

89-R-99001

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

IN RE: AMENDMENT OF M.R.C.P. 34

FILED
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OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

MOTION TO AMEND M.R.C.P. 34

Comes now the Supreme Court Advisory Committee on Rules, pursuant to M.R.A.P. 27(f), and moves the Mississippi Supreme Court to amend M.R.C.P. 34 as discussed below. The amendment subdivides subparagraph (b) and adds captions to made the provision more user friendly. Substantively, the amendment to M.R.C.P. 34(b)(2)(B) requires that the grounds for any objection be stated with specificity, including the reasons for the objection. The amendment to M.R.C.P. 34(b)(2)(C) requires that an objection must state whether any responsive materials are being withheld based upon the objection and further provides that an objection to part of a request must specify the part and permit inspection of the remainder. The amendment to M.R.C.P. 34(c) directs attorneys to use Rule 45 subpoenas when seeking production of documents or things from a nonparty.

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 his behalf, to inspect and copy, any designated documents or electronically stored information (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably useable 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).

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(b) Procedure.

(i) Requests. 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.

(ii) Responses and Objections.

(A) Time to Respond. The party upon whom the request is served shall serve a written response within thirty days after the service of the request, except that a defendant may serve a response within forty-five days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time.

(B) Responding to Each Item. 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, in which event the grounds reasons for objection shall be stated with specificity, 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.

(C) Objections. If objection is made to part of an item or category, the part shall be specified. An objection must state whether any responsive materials are being withheld on the basis of the objection. An objection to a part of a request must specify the part and permit inspection of the rest.

(D) Responding to a Request for Production of Electronically Stored Information. The response may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form - or if no form was specified in the request - the responding party must state the form or forms it intends to use. Pursuant to Rule 26(b)(5), a responding party may also object to production of electronically stored information that is not reasonably accessible because of undue burden or cost.

~~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 permit inspection as requested. The request may specify the form or forms in which electronically stored information is to be produced.~~

(E) Producing the Documents or Electronically Stored Information. When producing documents, the producing party 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 that call for their production. If a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. A party need not produce the same electronically stored information in more than one form.

(F) Motion to Compel. The party submitting the request may move for an order to compel discovery 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 permit inspection as requested.

~~(c) Persons Not Parties. This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land. As provided in Rule 45, a party may compel a nonparty to produce documents and tangible things or to permit inspection.~~

[Amended effective July 1, 2013, to address production of electronically stored information; amended effective _____.]

Advisory Committee Historical Note

Effective _____, M.R.C.P. 34 was amended. M.R.C.P. 34(b) was subdivided and captions were added. In addition, the amendment requires an objecting party to state the objection with specificity, including the reasons for the objection, and to indicate whether any materials are being withheld based upon the objection. M.R.C.P. 34(c) was amended to include a reference to M.R.C.P. 45.

Effective July 1, 2013, MRCP 34 was amended to specifically authorize a party to request any other party to produce electronically stored information. The amendment established the procedure for requesting production of electronically stored information and the procedure for objecting to such a request.

The Committee believes that the amendments requiring an objecting party: (i) to state the objection with specificity and to identify the grounds therefore; and (ii) to indicate whether any responsive materials are being withheld based upon an objection will eliminate unnecessary confusion, expedite the discovery process, and assist the requesting party in determining whether any materials are being withheld and whether additional follow-up is necessary. The Committee believes that M.R.C.P. 34(c)'s reference to M.R.C.P. 45 will be helpful to practitioners. The

amendments are consistent with F.R.C.P. 34. The motion to amend M.R.C.P. 34 was unanimously approved by the Committee on December 7, 2018.

The Supreme Court Advisory Committee on Rules therefore moves that the above proposed amendment to M.R.C.P. 34 be considered by the Mississippi Supreme Court.

SO MOVED, this the *15th* day of *January*, 2019.

SUPREME COURT ADVISORY COMMITTEE ON RULES



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