forth guidelines for the discovery of ESI from nonparties in Commercial Division cases, and includes limits on that discovery based on the same proportionality factors listed in FRCP 26
- 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.

9. Oregon (effective January 1, 2019)

Oregon Rule of Civil Procedure 43 defines "documents" to include ESI (Rule 43A(1)), 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 (Rule 43E(1)), and allows a party, or the court, to request a meet and confer on issues regarding ESI production (Rule 43E(2)).

10. Pennsylvania (effective August 1, 2012)

Pennsylvania Rules of Civil Procedure 4009.1, 4009.11, 4009.12, 4009.21, 4009.23 and 4011 provide for the discovery of "electronically stored information." But the Explanatory Comment preceding Rule 4009.1 expressly rules out adopting federal jurisprudence on ESI discovery: "[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 . . . ." Still, Pennsylvania's proportionality principles include a number of the same factors as listed in FRCP 26 (Explanatory Comment, B, preceding Rule 4009.1). And the Official Note to Rule 4009.11 provides that requests for ESI should be as specific as possible, including specifying the form of production and limitations as to time and scope.

11. Rhode Island (effective November 5, 2014)

Rhode Island Superior Court[4] 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 responding party into a reasonably usable form." Rule 34(a)(1)(A). The same ESI requests are allowed by the Family Court (page 45 of 90) and District Court (page 49 of 109) Rule 34 counterparts.

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[4] 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.

STATES NOT ADOPTING EDISCOVERY RULES AMENDMENTS

1. **Kentucky**
2. **South Dakota**
3. **West Virginia**
4. **Guam**

STATES ADOPTING RULES AFFECTING WAIVER OF PRIVILEGE AND WORK PRODUCT PROTECTION

1. Alabama

Rule 26(b)(6)(B) of the Alabama Rules of Civil Procedure (effective Dec. 21, 2018) mirrors Federal Rule of Civil Procedure 26(b)(5)(B) and provides a procedure for the retrieval of inadvertently produced privileged information;

Rule 510(a) of the Alabama Rules of Evidence (effective Oct. 1, 2013) defines privilege waiver as a voluntary or consented disclosure of any significant part of a privileged matter;

Rule 510(b) of the Alabama Rules of Evidence mirrors Federal Rule of Evidence 502 and, among other things, (i) confines subject matter waiver (Rule 510(b)(1)); (ii) prevents waiver for certain inadvertent disclosures (Rule 510(b)(2)); and (iii) allows a court order to prevent waiver for any disclosure (Rule 510(b)(4)).

2. Alaska

Rule 510 of the Alaska Rules of Evidence (effective July 15, 1994) defines privilege waiver as a voluntary or consented disclosure of any significant part of a privileged matter.

3. Arizona

Rule 26(b)(6)(B) of the Arizona Rules of Civil Procedure (effective Jan. 1, 2020) mirrors Federal Rule of Civil Procedure 26(b)(5)(B) and provides a procedure for the retrieval of inadvertently produced privileged information;

Rule 502 of the Arizona Rules of Evidence (effective Jan. 1, 2017) mirrors Federal Rule of Evidence 502 and, among other things, (i) confines subject matter waiver (Rule 502(a)); (ii) prevents waiver for certain inadvertent disclosures (Rule 502(b)); and (iii) allows a court order to prevent waiver for any disclosure (Rule 502(d)).

4. Arkansas

Rule 26(b)(5) of the Arkansas Rules of Civil Procedure (current Mar. 18, 2021), like Federal Rule of Civil Procedure 26(b)(5)(B), provides a procedure for the retrieval of inadvertently produced privileged information, but, unlike the federal rule, it specifies a time period for notification—14 days from the disclosure's discovery—providing that if the producing party notifies the receiving party within this period, the disclosure will be presumed to be inadvertent and not meant to waive privilege. The rule also lists factors for the court to consider when determining whether a

disclosure was inadvertent, including "the reasonableness of the precautions taken to prevent inadvertent disclosure" (Rule 26(b)(5)(D));

Arkansas Rule of Evidence 502 (current Sept. 1, 2021) limits waiver for inadvertent disclosures retrieved pursuant to the Rule 26(b)(5) procedures (Rule 502(e)) and applies selective waiver to disclosures made to government agencies (Rule 502(f)).

5. California

California Code of Civil Procedure Section 2031.285 (effective June 29, 2009), like Federal Rule of Civil Procedure 26(b)(5)(B), sets forth a process by which a party can claw back privileged or protected ESI that has been inadvertently disclosed but, unlike the federal rule, the California rule requires the receiving party to raise any challenges to the privilege claim within 30 days of the notice of disclosure;

Section 912 of the California Evidence Code (effective Jan. 1, 2015) defines waiver of privilege as disclosure or consent to disclosure, without coercion, of a significant part of the communication.

