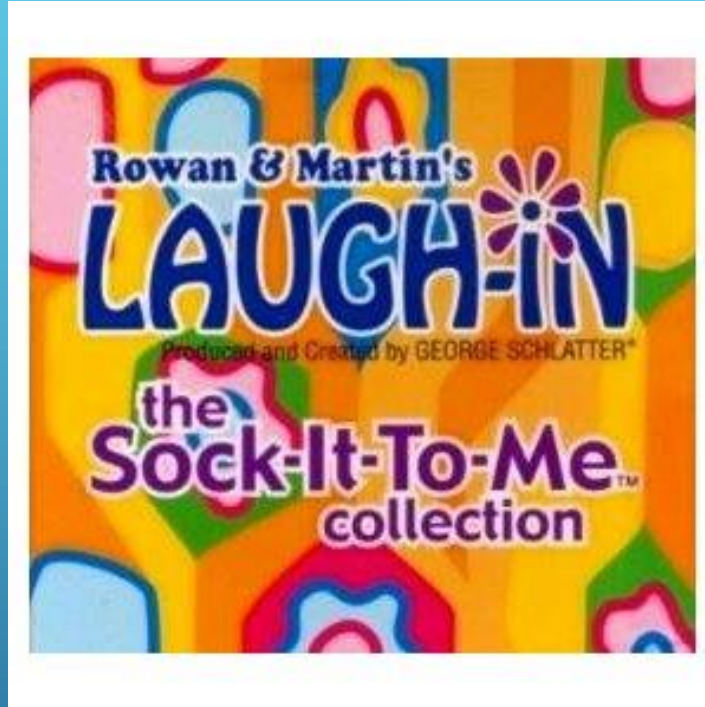


# IT'S SOCK IT TO ME TIME



Amendments to the Bankruptcy Forms and Rules


# CHANGES DESIGNED TO IMPROVE COOPERATION AND ENCOURAGE ACTIVE JUDICIAL CASE MANAGEMENT

FED. R. CIV. P. 1, 4(m), 16(b) & 26(f)



# RULE 1 - THE PARTIES HAVE AN OBLIGATION TO MAKE LITIGATION EFFICIENT

Rules “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.”



# RULES 4(M), 16, AND 26(F) REDUCE DELAY

- Rule 4(m) reduces the time to serve a defendant from 120 to 90 days.
- Rule 16(b)(1) scheduling conference involves “direct simultaneous communication” between parties and that “may be held in person, by telephone, or by more sophisticated electronic means.”
- Rule 16(b)(2) reduces the time to issue a scheduling order.
- Rule 16(b)(3) permits the scheduling order to require a conference with the court before a party may move for a discovery order.
  - Scheduling order may provide for preservation of ESI and for any agreements the parties reached under Federal Rule of Evidence 502.
- Rule 26(f)(3) requires the parties’ discovery plan to state the parties’ views and proposals on issues about preservation of ESI and include court orders under Rule of Evidence 502.


# DISCOVERY AMENDMENTS

FED. R. CIV. P. 26, 34 & 37


The background features several decorative white lines that are parallel and slanted upwards from left to right, creating a sense of motion and modern design.

