

RULE 34. PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES

(a) Scope. Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, electronically stored information, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

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

The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, including an objection to the requested form or forms for producing electronically stored information, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to produce or to permit inspection as requested.

A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request. If a request does not specify the form for producing electronically stored information, a responding party must produce the information in a form or forms in which it is ordinarily maintained or in a form that is reasonably usable. A party need not produce the same electronically stored information in more than one form.

A party upon whom a request is served to produce the party's medical, employment or other records in the possession of a third party may, at the party's option, produce in place of such records an effective written authorization by which the submitting party may obtain the requested records. Within 10 days of receiving records pursuant to the authorization, the party submitting the request shall serve upon the authorizing party a complete copy of the records so obtained.

(c) Persons Not Parties. A person not a party to the action may be compelled to produce documents and things or to submit to an inspection as provided in Rule 45.

Advisory Committee Note July 2008

Rule 34 is amended to make explicit that discovery of "electronically stored information" is permitted. Discovery of electronically stored information is permitted regardless of the medium in which the information is stored or the method by which it is retrieved. The amendment is made with simultaneous amendments to Rules 16, 26, 34 and 37 to provide a procedure for the discovery of electronically stored information. The amendments are taken largely from the 2006 amendments to the Federal Rules of Civil Procedure, whose Advisory Committees Notes and case law may be consulted for guidance.

Under the amendment to subdivision (b), a request for production of electronically stored information may specify the form in which the requesting party desires the production of the information. Thus, under the amended rule, accounting records could be requested in printed form on paper or the requesting party could specify that the production of the records be made in electronic form in a commercial spreadsheet program format. If the producing party can reasonably produce the electronically stored information in the requested form, it must do so. At the same time, it is not the intent of the rule to impose undue burden or cost on the producing party. Consequently, the producing party may object to the

requested form of production under the amendment to Rule 34 (b). If a dispute arises as to the form in which the information should be produced, or if the producing party claims that it would constitute an "undue burden or cost" to produce the information at all (see Rule 26 (b)(6)), the dispute must be resolved under Rule 26 (g).

If no particular form is specified in the request, electronically stored information may be produced in the form in which it is ordinarily maintained or in any form "that is reasonably usable." As the amendment to Rule 34(b) states, a party need not produce the same electronically stored information in more than one form.

Advisory Committee's Notes
July 1, 2001

This amendment to Rule 34(b) is recommended to address problems that sometimes develop when a party gives an opposing party an authorization to obtain records. In some cases, the party giving the authorization may not have copies of or even be aware of what records have been obtained. This change in the rules will provide that where a party obtains records of the other party pursuant to an authorization, the receiving party will provide the authorizing party with a complete set of the records received within 10 days.

Advisory Committee's Notes
1993

Rule 34(c) is amended to adopt a 1991 amendment of Federal Rule 34(c) for the purpose of maintaining conformity with the federal rule. The reasons are those stated in the federal Advisory Committee Note, which reads as follows:

This amendment reflects the change effected by revision of Rule 45 to provide for subpoenas to compel non-parties to produce documents and things and to submit to inspections of premises. The deletion of the text of the former [Rule 34(c) saving an independent action] is not intended to preclude an independent action for production of documents or things or for permission to enter upon land, but such actions may no longer be necessary in light of this revision.

Advisory Committee's Notes
1991

Rule 34(b) is amended to add a provision making clear that documents produced under the rule must be produced either in their normal business order or in the order specified in the request. This provision was added to Federal Rule 34(b) in 1980 to eliminate the practice of deliberately confusing the requesting party by intermixing critical documents with others. The provision also benefits the producing party, however, by giving that party the option simply to produce the documents as they are kept in the regular course of business. Under the latter provision, if documents produced come from different branches or divisions within the same business they may be presented in the order in which they are kept at their specific locations, with only the location of each group of documents indicated.

Advisory Committee's Note
October 1, 1970

The changes made in Rule 34 are thus summarized by the federal Advisory Committee's Note:

Rule 34 is revised to accomplish the following major changes in the existing rule: (1) to eliminate the requirement of good cause; (2) to have the rule operate extrajudicially; (3) to include testing and sampling as well as inspecting or photographing tangible things; and (4) to make clear that the rule does not preclude an independent action for analogous discovery against persons not parties.

Subdivision (a). Good cause is eliminated because it has furnished an uncertain and erratic protection to the parties from whom production is sought and is now rendered unnecessary by virtue of the more specific provisions added to Rule 26(b) relating to materials assembled in preparation for trial and to experts retained or consulted by parties." (48 F.R.D. 526)

The procedure provided in Rule 34(b) for production of documents and things and entry upon land for inspection is essentially the same as that in the amended Rule 33.

Rule 34 continues to apply only to parties. Subdivision (c) makes clear, however, that this rule is not pre-emptive and independent actions in the nature of

bills in equity may be brought in order to enter land or inspect large tangible things in the possession of persons who are not parties.

Reporter's Notes
December 1, 1959

This rule is the same as Federal Rule 34. It is much broader than R.S.1954, Chap. 113, Sec. 23 (repealed in 1959), which applies only to "books, papers or written instruments material to the issue." The test for production under this rule is the same as the scope of permitted examination under Rule 26(b), subject to the protective provisions of that rule.

A motion under this rule requires a showing of good cause, and it is limited to parties to the action. If a document is in the control of a third person, a deposition under Rule 26 and a subpoena duces tecum under Rule 45(b) must be used.

This rule is primarily intended to govern production and inspection before trial. Rule 45(b) applies both to the taking of depositions and to testimony and production of documents at trial.