6. Colorado

Rule 26(b)(5)(B) of the Colorado Rules of Civil Procedure (effective Sept. 23, 2021) largely mirrors Federal Rule of Civil Procedure 26(b)(5)(B) and provides a procedure for the retrieval of inadvertently produced privileged information. Unlike the federal rule, it requires the receiving party to challenge the privilege claim within 14 days of receiving the notice of disclosure;

Rule 502 of the Colorado Rules of Evidence (effective Mar. 22, 2016) mirrors Federal Rule of Evidence 502 and, among other things, (i) confines subject matter waiver (Rule 502(a)); (ii) prevents waiver for certain inadvertent disclosures (Rule 502(b)); and (iii) allows a court order to prevent waiver for any disclosure (Rule 502(d)).

7. Delaware

The Complex Commercial Litigation Division's (CCLD) 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";

Delaware Rule of Evidence 510 (page 34 of 75) (current May 2018) mirrors federal Rule of Evidence 502 and, among other things, (i) confines subject matter waiver (Rule 510(b)); (ii) prevents waiver for certain inadvertent disclosures (Rule 510(c)); and (iii) allows a court order to prevent waiver for any disclosure (Rule 510(f)).

8. Florida

Rule 1.285 of the Florida Rules of Civil Procedure (effective Jan. 1, 2011), like Federal Rule of Civil Procedure 26(b)(5)(B), provides a procedure for the retrieval of inadvertently produced privileged information, but, unlike the federal rule, it requires both that (i) the producing party provide notice of the inadvertent production within 10 days of discovery and that (ii) the receiving party raise any challenges to the privilege claim within 20 days of receiving that notice;

Section 90.507 of the Florida Statutes (effective July 10, 1995) defines waiver of privilege as consent to disclosure or voluntary disclosure without the expectation of privacy.

9. Hawaii

Hawaii Rule of Evidence 511 defines waiver of privilege as a voluntary or consented disclosure of any significant part of a privileged matter.

10. Idaho

Rule 26(b)(5)(B) of the Idaho Rules of Civil Procedure (effective July 1, 2016) mirrors Federal Rule of Civil Procedure 26(b)(5)(B) and provides a procedure for the retrieval of inadvertently produced privileged information;

Rule 510 of the Idaho Rules of Evidence (effective July 1, 2018) defines waiver of privilege as voluntary disclosure or consent for disclosure of any significant part of the matter or communication.

11. Illinois

Illinois Supreme Court Rule 201(p) (effective July 1, 2014) mirrors Federal Rule of Civil Procedure 26(b)(5)(B) and provides a procedure for the retrieval of inadvertently produced privileged information;

Illinois Rule of Evidence 502 (effective Jan. 1, 2013) mirrors Federal Rule of Evidence 502 and, among other things, (i) confines subject matter waiver (Rule 502(a)); (ii) prevents waiver for certain inadvertent disclosures (Rule 502(b)); and (iii) allows a court order to prevent waiver for any disclosure (Rule 502(d)).

12. Indiana

Rule 26(B)(5)(b) of the Indiana Rules of Trial Procedure (current July 15, 2021) mirrors Federal Rule of Civil Procedure 26(b)(5)(B) and provides a procedure for the retrieval of inadvertently produced privileged information;

Indiana Rule of Evidence 502 (current Jan. 1, 2020) mirrors Federal Rule of Evidence 502 and, among other things, (i) confines subject matter waiver (Rule 502(a)); (ii) prevents waiver for

certain inadvertent disclosures (Rule 502(b)); and (iii) allows a court order to prevent waiver for any disclosure (Rule 502(d)).

13. Iowa

Rule 1.503(5)(b) of the Iowa Rules of Civil Procedure (current Sept. 14, 2021) mirrors Federal Rule of Civil Procedure 26(b)(5)(B) and provides a procedure for the retrieval of inadvertently produced privileged information;

Iowa Rule of Evidence 5.502 (page 7 of 19) (effective June 1, 2009) mirrors Federal Rule of Evidence 502 and, among other things, (i) confines subject matter waiver (Rule 5.502(a)); (ii) prevents waiver for certain inadvertent disclosures (Rule 5.502(b)); and (iii) allows a court order to prevent waiver for any disclosure (Rule 5.502(c)).

