

1                                   **PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY**

2                                   **UPON LAND FOR INSPECTION AND OTHER PURPOSES**

3                                   **RULE 43**

4                   **A Scope.** Any party may serve on any other party a request: (1) to produce and permit  
5 the party making the request, or someone acting on behalf of the party making the request, to  
6 inspect and copy any designated documents (including electronically stored information,  
7 writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or  
8 data compilations from which information can be obtained and translated, if necessary, by the  
9 respondent through detection devices or software into reasonably usable form) or to inspect  
10 and copy, test, or sample any tangible things which constitute or contain matters within the  
11 scope of Rule 36 B and which are in the possession, custody, or control of the party upon whom  
12 the request is served; or (2) to permit entry upon designated land or other property in the  
13 possession or control of the party upon whom the request is served for the purpose of  
14 inspection and measuring, surveying, photographing, testing, or sampling the property or any  
15 designated object or operation thereon, within the scope of Rule 36 B.

16                   **B Procedure.**

17                   B(1) A party may serve a request on the plaintiff after commencement of the action and  
18 on any other party with or after service of the summons on that party. The request shall  
19 identify any items requested for inspection, copying, or related acts by individual item or by  
20 category described with reasonable particularity, designate any land or other property upon  
21 which entry is requested, and shall specify a reasonable place and manner for the inspection,  
22 copying, entry, and related acts.

23                   B(2) A request shall not require a defendant to produce or allow inspection, copying,  
24 entry, or other related acts before the expiration of 45 days after service of summons, unless  
25 the court specifies a shorter time. Otherwise, within 30 days after service of a request in  
26 accordance with subsection B(1) of this rule, or such other time as the court may order or the

1 parties may agree upon in writing, a party shall serve a response that includes the following:

2 B(2)(a) a statement that, except as specifically objected to, any requested item within  
3 the party's possession or custody is provided, or will be provided or made available within the  
4 time allowed and at the place and in the manner specified in the request, which items shall be  
5 organized and labeled to correspond with the categories in the request;

6 B(2)(b) as to any requested item not in the party's possession or custody, a statement  
7 that reasonable effort has been made to obtain it, unless specifically objected to, or that no  
8 such item is within the party's control;

9 B(2)(c) as to any land or other property, a statement that entry will be permitted as  
10 requested unless specifically objected to; and

11 B(2)(d) any objection to a request or a part thereof and the reason for each objection.

12 B(3) Any objection not stated in accordance with subsection B(2) of this rule is waived.  
13 Any objection to only a part of a request shall clearly state the part objected to. An objection  
14 does not relieve the requested party of the duty to comply with any request or part thereof not  
15 specifically objected to.

16 B(4) A party served in accordance with subsection B(1) of this rule is under a continuing  
17 duty during the pendency of the action to produce promptly any item responsive to the request  
18 and not objected to which comes into the party's possession, custody, or control.

19 B(5) A party who moves for an order under Rule 46 A(2) regarding any objection or  
20 other failure to respond or to permit inspection, copying, entry, or related acts as requested,  
21 shall do so within a reasonable time.

22 **C Writing called for need not be offered.** Though a writing called for by one party is  
23 produced by the other, and is inspected by the party calling for it, the party requesting  
24 production is not obliged to offer it in evidence.

25 **D Persons not parties.** A person not a party to the action may be compelled to produce  
26 books, papers, documents, or tangible things and to submit to an inspection thereof as

1 provided in Rule 55. This rule does not preclude an independent action against a person not a  
2 party for permission to enter upon land.

3 **E Electronically stored information.**

4 **E(1) Form in which information is to be produced.** A request for electronically stored  
5 information may specify the form in which the information is to be produced by the responding  
6 party but, if no such specification is made, the responding party must produce the information  
7 in either the form in which it is ordinarily maintained or in a reasonably useful form.

