



April 25, 2017

Contact:
Jason R. Gianvecchio
Senior Associate
213.417.5161
jgianvecchio@mpplaw.com

Changes to FRCP 34 Seek Specificity and Proportionality on Objections to Document Requests

Dramatic changes to Rule 34(b) which a) brought specificity to the requests for production of documents and b) attempted to do away with the tactic of objecting broadly to requests for production while, at the same time, producing some documents. This particular tactic leaves the propounding party guessing as to whether relevant information was withheld on the basis of the boilerplate objections. The new version of Rule 34 puts an end to that practice.

First, parties can no longer use broad document requests asking parties to produce "any and all" or "each and every" document. Instead, parties must specifically describe with reasonable particularity the information that is being requested. Fed. R. Civ. P. 34 (b)(1). This will hopefully decrease the number of discovery disputes that are associated with "overbroad" discovery requests. See *Henry v. Morgan's Hotel Group, Inc.*, 2016 WL 303114 (S.D.N.Y. Jan 25, 2016)

Second, general or boilerplate objections are no longer acceptable. A responding party is now required to state objections with "specificity." Fed. R. Civ. P. 34 (b)(2). This means that a responding party can no longer provide vague responses as to what documents are actually being produced in response to a document request. Instead, a responding party is required to specifically state if documents will be withheld based on the specific objections raised. See *Spencer v. City of Orlando*, 2016 WL 397935 (M.D. Fla. Feb. 2, 2016). This rule is intended to end the confusion that arises when a responding party states several objections and still produces information which leaves the propounding party uncertain as to whether any relevant and responsive information has been withheld on the basis of those objections.

Third, parties have to incorporate the proportionality standards from Rule 26(b) and 26(g) in their document requests and objections. Fed. R. Civ. P. 34(a). This rule was enacted in order to eliminate one of the most prevalent discovery abuses: knee-jerk discovery requests served without consideration of cost or burden to the responding party. This rule requires that broad document requests and boilerplate objections be replaced with specific, proportional requests and objections. See *Mancia v. Mayflower Textile Services Co.*, 253 F.R.D. 354, 358 (D. Md. 2008).

Fourth, parties now have the option to serve document requests under Rule 26(d)(2) before the Rule 26(f) conference. This change is intended to allow the parties to have a more focused discussion during the Rule 26(f) conference in that it may help establish the scope of discovery and allow the parties and the court to address any disagreements at the conference.

Fifth, a responding party must identify the date a production will be complete, or, for rolling productions, the beginning and end dates of the production. Fed. R. Civ. P. 34(b)(2)(B). As a result, parties need to understand the volume of data that needs to be collected and reviewed before specifying a date for the completion of a production. As such, this rule is designed to urge the parties to discuss these issues early in the case and try to reach agreements on the reasonable time frames for production. Finally, although parties usually produce copies of the documents or ESI, a party is now required to expressly state that it is opting to produce copies instead of permitting an inspection. Fed. R. Civ. P. 34(b)(2)(B).

All of these changes to the FRCP 34 show that parties can no longer approach discovery as they have in the past as the amendments to the Rule call for specificity and proportionality when it comes to document requests and objections. These rules have the potential to open the door to increased cooperation among the parties and a more straightforward approach to document production.

This article is designed to provide information in regard to the subject matter and may not reflect the most current legal developments, verdicts or settlements. This information is made available with the understanding that the article does not constitute the rendering of legal advice or other professional services. If legal advice is required, such services should be sought. ©2017 Morris Polich & Purdy LLP. All rights reserved.