14. Kansas

Kansas Rule of Civil Procedure 60-226(b)(7)(B) (effective July 1, 2012) mirrors Federal Rule of Civil Procedure 26(b)(5)(B) and provides a procedure for the retrieval of inadvertently produced privileged information;

Kansas Rule of Evidence 60-437 (effective Jan. 1, 1964) defines privilege waiver as disclosure of information with knowledge of the privilege and without coercion, trickery, deception, or fraud;

Kansas Rule of Evidence 60-426a (effective July 1, 2011) mirrors Federal Rule of Evidence 502 and, among other things, (i) confines subject matter waiver (KSA 60-426a(a)); (ii) prevents waiver for certain inadvertent disclosures (KSA 60-426a(b)); and (iii) allows a court order to prevent waiver for any disclosure (KSA 60-426a(d)).

15. Kentucky

Kentucky Rule of Evidence 509 (effective July 1, 1992) defines waiver of privilege as voluntary disclosure or consent to disclosure of any significant part of the privileged matter.

16. Louisiana

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";

Louisiana Code of Evidence Article 502 (effective Jan. 1, 1993) defines waiver of privilege as voluntary disclosure or consent to disclosure.

17. Maine

Rule 26(b)(5)(B) of the Maine Rules of Civil Procedure (current June 24, 2014) mirrors Federal Rule of Civil Procedure 26(b)(5)(B) and provides a procedure for the retrieval of inadvertently produced privileged information;

Maine's Rule of Evidence 510 (page 97 of 200) (effective Jan. 1, 2015) defines waiver of privilege as voluntary disclosure or consent to disclosure.

18. Maryland

Rule 2-402(e)(3) of the Maryland Rules of Civil Procedure for the Circuit Court (effective April 1, 2017), like Federal Rule of Civil Procedure 26(b)(5)(B), provides a procedure for inadvertently produced privilege information, but, unlike the federal rule, the producing party is required to provide notice of disclosure within a "reasonable time" **after its production** and there is no express provision requiring the receiving party to return ("promptly return, sequester, or destroy") the privileged information once notified, although the receiving party is directed not to use or disclose the information prior to resolution of the privilege claim;

Maryland Rules of Procedure 2-402(e) (effective April 1, 2017) contains two provisions of Federal Rule of Evidence 502, preventing waiver for certain inadvertent disclosures (Rule 2-402(e)(4)) and allowing a court order to prevent waiver for any disclosure (Rule 2-402(e)(5)).

19. Massachusetts

Rule 26(b)(5)(B) of the Massachusetts Rules of Civil Procedure (effective Sept. 1, 2017) largely mirrors Federal Rule of Civil Procedure 26(b)(5)(B), providing a procedure for the retrieval of inadvertently produced privileged information, but, unlike the federal rule, it directs the court to conduct the "reasonable steps" analysis of FRE 502(b) for all challenged claims to determine whether the disclosure was inadvertent;

The Massachusetts Guide to Evidence (2021 Ed.) Section 523(b) provides that privilege is waived if a significant part of the privileged matter is disclosed and that disclosure is voluntary, consented to, or made as part of a claim or defense. And 523(c) provides that an unintentional disclosure will not constitute waiver if "reasonable precautions were taken to prevent the disclosure." (The Note to this Section includes a thorough explanation of FRE 502 and its effect on state law.)

20. Minnesota

Rule 26.02(f)(2) of the Minnesota Rules of Civil Procedure (effective July 1, 2018) mirrors Federal Rule of Civil Procedure 26(b)(5)(B) and provides a procedure for the retrieval of inadvertently produced privileged information;

Minnesota Rule of Evidence 502 (effective Jan. 1, 2019) mirrors Federal Rule of Evidence 502 and, among other things, (i) confines subject matter waiver (Rule 502(a)); (ii) prevents waiver for certain inadvertent disclosures (Rule 502 (b)); and (iii) allows a court order to prevent waiver for any disclosure (Rule 502(c)).

21. Mississippi

Rule 26(b)(6)(B) of the Mississippi Rules of Civil Procedure (effective Jan. 1, 2020) mirrors Federal Rule of Civil Procedure 26(b)(5)(B) and provides a procedure for the retrieval of inadvertently produced privileged information;

Mississippi Rule of Evidence 502 (effective July 1, 2020) contains two provisions of Federal Rule of Evidence 502, confining subject matter waiver (502(e)(1)) and preventing waiver for certain inadvertent disclosures (502(e)(2)).

22. Missouri

Missouri Supreme Court Rule 56.01(b)(9)(A)(i) (effective Aug. 28, 2019) largely mirrors Federal Rule of Civil Procedure 26(b)(5)(B), providing a procedure for the retrieval of inadvertently produced privileged information, but, unlike the federal rule, it also expressly provides that "[t]he production of privileged or work-product protected documents, electronically stored information or other information, whether inadvertent or otherwise, is not a waiver of the privilege or protection from discovery in the proceeding" (Rule 56.01(b)(9)(B)).

