Comparison of Prior Federal Civil Rules and the September 2014 Amendments Approved by the Judicial Conference

Old Rule	**New Rule**	**Commentary**
Rule 1. Scope and Purpose These rules govern the procedure in all civil actions and proceedings in the United States district courts, except as stated in Rule 81. They should be construed**[,]** ~~and~~ administered**[, and employed by the court and the parties]** to secure the just, speedy, and inexpensive determination of every action and proceeding.	*Rule 1. Scope and Purpose* These rules govern the procedure in all civil actions and proceedings in the United States district courts, except as stated in Rule 81. They should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.	Rule 1 is amended to emphasize that just as the court should construe and administer these rules to secure the just, speedy, and inexpensive determination of every action, the parties also share the responsibility to employ the rules in the same way. This amendment does not create a new independent source of sanctions. Neither does it abridge the scope of any other of these rules.

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Old Rule	**New Rule**	**Commentary**
Rule 4. Summons *(d) Waiving Service.* *(1) Requesting a Waiver.* *(C)* be accompanied by a copy of the complaint, 2 copies of ~~a~~**[the]** waiver form**[appended to this Rule 4]**, and a prepaid means for returning the form; *(D)* inform the defendant, using ~~text prescribed in Form 5~~**[the form appended to this Rule 4]**, of the consequences of waiving and not waiving service;	*Rule 4. Summons* *(d) Waiving Service.* *(1) Requesting a Waiver.* *(C)* be accompanied by a copy of the complaint, 2 copies of the waiver form appended to this Rule 4, and a prepaid means for returning the form; *(D)* inform the defendant, using the form appended to this Rule 4, of the consequences of waiving and not waiving service;	Forms 5 and 6 are now directly incorporated into Rule 4 because of the abrogation of Rule 84 and the other official forms. The presumptive time for serving a defendant is reduced from 120 days to 90 days. This change, together with the shortened times for issuing a scheduling order set by amended Rule 16(b)(2), will reduce delay at the beginning of litigation.
(m) Time Limit for Service. If a defendant is not served within ~~120~~ **[90]** days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against the defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f) or 4(j)(1) **[or to service of a notice under Rule 71.1(d)(3)(A)]**.	*(m) Time Limit for Service.* If a defendant is not served within 90 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against the defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f) or 4(j)(1) or to service of a notice under Rule 71.1(d)(3)(A).	The final sentence is amended to make it clear that this reference to Rule 4 in Rule 71.1(d)(3)(A) does not include Rule 4(m). Shortening the time to serve under Rule 4(m) means that the time of the notice required by Rule 15(c)(1)(C) for relation back is also shortened.

Old Rule	**New Rule**	**Commentary**
Rule 16. Pretrial Conferences; Scheduling; Management *(b) Scheduling.* *(1) Scheduling Order.* Except in categories of actions exempted by local rule, the district judge – or a magistrate judge when authorized by local rule – must issue a scheduling order; *(A)* after receiving the parties' report under Rule 26(f); or *(B)* after consulting with the parties' attorneys and any unrepresented parties at a scheduling conference ~~by telephone, mail, or other means~~. *(2) Time to Issue.* The judge must issue the scheduling order as soon as practicable, but ~~in any event~~ **[unless the judge finds good cause for delay, the judge must issue it]** within the earlier of ~~120~~ **[90]** days after any defendant has been served with the complaint or ~~90~~ **[60]** days after any defendant has appeared.	*Rule 16. Pretrial Conferences; Scheduling; Management* *(b) Scheduling.* *(1) Scheduling Order.* Except in categories of actions exempted by local rule, the district judge – or a magistrate judge when authorized by local rule – must issue a scheduling order; *(A)* after receiving the parties' report under Rule 26(f); or *(B)* after consulting with the parties' attorneys and any unrepresented parties at a scheduling conference . *(2) Time to Issue.* The judge must issue the scheduling order as soon as practicable, but unless the judge finds good cause for delay, the judge must issue it within the earlier of 90 days after any defendant has been served with the complaint or 60 days after any defendant has appeared.	The provision for consulting at a scheduling conference by "telephone, mail, or other means" is deleted. The conference may be held in person, by telephone, or by more sophisticated electronic means. The time to issue the scheduling order is reduced to the earlier of 90 days (not 120 days) after any defendant has been served, or 60 days (not 90 days) after any defendant has appeared. This change, together with the shortened time for making service under Rule 4(m), will reduce delay at the beginning of litigation. At the same time, a new provision recognizes that the court may find good cause to extend the time to issue the scheduling order.

