

The Court of Chancery Amends Rules 1, 26, 34 and 37

The Court of Chancery has amended Rules 1, 26, 34, and 37. The changes were made as part of an effort to update and harmonize the rules of the Delaware trial courts in light of changes to the Federal Rules of Civil Procedure adopted in 2015.

Rule 1 is amended to reflect that parties share the responsibility along with the court to employ the rules to secure the just, speedy, and inexpensive determination of every proceeding.

Rule 26(b)(1) is amended to expressly incorporate proportionality considerations consistent with the Federal Rules and to confirm that relevance is the touchstone for discovery. Under this standard, relevant evidence is discoverable, even if it may not be admissible. The 2019 amendment removes the qualification about the information appearing “reasonably calculated to lead to the discovery of admissible evidence.” As the comments to Federal Rule of Civil Procedure 26(b)(1) explain, this phrase “has been used by some, incorrectly, to define the scope of discovery.” To avoid this implication, the qualification has been removed and replaced with the direct statement that information within the scope of discovery need not be admissible in evidence to be discoverable. This clarification is not intended to change the scope of available discovery under the Delaware rules. Rule 26(c)(2) is amended to reference cost allocation as a means to address discovery burdens.

Rule 34(b) is amended to require, among other things, that objections to Rule 34 requests be stated with specificity and that objections must state whether any responsive materials are being withheld on the basis of that objection. Rule 34(d) is amended to provide that, unless otherwise stipulated or ordered by the court, the procedures in Rule 34 apply to producing documents or electronically stored information.

Rule 37 is amended to add a new subsection (e), which addresses actions the court may take for failing to preserve electronically stored information.

These Rules will become effective on July 1, 2019.