23. Montana

Rule 26(b)(6)(B) of the Montana Rules of Civil Procedure (effective Dec. 16, 2014) mirrors Federal Rule of Civil Procedure 26(b)(5)(B) and provides a procedure for the retrieval of inadvertently produced privileged information;

Montana Rule of Evidence 503 (effective June 7, 1990) provides that privilege is waived if a significant part of the privileged matter is disclosed and that disclosure is voluntary or consented to.

24. Nebraska

Nebraska Revised Statute 27-511 (effective 1975) provides that privilege is waived if a significant part of the privileged matter is disclosed and that disclosure is voluntary or consented to.

25. Nevada

Rule 26(b)(5)(B) of the Nevada Rules of Civil Procedure (effective Mar. 1, 2019) mirrors Federal Rule of Civil Procedure 26(b)(5)(B) and provides a procedure for the retrieval of inadvertently produced privileged information;

Nevada's Revised Statute 49.385 (effective 1995) provides that privilege is waived if a significant part of the privileged matter is disclosed and that disclosure is voluntary or consented to.

26. New Hampshire

Under New Hampshire Superior Court Rule 25(i) the inadvertent disclosure of privileged ESI will not waive privilege. And Superior Court Rule 25(j) allows such privileged ESI to be clawed back.

27. New Jersey

Rule 4:10-2(e)(2) of the New Jersey Court Rules (effective Sept. 1, 2016) mirrors Federal Rule of Civil Procedure 26(b)(5)(B) and provides a procedure for the retrieval of inadvertently produced privileged information;

New Jersey Rule of Evidence 530(c) (effective July 1, 2020) mirrors Federal Rule of Evidence 502 and, among other things, (i) confines subject matter waiver (Rule 530(c)(1)); (ii) prevents waiver for certain inadvertent disclosures (Rule 530(c)(2)); and (iii) allows a court order to prevent waiver for any disclosure (Rule 530(c)(4)).

28. New Mexico

Rule 1-026(B)(7)(b) of the New Mexico Rules of Civil Procedure (effective May 15, 2009) mirrors Federal Rule of Civil Procedure 26(b)(5)(B) and provides a procedure for the retrieval of inadvertently produced privileged information;

New Mexico Rule of Evidence 11-511 (effective Dec. 31, 2013) provides that privilege is waived if a significant part of the privileged matter is disclosed and that disclosure is voluntary or consented to.

29. North Dakota

Rule 26(b)(5)(B) of the North Dakota Rules of Civil Procedure (effective Mar. 1, 2017) mirrors Federal Rule of Civil Procedure 26(b)(5)(B) and provides a procedure for the retrieval of inadvertently produced privileged information;

North Dakota Rule of Evidence 510 (effective Mar. 1, 2014) provides that privilege is waived if a significant part of a privileged matter is disclosed and that disclosure is voluntary or consented to.

30. Oklahoma

§ 12-3226(B)(5)(b) of the Oklahoma Rules of Civil Procedure (effective Mar. 15, 2005) mirrors Federal Rule of Civil Procedure 26(b)(5)(B) and provides a procedure for the retrieval of inadvertently produced privileged information;

Oklahoma Evidence Code 12 O.S. §2511 (effective Nov. 1, 2002) provides that privilege is waived if a significant part of a privileged matter is disclosed and that disclosure is voluntary or consented to; and

Oklahoma Evidence Code 12 O.S. §2502 (effective Nov. 1, 2013) contains two provisions of Federal Rule of Evidence 502, confining subject matter waiver (§12-2502(F)) and preventing waiver for certain inadvertent disclosures (§12-2502(E)).

31. Oregon

Oregon Rule of Evidence 511 (effective 2017) provides that privilege is waived if a significant part of a privileged matter is disclosed and that disclosure is voluntary or consented to.

32. Rhode Island

Rule 26(b)(7) of the Rhode Island Rules of Civil Procedure (effective Dec. 10, 2020) contains a similar procedure for the retrieval of inadvertently produced privileged information as contained in Federal Rule of Procedure 26(b)(5)(B) but, unlike the federal rule, it is specific to ESI;

Rhode Island Rule of Evidence 502 (effective Sept. 9, 2019) mirrors Federal Rule of Evidence 502 and, among other things, (i) confines subject matter waiver (Rule 502(a)); (ii) prevents waiver for certain inadvertent disclosures (Rule 502 (b)); and (iii) allows a court order to prevent waiver for any disclosure (Rule 502(d)).

33. South Dakota

South Dakota Rule of Evidence 510 provides that privilege is waived if a significant part of a privileged matter is disclosed and that disclosure is voluntary or consented to.