Old Rule	**New Rule**	**Commentary**
Rule 16 (continued) *(3) Contents of the Order.* *(B) Permitted Contents.* The scheduling order may: *(iii)* provide for disclosure**[,]** ~~or~~ discovery**[, or preservation]** of electronically stored information; *(iv)* include any agreements the parties reach for asserting claims of privilege or of protection as trial- preparation material after information is produced**[, including agreements reached under Federal Rule of Evidence 502;** ***(v)* direct that before moving for an order relating to discovery, the movant must request a conference with the court;]** (~~*v*~~**[*vi*]**) set dates for pretrial conferences and for trial; and (~~*vi*~~**[*vii*]**) include other appropriate matters.	*Rule 16 (continued)* *(3) Contents of the Order.* *(B) Permitted Contents.* The scheduling order may: *(iii)* provide for disclosure, discovery, or preservation of electronically stored information; *(iv)* include any agreements the parties reach for asserting claims of privilege or of protection as trial- preparation material after information is produced, including agreements reached under Federal Rule of Evidence 502; *(v)* direct that before moving for an order relating to discovery, the movant must request a conference with the court; (*vi*) set dates for pretrial conferences and for trial; and (*vii*) include other appropriate matters.	The scheduling order may provide for preservation of electronically stored information, which was also added to the provisions of a discovery plan under Rule 26(f)(3)(C). Parallel amendments of Rule 37(e) recognize that a duty to preserve discoverable information may arise before an action is filed. The scheduling order also may include agreements incorporated in a court order under Evidence Rule 502 controlling the effects of disclosure of information covered by attorney-client privilege or work-product protection, a topic also added to the provisions of a discovery plan under Rule 26(f)(3)(D). Finally, the scheduling order may direct that before filing a motion for an order relating to discovery the movant must request a conference with the court. However, the decision whether to require such conferences is left to the discretion of the judge in each case.

Old Rule	**New Rule**	**Commentary**
Rule 26. Duty to Disclose; General Provisions; Governing Discovery *(b) Discovery Scope and Limits.* *(1) Scope in General.* Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense**[and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.]** ~~-- including the existence, description, nature, custody, condition and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 26(b)(2)(C).~~	*Rule 26. Duty to Disclose; General Provisions; Governing Discovery* *(b) Discovery Scope and Limits.* *(1) Scope in General.* Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.	Information is discoverable under revised Rule 26(b)(1) if it is relevant to any party's claim or defense and is proportional to the needs of the case. The considerations that bear on proportionality are taken from Rule 26(b)(2)(C)(iii), slightly rearranged and with one addition.

Old Rule	**New Rule**	**Commentary**
Rule 26 (continued) *(2) Limitations on Frequency and Extent.* *(C) When Required.* On motion or on its own, the court must limit the frequency or extent of discover otherwise allowed by these rules or by local rule if it determines that: *(iii)* the ~~burden or expense of the~~ proposed discovery **[is outside the scope permitted by Rule 26(b)(1)]** ~~outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.~~ *(c) Protective Orders.* *(1) In General.* * * * *(B)* specifying terms, including time and place **[or the allocation of expenses]**, for the disclosure or discovery;	*Rule 26 (continued)* *(2) Limitations on Frequency and Extent.* *(C) When Required.* On motion or on its own, the court must limit the frequency or extent of discover otherwise allowed by these rules or by local rule if it determines that: *(iii)* the proposed discovery is outside the scope permitted by Rule 26(b)(1). *(c) Protective Orders.* *(1) In General.* * * * *(B)* specifying terms, including time and place or the allocation of expenses, for the disclosure or discovery;	Rule 26(b)(2)(C)(iii) is amended to reflect the transfer of the considerations that bear on proportionality to Rule 26(b)(1). Rule 26(c)(1)(B) is amended to include an express recognition of protective orders that allocate expenses for disclosure or discovery.