8 **E(2) Duty to confer. In any case in which a request for production of electronically**  
9 **stored information ("ESI") is anticipated, any party may request a meeting to confer about ESI**  
10 **production in that case. Within 20 days of the request for a meeting, the parties shall meet**  
11 **and confer about the scope of the production of ESI; data sources of the requested ESI; form**  
12 **of the production of ESI; cost of producing ESI; search terms relevant to identifying responsive**  
13 **ESI; preservation of ESI; issues of privilege pertaining to ESI; and any other issue a requesting**  
14 **or producing party deems relevant to the request for ESI. Failure to comply with this**  
15 **requirement shall be considered by a court when ruling on any motion to compel or motion**  
16 **for a protective order related to ESI.**

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4                   **A Scope.** Any party may serve on any other party [*a request*] **any of the following**  
5 **requests:** [(1)]

6                   **A(1) Documents or things. A request** to produce and permit the party making the  
7 request, or someone acting on behalf of the party making the request, to inspect and copy any  
8 designated documents (including electronically stored information, writings, drawings, graphs,  
9 charts, photographs, sound recordings, images, and other data or data compilations from  
10 which information can be obtained and translated, if necessary, by the respondent through  
11 detection devices or software into reasonably usable form) or to inspect and copy, test, or  
12 sample any tangible things [*which*] **that** constitute or contain matters within the scope of Rule  
13 36 B and [*which*] **that** are in the possession, custody, or control of the party upon whom the  
14 request is served; [*or* (2)]

15                   **A(2) Entry upon land. A request** to permit entry upon designated land or other  
16 property in the possession or control of the party upon whom the request is served for the  
17 purpose of inspection and measuring, surveying, photographing, testing, or sampling the  
18 property or any designated object or operation thereon, within the scope of Rule 36 B.

19                   **B Procedure.**

20                   B(1) **Generally.** A party may serve a request on the plaintiff after commencement of the  
21 action and on any other party with or after service of the summons on that party. The request  
22 shall identify any items requested for inspection, copying, or related acts by individual item or  
23 by category described with reasonable particularity, designate any land or other property upon  
24 which entry is requested, and shall specify a reasonable place and manner for the inspection,  
25 copying, entry, and related acts.

26                   B(2) **Time for response.** A request shall not require a defendant to produce or allow

1 inspection, copying, entry, or other related acts before the expiration of 45 days after service  
2 of summons, unless the court specifies a shorter time. Otherwise, within 30 days after service  
3 of a request in accordance with subsection B(1) of this rule, or such other time as the court  
4 may order or **to which** the parties may agree [*upon*] in writing, a party shall serve a response  
5 that includes the following:

6 B(2)(a) a statement that, except as specifically objected to, any requested item within  
7 the party's possession or custody is provided, or will be provided or made available within the  
8 time allowed and at the place and in the manner specified in the request, [*which items*] **and**  
9 **that the items are or** shall be organized and labeled to correspond with the categories in the  
10 request;

11 B(2)(b) **a statement that, except as specifically objected to, a reasonable effort has**  
12 **been made to obtain** [*as to*] any requested item not in the party's possession or custody, [*a*  
13 *statement that reasonable effort has been made to obtain it, unless specifically objected to,*] or  
14 that no such item is within the party's control;

15 B(2)(c) **a statement that, except as specifically objected to, [as to] entry will be**  
16 **permitted as requested to** any land or other property[, *a statement that entry will be*  
17 *permitted as requested unless specifically objected to*]; and

18 B(2)(d) any objection to a request or a part thereof and the reason for each objection.

19 B(3) **Objections.** Any objection not stated in accordance with subsection B(2) of this rule  
20 is waived. Any objection to only a part of a request shall clearly state the part objected to. An  
21 objection does not relieve the requested party of the duty to comply with any request or part  
22 thereof not specifically objected to.

23 B(4) **Continuing duty.** A party served in accordance with subsection B(1) of this rule is  
24 under a continuing duty during the pendency of the action to produce promptly any item  
25 responsive to the request and not objected to [*which*] **that** comes into the party's possession,  
26 custody, or control.

1 B(5) **Seeking relief under Rule 46 A(2)**. A party who moves for an order under Rule 46  
2 A(2) regarding any objection or other failure to respond or to permit inspection, copying, entry,  
3 or related acts as requested, shall do so within a reasonable time.

4 **C Writing called for need not be offered.** Though a writing called for by one party is  
5 produced by the other, and is inspected by the party calling for it, the party requesting  
6 production is not obliged to offer it in evidence.