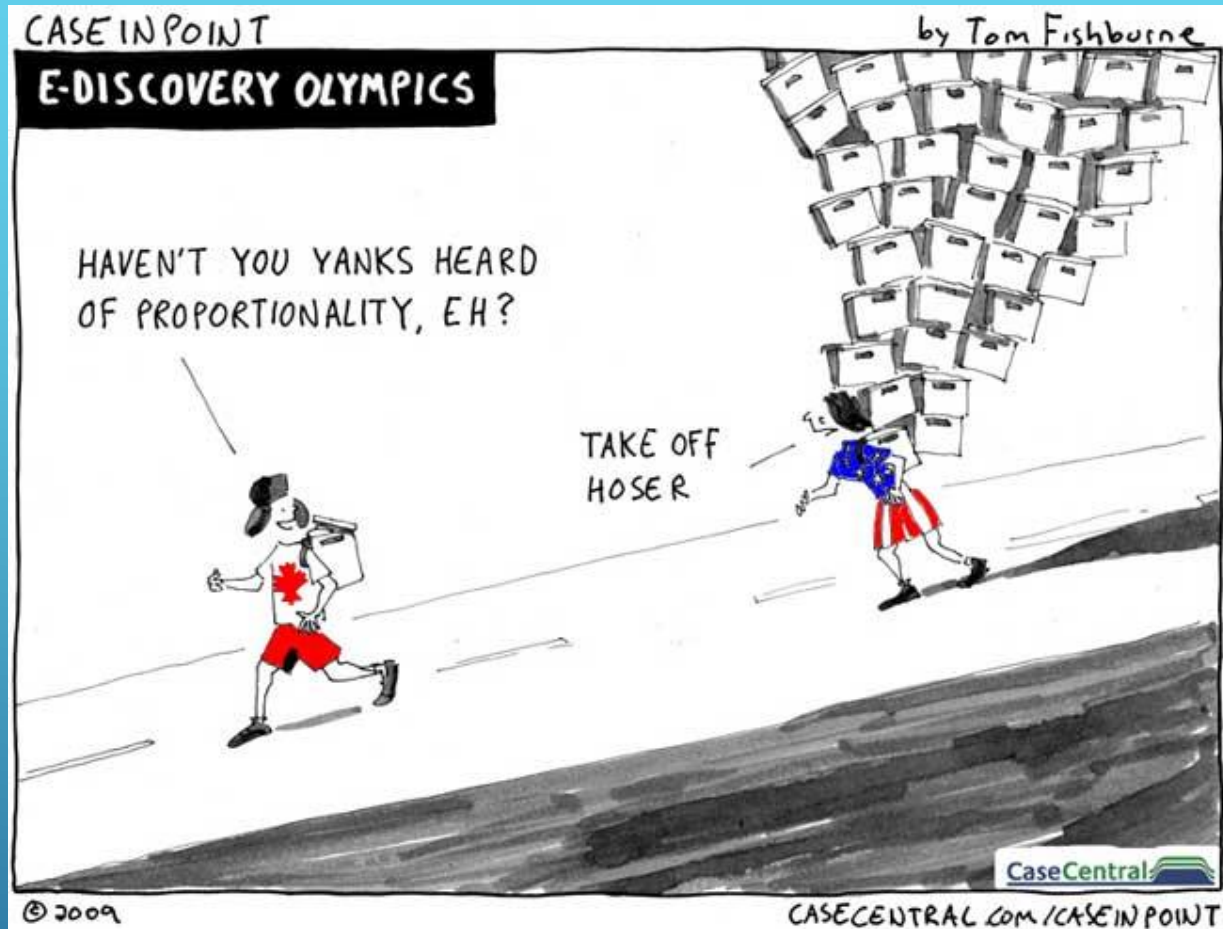
# AMENDMENT TO RULE 26(B)(1) LIMITS THE SCOPE OF DISCOVERY

Information is discoverable if it is “**relevant** to any party’s claim or defense” and “**proportional to the needs of the case.**”



# AMENDMENT TO RULE 26(B)(1)

- **Removes** language allowing the court to order discovery of “**any matter relevant to the subject matter** involved in the action.”
  - **Removes** sentence “Relevant information need not be admissible at the trial if the discovery appears **reasonably calculated to lead to the discovery of admissible evidence.**”
- 




HOW TO DETERMINE PROPORTIONALITY?



# PROPORTIONALITY FACTORS

Relocated from Rule 26(b)(2)(C)(iii):


1. the importance of the issues at stake;
  2. the amount in controversy;
  3. the parties' relative access to relevant information;
  4. the parties' resources;
  5. the importance of the discovery in resolving the issues; and
  6. whether the burden or expense of the proposed discovery outweighs its likely benefit.
- 

RULE 26(C)(1)(B) AUTHORIZES COURTS TO ISSUE COST-SHIFTING ORDERS, DETERMINING THE “ALLOCATION OF EXPENSES” FOR CERTAIN DISCOVERY.



# THE BURDEN HAS NOT CHANGED

**Party resisting discovery** still bears the burden to show that the discovery is not proportional to the needs of the case. See *Carr v. State Farm Mutual Automobile Insurance Company*, 312 F.R.D. 459, 463-69 (N.D. Tex. 2015).



