

RULE 16

Pretrial Conferences, Scheduling, Management

Early, active, judicial management

Rule 16 Amendment

1. Deleted: “by telephone, mail, or other means”
2. Time – earlier of 90 days after service; 60 days after any defendant appears
3. subjects added:
 - (i) preservation of ESI;
 - (ii) agreements reached under Fed Ev 502
4. Consider requiring court order b/f discovery motions

Rule 26 Amendment

- Scope of discovery - 26 (b)(1)
 - Relevant; and
 - Proportional to the needs of the case
 - Importance of issues at stake
 - Amount in controversy
 - **Parties relative access to relevant information (new)**
 - Parties resources
 - Importance of discovery in resolving issues
 - Burden or expense outweighs its likely benefit.

OUT of Rule 26

- Out: “reasonably calculated to lead to the discovery of admissible evidence”
- Keeps: “need not be admissible”

Rule 26 – Costs

- Added to the terms of a protective order:
“allocation of expenses”
- Advisory notes emphasis – “not meant to shift costs to the proponent of the discovery.”

Requests for Production

- Can now be served before a Rule 26 conference (22 days after service)
- But if they are sent then they are deemed served at start of conference.