Old Rule	**New Rule**	**Commentary**
Rule 26 (continued) *(d) Timing and Sequence of Discovery.* ***[(2) Early Rule 34 Requests.*** ***(A) Time to Deliver.* More than 21 days after the summons and complaint are served on a party, a request under Rule 34 may be delivered:** **(i) to that party by any other party, and** **(ii) by that party to any plaintiff or to any other party that has been served.** ***(B) When Considered Served.* The request is considered to have been served at the first Rule 26(f) conference.]** *(~~2~~[3]) Sequence.* Unless~~, on motion,~~ **[the parties stipulate or]** the court orders otherwise for the parties' and witnesses' convenience and in the interests of justice: (A) methods of discovery may be used in any sequence; and (B) discovery by one party does not require any other party to delay its discovery.	*Rule 26 (continued)* *(d) Timing and Sequence of Discovery.* *(2) Early Rule 34 Requests.* *(A) Time to Deliver.* More than 21 days after the summons and complaint are served on a party, a request under Rule 34 may be delivered: (i) to that party by any other party, and (ii) by that party to any plaintiff or to any other party that has been served. *(B) When Considered Served.* The request is considered to have been served at the first Rule 26(f) conference. *(3) Sequence.* Unless the parties stipulate or the court orders otherwise for the parties' and witnesses' convenience and in the interests of justice: (A) methods of discovery may be used in any sequence; and (B) discovery by one party does not require any other party to delay its discovery.	Rule 26(d)(2) is added to allow a party to deliver Rule 34 requests to another party more than 21 days after that party has been served even though the parties have not yet had a required Rule 26(f) conference. Delivery may be made by any party to the party that has been served, and by that party to any plaintiff and any other party that has been served. Rule 26(d)(3) is renumbered and amended to recognize that the parties may stipulate to case-specific sequences of discovery.

Old Rule	**New Rule**	**Commentary**
Rule 26 (continued) *(f) Conference of the Parties; Planning for Discovery.* *(3) Discovery Plan.* A discovery plan must state the parties' views and proposals on: (C) any issues about disclose**[,]** ~~or~~ discovery**[, or preservation]** of electronically stored information, including the form or forms in which it should be produced; (D) any issues about claims of privilege or of protection as trial-preparation materials, including – if the parties agree on a procedure to assert these claims after production – whether to ask the court to include their agreement in an order **[under Federal Rule of Evidence 502]**;	*Rule 26 (continued)* *(f) Conference of the Parties; Planning for Discovery.* *(3) Discovery Plan.* A discovery plan must state the parties' views and proposals on: (C) any issues about disclose, discovery, or preservation of electronically stored information, including the form or forms in which it should be produced; (D) any issues about claims of privilege or of protection as trial-preparation materials, including – if the parties agree on a procedure to assert these claims after production – whether to ask the court to include their agreement in an order under Federal Rule of Evidence 502;	Rule 26(f)(3) is amended in parallel with Rule 16(b)(3) to add two items to the discovery plan – issues about preserving electronically stored information and court orders under Evidence Rule 502.