34. Tennessee

Rule 26.02(5) of the Tennessee Rules of Civil Procedure (effective July 1, 2011) mirrors Federal Rule of Civil Procedure 26(b)(5)(B) and provides a procedure for the retrieval of inadvertently produced privileged information;

Tennessee Rule of Evidence 502 (effective July 1, 2010) mirrors Federal Rule of Evidence 502(b) and prevents waiver for certain inadvertent disclosures.

35. Texas

Texas Rule of Evidence 511(b) (effective June 1, 2020) largely mirrors Federal Rule of Evidence 502 and, among other things, (i) confines subject matter waiver (Rule 511(b)(1)), (ii) prevents waiver for certain inadvertent disclosures (Rule 511(b)(2)), and (iii) allows a court order to prevent waiver for any disclosure (Rule 511(b)(3)). Unlike FRE 502(b), Rule 511(b)(2) does not include the reasonable steps analysis but instead requires compliance with Texas Rule of Civil

Procedure 193.3(d) (effective Jan. 1, 2021), which provides that an inadvertent disclosure of privileged materials will 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."

36. Utah

Rule 26(b)(8)(B) of the Utah Rules of Civil Procedure (effective Nov. 1, 2021) mirrors Federal Rule of Civil Procedure 26(b)(5)(B) and provides a procedure for the retrieval of inadvertently produced privileged information;

Utah Rule of Evidence 510(a) (current Aug. 31, 2021) defines waiver of privilege as the voluntary disclosure or consent to disclosure of any significant part of the matter (Rule 510(a)(1)), or failure to take reasonable precautions against inadvertent disclosure (Rule 510(a)(2)).

37. Vermont

Rule 26(b)(6)(B) of the Vermont Rules of Civil Procedure (effective Dec. 7, 2020) mirrors Federal Rule of Civil Procedure 26(b)(5)(B) and provides a procedure for the retrieval of inadvertently produced privileged information;

Vermont Rule of Evidence 510(b) (effective Jan. 23, 2012) mirrors Federal Rule of Evidence 502 and, among other things, (i) confines subject matter waiver (Rule 510(b)(1)); (ii) prevents waiver for certain inadvertent disclosures (Rule 510(b)(2)); and (iii) allows a court order to prevent waiver for any disclosure (Rule 510(b)(4)).

38. Virginia

The Code of Virginia § 8.01-420.7 (effective July 1, 2010) mirrors Federal Rule of Evidence 502 and, among other things, (i) confines subject matter waiver (§ 8.01-420.7(A)); (ii) prevents waiver for certain inadvertent disclosures (§ 8.01-420.7(B)); and (iii) allows a court order to prevent waiver for any disclosure (§ 8.01-420.7(C)).

39. Washington

Rule 26(b)(6) of the Washington Superior Court Civil Rules (effective April 28, 2015) mirrors Federal Rule of Civil Procedure 26(b)(5)(B) and provides a procedure for the retrieval of inadvertently produced privileged information;

Washington Rule of Evidence 502 (effective Sep. 1, 2010) mirrors Federal Rule of Evidence 502 and, among other things, (i) confines subject matter waiver (Rule 502(a)); (ii) prevents waiver for certain inadvertent disclosures (Rule 502(b)); and (iii) allows a court order to prevent waiver for any disclosure (Rule 502(d)).

40. West Virginia

West Virginia Rule of Evidence 502 mirrors Federal Rule of Evidence 502 and, among other things, (i) confines subject matter waiver (Rule 502(a)); (ii) prevents waiver for certain inadvertent disclosures (Rule 502(b)); and (iii) allows a court order to prevent waiver for any disclosure (Rule 502(d)).

41. Wisconsin

Wisconsin Statute §804.01(7) (effective Apr. 5, 2018) mirrors Federal Rule of Civil Procedure 26(b)(5)(B) and provides a procedure for the retrieval of inadvertently produced privileged information;

Wisconsin Statute §905.11 (effective 1993) provides that privilege is waived if a significant part of a privileged matter is disclosed and that disclosure is voluntary or consented to.

Wisconsin Statute §905.03(5) (effective Jan. 1, 2013) contains two provisions of Federal Rule of Evidence 502, confining subject matter waiver (§905.03(5)(b)) and preventing waiver for certain inadvertent disclosures (§905.03(5)(a)).