# REQUESTS FOR PRODUCTION

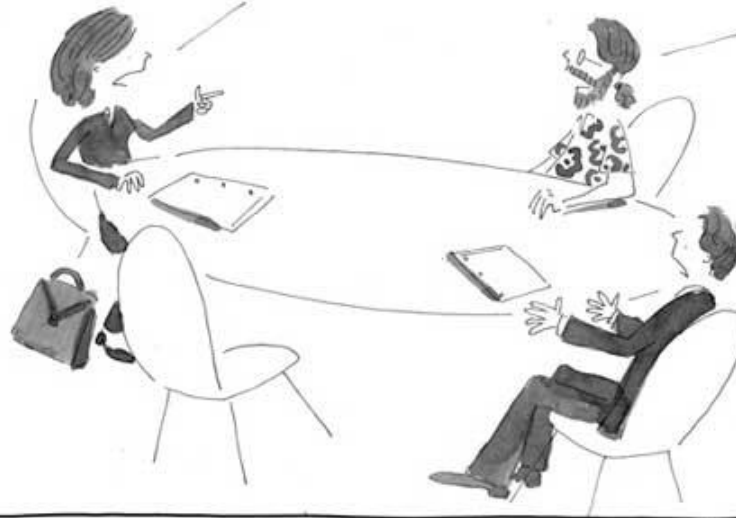
- Rule 26(d)(2) permits Requests for Production of Documents to be made before the Rule 26(f) conference.
- Rule 34(b)(2)(B) allows parties to produce copies of documents or electronically stored information instead of allowing inspection.
- Rule 34(b)(2)(B) & (C) make the responding party state with specificity the grounds for objection and whether any responsive materials are being withheld on the basis of the objection.

**BONUS E-DISCOVERY**

YOU DELETED THE E-MAIL ARCHIVE TO MAKE SPACE FOR YOUR PLAYSTATION GAMES, WHICH DESTROYED KEY DEFENSE EVIDENCE, VIOLATED A PRESERVATION ORDER AND LOST US THE CASE!

WILL I STILL GET MY ANNUAL BONUS?

SURE, IT WOULD TAKE AN ACT OF CONGRESS TO STOP THAT




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RULE 37(E) PROVIDES BROAD DISCRETION FOR COURTS TO CURE PREJUDICE CAUSED BY LOSS OF ESI

- Courts may impose sanctions if a party's failure to preserve electronically stored information prejudices the requesting party.
  - Substantive sanctions including the issuance of a default judgment are provided in instances of intentional conduct.
- 

# RULE CHANGES PENDING FOR DECEMBER 1, 2016

- FRCP 6(d) and FRBP 9006(f)- Eliminate the need to add 3 days if service is by electronic means.
- FRBP 1010, 1011, 1012 (new), and 2002 - reorganize and clarify the procedures related to the filing of a chapter 15 petition.
- FRBP 3002.1
- FRBP 7008, 7012, 7016, 9027 and 9033 - drafted in response to the Supreme Court decision in *Stern v. Marshall*.

# NEW OFFICIAL BANKRUPTCY FORMS





# STATEMENT OF FINANCIAL AFFAIRS

- Now separate Individual and non-individual forms and new form numbers:

Individual  
B107

Non-Individual  
B207

- New Format
- New Questions

# SCHEDULES AND SUMMARY OF SCHEDULES

New Schedules also have separate Individual and non-individual forms and new form numbers.

## Individual

B106**A/B**

B106**D**

B106**E/F**

B106**G**

B106**H**

## Non-Individual

B206**A/B**


B206**D**

B206**E/F**

B206**G**

B206**H**

# PROPERTY (A & B) AND UNSECURED (E & F) FORMS ARE COMBINED, HOWEVER THERE ARE STILL SEPARATE SECTIONS FOR:

- Real estate/property (Formerly Schedule A)
  - Personal property (Formerly Schedule B)
  - Priority unsecured claims (Formerly Schedule E)
  - Non-priority unsecured claims (Formerly Schedule F)
- 

# PROOF OF CLAIM FORM – NEW FORM 410 (OR THE FORM FORMERLY KNOWN AS B10)

- Questions regarding whether the claim is based on a lease
- Questions regarding whether the claim is subject to a right of setoff
- Claimant must identify whether the claim was acquired from someone else
- Attachment to the Proof of Claim of documents showing that the debt has been assigned and/or transferred.

