



**Show Notes**  
**Judge Lee Rosenthal**  
**2015 Amendments to the Federal Rules of Civil Procedure**

- I. **Effective December 1, 2015**
  - a. Apply to pending cases to the extent that is just and practicable
  
- II. **Purpose of Changes**
  - a. The purpose of the amendments to the rules is to affect the way discovery is sought and responded to by focusing the attention on what the limits of discovery are—particularly in cases where the costs and burdens are high.
  
- III. **Case Management Changes**
  - a. This rule package also encourages greater engagement by the trial judge or magistrate through earlier and more active case management.
  - b. The rules encourage live case management conferences—having the proceeding occur in person or in real time to have a conversation with the judge so that the parties and the judge can tailor a discovery plan to the needs of the particular case.
    - i. This encourages pre-motion conferences, which require parties to talk to the court after talking to each other if they are unable to settle a discovery dispute instead of filing a motions, briefs, and responses.
  
- IV. **Scope of Discovery Changes and Proportionality**
  - a. These changes are designed to make exiting limits clearer and more effective.
  - b. Some changes require greater specificity in responses to discovery requests as opposed to blanket, general objections.
  - c. **Proportionality Changes**
    - i. Rule 26(b)(1): Specifically introduces the word “proportionality” into the rule text.
      1. Discovery is limited to nonprivileged matters that are (a) relevant and (b) proportional to the needs of the case.
    - ii. This rule also includes a new factor in determining the proportionality of discovery—benefit vs. burden, which is comparing the benefit of proposed discovery with the burdens that obtaining it imposes.
      1. See Committee Notes for further guidance
  - d. The previous statement that “discovery can include what is reasonably calculated to lead to the discovery of admissible evidence” has been deleted.
    - i. This language was often misread to not include requirements of relevance or proportionality.
    - ii. Therefore, the language is replaced with “information within the scope of discovery need not be admissible to be discoverable.”
    - iii. The question is whether this changes the burden, but the thinking is that it does not—generally, the party seeking discovery knows best what it

expects the discovery to provide, so it should have the burden of explaining why it needs the material. On the other hand, the party who must produce the discovery is in a better position to address the costs and burdens of providing the information.

e. Changes Rule 34 Objections

i. No more boilerplate

1. Change your forms!

ii. **Changes**

1. The response must specifically state the grounds for objections

2. If a party has not produced all discovery without waiving a generally stated objection, the party has to state that they are still withholding material and give enough information to allow the opposing party to ask questions in a meaningful way.

3. A responding party may no longer say “here is what I have now, more will come later” without saying when “later” might be.

a. Rolling productions are fine, but you must state that production will be completed either within the time specified in the request or another reasonable time specified in the response.

f. Rule 26(c) Protective Orders

i. It is now explicit that Rule 26(c) orders are allowed to include discovery costs.

ii. The default is still that the producer pays, but there is no entitlement to disproportionate discovery simply because the requesting party can pay.

V. **Rule 1**

a. Rule 1 was always phrased in terms of the court’s obligation. It is now phrased to add words that make it clear that it is also the parties’ and lawyers’ obligations shared with the court.

VI. **Rule 37 – Sanctions for Spoliation**

a. Amendments clarify the nature and extent of the culpability required for the most severe sanctions for spoliation and the findings that a court must make before sanctioning conduct.

b. This only applies to electronically stored information.

c. For severe sanctions, the court must find that there was an intent to deprive the other party of the use of the information lost in the litigation.