FEDERAL DISTRICT COURT LOCAL EDISCOVERY RULES, ORDERS, AND FORMS[5]

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
- Civil L.R. 26(a) – Conference of the Parties; Planning for Discovery
- Local Form for Report of Parties' Planning Meeting (Rule 26(f) Report)

3. D. Alaska

Local Rule 16.1(b) – Pre-Trial Scheduling and Planning Conference (effective Dec. 7, 2018)
Local Civil Form 26(f) – Scheduling and Planning Conference Report (*see* ¶ IV(C))

4. Ariz.

General Order 17-08 – regarding the Mandatory Initial Discovery Pilot Project (MIDP) (see MIDP discussion in following section 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 (effective Nov. 1, 2018)
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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[5] 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 (revised July 5, 2021)
- Patent Local Rule 2.1.a – Early Neutral Evaluation Conference (page 74)
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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 9) (effective Dec. 1, 2015)
Proposed Scheduling Order and Instructions (revised March, 2020)

9. D. Conn.

Local Rules (revised Jan. 31, 2021)
- Rule of Civil Procedure 16(b) – Scheduling Orders (page 22)
- Civil Appendix, Form 26(F) Report of Parties' Planning Meeting (page 99) (*see* ¶ V(E)(j))

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 (Effective Feb. 1, 2021)

11. M.D. Fla.

Handbook on Civil Discovery Practice (*see* § VIII – E-Discovery) (revised Feb. 1, 2021)

12. N.D. Fla.

Local Rules (effective Nov. 24, 2015)
- 2.1 – Definitions (page 7)
- 26.2(E) – Discovery in Criminal Cases (page 25)

13. S.D. Fla.

Local Rules (revised Dec. 1, 2020)
- 16.1(b)(2)(K) – Scheduling Conference Report (pages 312-33)
- 16.1(b)(3)(C) – Joint Proposed Scheduling Order (page 33)
- 26.1(e) – Interrogatories and Production Requests (pages 44-47)

ESI Checklist

14. N.D. Ga.

LR 16.2 – Joint Preliminary Report and Discovery Plan (pages CV - 27-29) (updated June 18, 2020)
Appendix B, II. Joint Preliminary Report and Discovery Plan (page APP.B – 9-18) (*see* ¶ 11(b), page APP.B. - 15) (revised Mar. 1, 2011)

15. S.D. Ga.

Local Rule 26.1(b)
Form – Rule 26(f) Report (*see* ¶ F)

16. D. Guam

Civil Attachment 5 – Scheduling and Planning Conference Report (*see* ¶ V (C)) (revised Dec. 12, 2014)

17. D. Haw.

General and Civil Rule LR16.3 – Scheduling Conference Order (page 18) (effective Sept. 1, 2019)

18. D. Idaho

Local District Civil Rule 16.1 – Scheduling Conference, Litigation Plan, Voluntary Case Management Conference and Electronically Stored Information (revised Jan. 4, 2021)

19. N.D. Ill.

General Order 17-0005 – implementing the Mandatory Initial Discovery Pilot (MIDP) program (see below)
Standing Order Regarding MIDP

20. S.D. Ill.

Local Rules (revised 2021)

- 16.2(a) – Initial Conferences of the Parties; Submission of Report (page 10)
- 23.1 – Class Actions / Scheduling and Discovery Conference (page 12)

Joint Report of Parties and Proposed Scheduling and Discovery Order (*see* ¶ 7) (revised Dec. 2019)
Joint Report of Parties and Proposed Scheduling and Discovery Order (Class Action) (*see* ¶ 8) (revised Dec. 2019)

21. N.D. Ind.

Local Rules (effective Nov. 18, 2019)

- L.R. 16.1(d) – Planning-Meeting Report

- L.P.R. 2-1(b) – Discovery Plan

Report of Parties' Planning Meeting (*see* ¶ 4)

22. S.D. Ind.

Local Rule 16.1(b) – Case Management Plan (effective July 1, 2021)
Uniform Case Management Plan (*see* ¶ III(K)) (revised Aug. 27, 2021)
Uniform Patent Case Management Plan (*see* ¶ IV(G))(revised Aug. 27, 2021)
ESI Supplement to Case Management Plan

23. N.D. Iowa

Instructions and Worksheet for Preparation of Trial Schedule and Discovery Plan (effective June 9, 2020)

24. S.D. Iowa

Order for Status Report on ESI
Instructions and Worksheet for Preparation of Scheduling Order and Discovery Plan (effective May 1, 2017)

25. D. Kan.

Guidelines for Cases Involving Electronically Stored Information (ESI) (effective Dec. 1, 2015)
Report of Parties' Planning Conference (*see* page 2 and ¶5(E)) (revised Aug. 2016)
Initial Order Regarding Planning and Scheduling (*see* page 5 and ¶5(e).) (revised Dec. 1, 2015)
Scheduling Order (*see* ¶2(f)) (revised Dec. 1, 2015)

