
FLORIDA, MIDDLE DISTRICT DISCOVERY HANDBOOK (2015)
TITLE III: PRODUCTION OF DOCUMENTS
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FLORIDA, MIDDLE DISTRICT DISCOVERY HANDBOOK | FEDERAL

SECTION III PRODUCTION OF DOCUMENTS

RULES: A-B

III.A | PREPARATION AND INTERPRETATION OF REQUESTS FOR DOCUMENTS

1 - Formulating Requests for Documents. In addition to complying with the provisions of Rules 34 and 45, Federal Rules of Civil Procedure, a request for documents, whether a request for production or a subpoena duces tecum, should be clear, concise, and reasonably particularized. For example, a request for "each and every document supporting your claim" or a request for "the documents you believe support Count I" is objectionably broad in most cases.

2 - Use of Form Requests. An attorney shall review any standard form document request or subpoena duces tecum and modify it to apply to the facts and contentions of the particular case. A "boilerplate" request or subpoena not directed to the facts of the particular case shall not be used. Neither should burdensome "boilerplate" definitions or instructions be used in formulating a document request or subpoena. Words used in discovery normally should carry their plain and ordinary meaning unless the particular case requires a special or technical definition, which should be specified plainly and concisely by the party required to respond to the term(s).

3 - Reading and Interpreting Requests for Documents. An attorney receiving a request for documents or a subpoena duces tecum shall reasonably and naturally interpret it, recognizing that the attorney serving it generally does not have specific knowledge of the documents sought and that the attorney receiving the request or subpoena generally has or can obtain pertinent knowledge from the client. Furthermore, attorneys are reminded that evasive or incomplete disclosures, answers, or responses may be sanctionable under the provisions of Rule 37, Federal Rules of Civil Procedure.

4 - Contact With the Client When a Document Request Is Received. Upon receiving a document request, counsel should promptly confer with the client and take reasonable steps to ensure that the client (i) understands what documents are requested, (ii) has adopted a reasonable plan to obtain documents in a timely and reasonable manner, and (iii) is purposefully implementing that plan in good faith.

5 - Responding to a Document Request. A party and counsel ordinarily have complied with the duty to respond to a document request if they have:

- (a) Responded to the requests within the time set by the governing rule, stipulation, or court-ordered extension;
- (b) Objected with specificity to objectionable requests;
- (c) Produced the documents themselves (or copies), specifically identified those documents that are being or will be produced, or specified precisely where the documents can be found and when they can be reviewed; if the documents will be produced, the response should state a specific date when the responsive documents will be available. For example, to state that the requested documents will be available at an ambiguous "mutually agreeable time" is not sufficient.
- (d) Stated specifically that no responsive documents have been found; and
- (e) Ensured a reasonable inquiry with those persons and a reasonable search of those places likely to result in the discovery of responsive documents.

6 - Objections. Attorneys should not make objections solely to avoid producing documents that are relevant to the case or that are otherwise necessary to discover or understand those the issues. Absent compelling circumstances, failure to assert an objection to a request for production within the time allowed for responding constitutes a waiver and will preclude a party from asserting the objection in response to a motion to compel. Objections to requests for production should be specific, not generalized, and should be in compliance with the provisions of Rule 34(b), Federal Rules of Civil Procedure. Objections to portions of a document request do not excuse the responding party from producing those documents to which there is no objection. Specific objections should be matched to specific requests. General or blanket objections should be used only when they apply to every request. Boilerplate objections such as "the request is overly broad, unduly burdensome, and outside the scope of permissible discovery" are insufficient without a full, fair explanation particular to the facts of the case.

7 - Producing Documents Subject to Objection. When the scope of the document production is narrowed by one or more objections, this fact and the nature of the documents withheld should be asserted explicitly for that request.

8 - When Production Is Limited by Interpretation. If a party objects to a request as overbroad when a narrower version of the request would not be objectionable, the documents responsive to the narrower version ordinarily should be produced without waiting for a resolution of the dispute over the scope of the request. When production is limited by a party's objection, the producing party should clearly describe the limitation in its response.

9 - Supplementation of Document Production. A party should, without having to be asked, promptly produce any responsive documents discovered after the original production.

10 - Producing Business Records in Lieu of Answering Interrogatories. Rule 33(d), Federal Rules of Civil Procedure, allows a party in very limited circumstances to produce business records in lieu of answering interrogatories. To avoid abuses of Rule 33(d), the party wishing to respond to interrogatories in the manner contemplated by Rule 33(d) should observe the following practice:

(a) Specify the documents to be produced in sufficient detail to permit the interrogating party to locate and identify the records and to ascertain the answer as readily as could the party from whom discovery is sought.

(b) The producing party shall make its records available in a reasonable manner [i.e., with tables, chairs, lighting, air conditioning or heat, and the like if possible] during normal business hours, or, in lieu of agreement, from 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays.

(c) The producing party shall designate one of its regular employees to instruct the interrogating party on the use of the records retention system involved. That person shall be one who is fully familiar with the records system and, if a question concerning the records arises and the designated person cannot answer, the producing party should act reasonably and cooperatively in locating someone who knows the answer to the question.