Old Rule	**New Rule**	**Commentary**
Rule 30. Depositions by Oral Examination *(a) When a Deposition May Be Taken.* *(2) With Leave.* A party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)**[(1) and]**(2): *(d) Duration.* Unless otherwise stipulated or ordered by the court, a deposition is limited to one day of 7 hours. The court must allow additional time consistent with Rule 26(b)**[(1) and]**(2) if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.	*Rule 30. Depositions by Oral Examination* *(a) When a Deposition May Be Taken.* *(2) With Leave.* A party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(1) and (2): *(d) Duration.* Unless otherwise stipulated or ordered by the court, a deposition is limited to one day of 7 hours. The court must allow additional time consistent with Rule 26(b)(1) and (2) if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.	Rule 30 is amended similarly to Rules 31 and 33 to reflect the new recognition of proportionality in Rule 26(b)(1).

Old Rule	**New Rule**	**Commentary**
Rule 31. Depositions by Written Questions *(a) When a Deposition May Be Taken.* *(2) With Leave.* A party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)**[(1) and]**(2): * * * *Rule 33. Interrogatories to Parties* *(a) In General* *(1) Number.* Unless otherwise stipulated or ordered by the court, a party may serve on any other party no more than 25 written interrogatories, including all discrete subparts. Leave to serve additional interrogatories may be granted to the extent consistent with Rule 26(b)**[(1) and]**(2).	*Rule 31. Depositions by Written Questions* *(a) When a Deposition May Be Taken.* *(2) With Leave.* A party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(1) and (2): * * * *Rule 33. Interrogatories to Parties* *(a) In General* *(1) Number.* Unless otherwise stipulated or ordered by the court, a party may serve on any other party no more than 25 written interrogatories, including all discrete subparts. Leave to serve additional interrogatories may be granted to the extent consistent with Rule 26(b)(1) and (2).	Rules 31 and 33 are amended similarly to Rule 30 to reflect the new recognition of proportionality in Rule 26(b)(1).

Old Rule	**New Rule**	**Commentary**
Rule 34. Producing Documents, Electronically Stored Information, and Tangible Things, or Entering onto Land, for Inspection and Other Purposes *(b) Procedure.* *(2) Responses and Objections.* *(A) Time to Respond.* The party to whom the request is directed must respond in writing within 30 days after being served**[or – if the request was delivered under Rule 26(d)(2) – within 30 days after the parties' first Rule 26(f) conference]**. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court. *(B) Responding to Each Item.* For each item or category, the response must either state that inspection and related activities will be permitted as requested or state ~~an objection~~**[with specificity the grounds for objecting]** to the request, including the reasons.**[The responding party may state that it will produce copies of documents or of electronically stored information instead of permitting inspection. The production must then be completed no later than the time for inspection specified in the request or another reasonable time specified in the response.]**	*Rule 34. Producing Documents, Electronically Stored Information, and Tangible Things, or Entering onto Land, for Inspection and Other Purposes* *(b) Procedure.* *(2) Responses and Objections.* *(A) Time to Respond.* The party to whom the request is directed must respond in writing within 30 days after being served or – if the request was delivered under Rule 26(d)(2) – within 30 days after the parties' first Rule 26(f) conference. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court. *(B) Responding to Each Item.* For each item or category, the response must either state that inspection and related activities will be permitted as requested or state with specificity the grounds for objecting to the request, including the reasons. The responding party may state that it will produce copies of documents or of electronically stored information instead of permitting inspection. The production must then be completed no later than the time for inspection specified in the request or another reasonable time specified in the response.	Rule 34(b)(2)(A) is amended to conform with new Rule 26(d)(2). The time to respond to a Rule 34 request delivered before the parties' Rule 26(f) conference is 30 days after the first Rule 26(f) conference. Rule 34(b)(2)(B) is amended to require that objections to Rule 34 requests be stated with specificity. The specificity of the objection ties to the new provision in Rule 34(b)(2)(C), directing that an objection must state whether any responsive materials are being withheld on the basis of that objection. Rule 34(b)(2)(B) is further amended to reflect the common practice of producing copies of documents or electronically stored information rather than simply permitting inspection. The response to the request must state that copies will be produced. The production must be completed either by the time for inspection specified in the request or by another reasonable time specifically identified in the response.