26. D. Md.

Local Rules (effective July 1, 2021)

- Section VIII. Patents; Rule 802 – Scheduling Conference (page 84)
- Appendix D; Standard Requests for Production of Documents (page 146)

Discovery Guidelines (Local Rules, Appendix A)
Principles for the Discovery of Electronically Stored Information in Civil Cases (these principles replaced Suggested Protocol for Discovery of Electronically Stored Information)

Local Bankruptcy Rules (Revised Dec. 1, 2020)

- 2004-1(d) – Examination Guidelines (page 12)
- 7026-1(j) – Discovery Guidelines (page 65)
- Appendix C – Discovery Guidelines (page 161)

27. 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) (upated Feb. 27, 2018)
Bankruptcy Court Report of Parties' Rule 26(f) Conference (revised Apr. 19, 2016)

28. D. Minn.

Local Rule 37.1(e) – form of discovery motion concerning failure to preserve ESI (amended Dec. 21, 2015)
eDiscovery Guide (Jan. 2021)
Rule 26(f) Report and Proposed Scheduling Order (*see* ¶ (e)(2))
Rule 26(f) Report and Proposed Scheduling Order (Patent Cases) (*see* ¶ (h)(4))

29. N.D. and S.D. Miss.

Local Uniform Civil Rules (effective Dec. 1, 2021)

- 26(f) – Fed. R. Civ. P. 26(f) Conference of the Parties (page 19)
- 45(d) – Non-Party ESI (page 24)

Form 1 – Case Management Order (*see* ¶ 6(E)) (updated Feb. 2018)

30. E.D. Mo.

Local Rule 3.01(A) – Disclosure Pursuant to Rule 26(a)(1) and (2) (page 39 of 150) (effective Dec. 1, 2009)

31. D.N.H.

Local Rules (amended Dec. 1, 2019)

- 26.1 – Discovery Plan (page 22)
- Civil Form 2 – Discovery Plan (page 66)
- Supplemental Patent Rule 3.1 – Scheduling Conference, Discovery Plan and Discovery Order (page 153 of 161)

32. D.N.J.

Local Civil Rules (revised June 24, 2021)

- 26.1(b) – Meeting of Parties, Discovery Plans, and Initial Disclosures (page 45)
- 26.1(d) – Discovery of Digital Information Including Computer-Based Information (page 47)

Joint Proposed Discovery Plan
Local Bankruptcy Rule 7016-1 – Pretrial Procedure (page 61) (current as of August 1, 2021)

33. E.D.N.Y

Local Civil Rules (effective Oct. 28, 2018)

- 26.2 – Assertion of Claim of Privilege (*see* Committee Note, page 32)
- 26.3(c)(2) – Uniform Definitions in Discovery Requests / Document (page 33)
- 54.1 – Taxable Costs (*see* Committee Note, page 47)

Local Bankruptcy Rule 7033-1(f) – Reference to Records (effective Dec. 13, 2019)

34. N.D.N.Y.

Civil Case Management Plan (*see* ¶ 14.G.) (effective Dec. 4, 2020)

35. S.D.N.Y

Local Civil Rules (effective Oct. 28, 2018)

- 26.2 – Assertion of Claim of Privilege (*see* Committee Note, page 32)
- 26.3(c)(2) – Uniform Definitions in Discovery Requests / Document (page 33)
- 54.1 – Taxable Costs (*see* Committee Note, page 47)

Standing Order – Pilot Project Regarding 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 70) (effective Dec. 1, 2017)

36. W.D.N.Y.

Local Rules of Civil Procedure (effective Jan. 1, 2021)

- 16(b) – Initial Pretrial Conference (page 18)
- 26(e) – Electronically Stored Information (page 26)

37. M.D.N.C.

Local Rule of Practice and Procedure 16.1(f) – Meeting on the Scope of Retention of Potentially Relevant Documents (page 18) (effective June 21, 2021)

38. W.D.N.C.

Local Rule of Civil Procedure 16.1(g) – Initial Pretrial Conference (page 21) (effective Dec. 1, 2018)

39. N.D. Ohio

Local Civil Rules

- 16.3(b) – Case Management Conference (revised Aug. 9, 2021)
- Appendix K – Default Standards for Discovery of Electronically Stored Information

40. S.D. Ohio

Rule 26(f) Report of Parties (Western Division, Dayton only) (*see* ¶ 6.h.)
Rule 26(f) Report of Parties (Eastern Division only) (*see* ¶ 7.b.)