(d) The producing party shall make available any computerized information or summaries that it either possesses or can produce by a reasonably efficient procedure. See, Section VII on E-Discovery.

(e) The producing party shall provide any relevant compilations, abstracts, or summaries, either in its custody or reasonably obtainable by it, not prepared in anticipation of litigation. If it has any documents arguably subject to this clause but which it declines to produce for some reason, the producing party shall call the circumstances to the attention of the opposing party, who may move to compel.

(f) All of the actual clerical data extraction work shall be performed by the interrogating party unless agreed to the contrary, or unless, after actually beginning the effort, it appears that the task could be performed more efficiently by the producing party. In that event, the interrogating party may ask the Court to review the propriety of the Rule 33(d) election. In other words, it behooves the producing party to make the document search as simple as possible, or the producing party may be required to answer the interrogatory in full.

11 - Oral Requests for Production of Documents. As a practical matter, many attorneys produce or exchange documents upon informal request, often confirmed by letter. An attorney's promise that documents will be produced should be honored. Requests for production of documents and responses may be made on the record at depositions but usually should be confirmed in writing to avoid uncertainty. Attorneys are reminded that informal requests may not support a motion to compel.

III.B | PROCEDURES GOVERNING MANNER OF PRODUCTION

Production of Documents. Rule 34, Federal Rules of Civil Procedure, sets forth the procedures required for responding to a request for production of documents. Rule 34 also defines the term "document." In addition, the following general guidelines, although varied to suit the needs of each case, are normally followed:

1 - General. The Court expects attorneys to reach agreements regarding the production of documents based upon considerations of reasonableness, convenience, and common sense.

2 - Place of Production. As a matter of convenience, the request may suggest production at the office of either counsel. The Court expects the attorneys to reasonably accommodate one another with respect to the place of production of documents.

3 - Response. An attorney should not state the documents are available for inspection and copying if they are not in fact available when this representation is made.

4 - Manner of Production. Rule 34, Federal Rules of Civil Procedure, requires that a party producing documents for inspection produce them as they are maintained in the usual course of business or organize and label them to correspond with the categories in the request. In addition, if feasible, all of the documents should be made available simultaneously, and the party inspecting can determine the desired order of review. While the inspection is in progress, the inspecting party shall have the right to review again any documents which have already been examined during the inspection.

If the documents are produced as they are kept in the usual course of business, the producing party has an obligation to explain the general scheme of record-keeping to the inspecting party. The objective is to acquaint the inspecting party generally with how and where the documents are maintained. If the documents are produced to correspond with the categories in the request, some reasonable effort should be made to identify certain groups of the produced documents with particular categories of the request or to provide some meaningful description of the documents produced. The

producing party is not obligated to rearrange or reorganize the documents.

5 - Listing or Marking. The producing party is encouraged to list or mark the documents which have been produced with unique Bates labels, Hash tags, Hash values or similar document recognition systems. The parties are encouraged to then use Bates stamped documents for deposition and trial exhibits. This will prevent later confusion or dispute about which documents were produced. For relatively few documents, a list prepared by the inspecting attorney (which should be exchanged with opposing counsel) may be appropriate; when more documents are involved, the inspecting attorney may want to number each document. The producing party should allow such numbering so long as marking the document does not materially interfere with its intended use. Documents that would be materially altered by marking (e.g., promissory notes) should be listed rather than marked. Alternatively, copies of the documents (rather than originals) may be marked.

6 - Copying. Photocopies of the original documents are often prepared by the producing party for the inspecting party as a matter of convenience. However, the inspecting party has the right to insist on inspecting the original documents.

The photocopying of documents will generally be the responsibility of the inspecting party, but the producing party must render reasonable assistance and cooperation depending on its staffing and facilities. In a case with a manageable number of documents, the producing party should allow its personnel and its photocopying equipment to be used with the understanding that the inspecting party will pay reasonable charges. If a large quantity of documents is produced, it may be reasonable for the inspecting party to furnish personnel to make copies on the producing party's equipment or it may be reasonable for the inspecting party to furnish both the personnel and the photocopying equipment. On occasion it may be reasonable for the documents to be photocopied at another location or by an outside professional copy service.

7 - Scanning. The producing party should cooperate reasonably if the inspecting party wishes to scan rather than copy documents.

8 - Later Inspection. The inspecting party's right to inspect the documents again at a later date (after having completed the entire initial inspection) must be determined on a case-by-case basis, but permission should not be unreasonably withheld.

9 - Objections. Rule 34, Federal Rules of Civil Procedure, requires that if a request for production is objectionable only in part, production should be afforded with respect to the unobjectionable portions of the request. Objections to the production of documents based on generalized claims of privilege will be rejected. A claim of privilege must be supported by a statement of particulars sufficient to enable the Court to assess its validity. For a more detailed discussion of the invocation of privilege see Section V of this handbook. The procedures for invoking privilege set forth in Section VI also apply to document production (which often requires the production of a "privilege log" containing the information requested in Section VI).

APPENDIX

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