Old Rule	**New Rule**	**Commentary**
Rule 34 (continued) *(C) Objections.* **[An objection must state whether any responsive materials are being withheld on the basis of that objection.]**An objection to part of a request must specify the party and permit inspection of the rest.	*Rule 34 (continued)* *(C) Objections.* An objection must state whether any responsive materials are being withheld on the basis of that objection. An objection to part of a request must specify the party and permit inspection of the rest.	Rule 34(b)(2)(C) is amended to provide that an objection to a Rule 34 request must state whether anything is being withheld on the basis of the objection.

Old Rule	**New Rule**	**Commentary**
Rule 37. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions *(a) Motion for an Order Compelling Disclosure or Discovery.* *(3) Specific Motions.* *(B) To Compel a Discovery Response.* A party seeking discovery may move for an order compelling an answer, designation, production, or inspection. This motion may be made if: (iv) a party**[fails to produce documents or]** fails to respond that inspection will be permitted – or fails to permit inspection – as requested under Rule 34.	*Rule 37. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions* *(a) Motion for an Order Compelling Disclosure or Discovery.* *(3) Specific Motions.* *(B) To Compel a Discovery Response.* A party seeking discovery may move for an order compelling an answer, designation, production, or inspection. This motion may be made if: (iv) a party fails to produce documents or fails to respond that inspection will be permitted – or fails to permit inspection – as requested under Rule 34.	Rule 37(a)(3)(B)(iv) is amended to reflect the common practice of producing copies of documents or electronically stored information rather than simply permitting inspection. This change brings item (iv) into line with paragraph (B), which provides for a motion for an order compelling "production, or inspection."

Rule 37 (continued) *(e) Failure to ~~Provide~~**[Preserve]** Electronically Stored Information.* ~~Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good faith operation of an electronic information system.~~**[If electronically stored information that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery, the court:** **(1) upon finding prejudice to another party from loss of information, may order measures no greater than necessary to cure the prejudice; or** **(2) only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation may:** **(A) presume that the lost information was unfavorable to the party;** **(B) instruct the jury that it may or must presume the information was unfavorable to the party; or** **(C) dismiss the action or enter a default judgment.**	*Rule 37 (continued)* *(e) Failure to Preserve Electronically Stored Information.* If electronically stored information that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery, the court: (1) upon finding prejudice to another party from loss of information, may order measures no greater than necessary to cure the prejudice; or (2) only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation may: (A) presume that the lost information was unfavorable to the party; (B) instruct the jury that it may or must presume the information was unfavorable to the party; or (C) dismiss the action or enter a default judgment.	The present Rule 37(e) is replaced by a new Rule 37(e). The new Rule 37(e) authorizes and specifies measures a court may employ if information that should have been preserved is lost, and specifies the findings necessary to justify these measures.

Rule 55. Default; Default Judgment *(c) Setting Aside a Default or a Default Judgment.* The court may set aside an entry of default for good cause, and it may set aside a **[final]**default judgment under Rule 60(b).	*Rule 55. Default; Default Judgment* *(c) Setting Aside a Default or a Default Judgment.* The court may set aside an entry of default for good cause, and it may set aside a final default judgment under Rule 60(b).	Rule 55(c) is amended to clarify the interplay between Rules 54(b), 55(c), and 60(b). A default judgment that does not dispose of all the claims among all parties is not a final judgment under Rule 54(b).

Rule 84. Forms **[Abrogated (Apr. __, 2015, eff. Dec. 1, 2015.]** ~~The forms in the Appendix suffice under these rules and illustrate the simplicity and brevity that these rules contemplate.~~	*Rule 84. Forms* Abrogated (Apr. __, 2015, eff. Dec. 1, 2015.	Recognizing that there are many excellent alternative sources for forms, including the Administrative Office of the United States Courts, Rule 84 and the Appendix of Forms are no longer necessary and have been abrogated.