41. E.D. Okla.

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

42. W.D. Okla.

Local Court Rules (effective May 26, 2021)

- Civil Rule 16.1(a)(1) – Parties' Initial Conference (page 14)
- Civil Rule 26.1 – Discovery Plan (page 20)
- Appendix II – Joint Status Report and Discovery Plan (page Appx.II-1, 76 of 107) (*see* ¶ 8.D.)
- 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)

43. D. Or.

Local Rule of Civil Procedure 26 (updated May 17, 2021)

- LR 26-1(2) – Electronically Stored Information
- LR 26-6 – E-Discovery in Patent Cases
- LR 26-7 – Initial Discovery Protocols for Employment Cases Alleging Adverse Action

44. M.D. Penn.

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

- LR 26.1 – Duty to Investigate and Disclose (page 19)
- Appendix A – Joint Case Management Plan (page 72; *see* ¶4.6)

45. W.D. Penn.

Local Rules (effective Nov. 1, 2016)

- LCvR 26.2 – Discovery of Electronically Stored Information (page 23)
- Appendix LCvR 16.1A – Fed. R. Civ. Pr. 26(f) Report of the Parties (page 92)

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 June 15, 2017)

- 7026-1 – Discovery of Electronic Documents
- 7026-2 – Electronic Discovery Special Master

46. P.R.

Local Civil Rule 16(a) – Scheduling Conference (page 18) (effective December 21, 2020)

47. M.D. Tenn.

Administrative Order No. 174-1 – Default Standard for Discovery of Electronically Stored Information ("E-Discovery") (effective Sept. 12, 2018)

48. W.D. Tenn.

Local Rule 26.1(e) – E-Discovery (page 19) (revised Nov. 2, 2020)
Standard Track Scheduling Order (Local Rule 16.2 Appendix H)
Expedited Track Scheduling Order (Local Rule 16.2 Appendix G)
Complex Track Scheduling Order (Local Rule 16.2 Appendix I)
Local Patent Rules (effective Sept. 20, 2019), Appendix B – Joint Planning Report and Proposed Schedule (page 34 of 48)

49. E.D. Tex.

[Model] Order Regarding E-Discovery in Patent Cases

50. N.D. Tex.

Second Amended Miscellaneous Order No. 62 (Dallas Division, Patent Cases) (filed Sept. 12, 2019) (*see* ¶ 2-1(a) – Conference of the Parties and Case Management Statement and Appendix B – [Model] Order Regarding E-Discovery in Patent Cases)

51. S.D. Tex.

Local Rule of Practice for Patent Cases 2-1(a) – Parties' Preparation for Initial Case Management Conference (effective Jan. 1, 2008)

52. D. Utah

Bankruptcy Court Form 35: Report of Parties' Planning Meeting Pursuant to Local Rule 7016-1(b)

53. D. Vt.

Local Rule of Procedure 26(a) – Discovery Schedule (page 20) (effective Mar. 1, 2017)

54. W.D. Wash.

Local Civil Rules 26(f) (page 52)(updated Jan. 19, 2021)
Model Agreement re: Discovery of Electronically Stored Information (updated Mar. 12, 2015)
Best Practices for Electronic Discovery in Criminal Cases (adopted Mar. 21, 2013)

55. S.D. W. Va.

Local Rules of Procedure (current as of June 8, 2017)

- Report of Parties' Planning Meeting (required by Local Rule 16.1 (page 12))
- Local Rule 26.5 – Discovery of Electronically Stored Information (page 27)

56. E.D. Wis.

Civil Local Rules (amended May 1, 2021)

- 16(a) – Preliminary Pretrial Conferences (page 24)
- 26(a) – Conference of the Parties; Planning for Discovery (page 29)
- Criminal Local Rule 16.1(b) (page 51)

57. D. Wyo.

Local Civil Rules (current as of May 2017)

- 26.1(c) – Discovery of Electronically Stored Information (page 24)
- Appendix A – Rule 26(f) Conference Checklist[6] (page 93)

58. U.S. Court of Federal Claims

Rules of the United States Court of Federal Claims (amended August 2, 2021), Title V (page 38)

[6] Appendix A's reference to Local Rule 26.1(d)(3) is an outdated reference; the Appendix should reference Local Rule 26.1(c)(2) instead.

SHOOK HARDY & BACON

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, Second Edition (January 2018), 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). And Phase Three began in May 2012 (Interim Report on Phase Three).

2. 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."

3. Federal Criminal Cases

The Department of Justice and Administrative Office Joint Electronic Technology Working Group published Recommendations for ESI Discovery Production in Federal Criminal Cases in Feb. 2012.

4. 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."

5. 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 replaced the initial disclosures required by Rule 26(a)(1) and required instead that the parties make more expansive disclosures, including that they:

- 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."

Two district courts – Ariz. and N.D. Ill. – participated in the program, which ended on June 1, 2020.

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.