7 **D Persons not parties.** A person not a party to the action may be compelled to produce  
8 books, papers, documents, or tangible things and to submit to an inspection thereof as  
9 provided in Rule 55. This rule does not preclude an independent action against a person not a  
10 party for permission to enter upon land.

11 **E Electronically stored information (“ESI”).**

12 **E(1) Form in which information is to be produced.** A request for [*electronically stored*  
13 *information*] **ESI** may specify the form in which the information is to be produced by the  
14 responding party but, if no such specification is made, the responding party must produce the  
15 information in either the form in which it is ordinarily maintained or in a reasonably useful  
16 form.

17 **E(2) Duty to confer. In any action in which a request for production of ESI is**  
18 **anticipated, any party may request a meeting to confer about ESI production in that action.**  
19 **Within 20 days of the request for a meeting, the parties shall meet and confer about the**  
20 **scope of the production of ESI; data sources of the requested ESI; form of the production of**  
21 **ESI; cost of producing ESI; search terms relevant to identifying responsive ESI; preservation of**  
22 **ESI; issues of privilege pertaining to ESI; and any other issue a requesting or producing party**  
23 **deems relevant to the request for ESI. Failure to comply with this requirement shall be**  
24 **considered by a court when ruling on any motion to compel or motion for a protective order**  
25 **related to ESI.**  
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10 and copy, test, or sample any tangible things which constitute or contain matters within the  
11 scope of Rule 36 B and which are in the possession, custody, or control of the party upon whom  
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11 **of ESI; cost of producing ESI; search terms relevant to identifying responsive ESI; preservation**  
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15 **motion for a protective order related to ESI. This rule is in addition to any other duty to**  
16 **confer created by rule.**

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14 served; [*or* (2)]

15                   **A(2) Entry upon land. A request** to permit entry upon designated land or other property  
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17 inspection and measuring, surveying, photographing, testing, or sampling the property or any  
18 designated object or operation thereon, within the scope of Rule 36 B.

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26                   B(2) **Time for response.** A request shall not require a defendant to produce or allow

1 inspection, copying, entry, or other related acts before the expiration of 45 days after service of  
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5 produced by the other, and is inspected by the party calling for it, the party requesting  
6 production is not obliged to offer it in evidence.

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9 provided in Rule 55. This rule does not preclude an independent action against a person not a  
10 party for permission to enter upon land.

11 **E Electronically stored information (“ESI”).**

12 **E(1) Form in which ESI is to be produced.** A request for [*electronically stored*  
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14 responding party but, if no such specification is made, the responding party must produce the  
15 information in either the form in which it is ordinarily maintained or in a reasonably useful  
16 form.

17 **E(2) Meetings to resolve issues regarding ESI production; relevance to discovery**  
18 **motions. In any action in which a request for production of ESI is anticipated, any party may**  
19 **request a meeting to confer about ESI production in that action. The court may also request**  
20 **that the parties meet to confer about ESI production. Within 21 days of the request for a**  
21 **meeting, the parties shall meet and confer about the scope of the production of ESI; data**  
22 **sources of the requested ESI; form of the production of ESI; cost of producing ESI; search**  
23 **terms relevant to identifying responsive ESI; preservation of ESI; issues of privilege pertaining**  
24 **to ESI; issues pertaining to metadata; and any other issue a requesting or producing party**  
25 **deems relevant to the request for ESI. Failure to comply with this requirement shall be**  
26 **considered by a court when ruling on any motion to compel or motion for a protective order**

related to ESI. This rule is in addition to any other duty to confer created by any other rule.

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1                                   **PRODUCTION OF DOCUMENTS AND THINGS AND [ENTRY**

2                                   **UPON LAND] ENTERING PROPERTY FOR INSPECTION AND OTHER PURPOSES**

3                                   **RULE 43**

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11 detection devices or software into reasonably usable form) or to inspect and copy, test, or  
12 sample any tangible things [*which*] **that** constitute or contain matters within the scope of Rule  
13 36 B and [*which*] **that** are in the possession, custody, or control of the party [*upon*] **on** whom  
14 the request is served; [*or (2)*]

15                                   **A(2) Entering property. A request to enter** [*to permit entry upon designated*] land or  
16 other property in the possession or control of the party [*upon*] **on** whom the request is served  
17 for the purpose of inspection and measuring, surveying, photographing, testing, or sampling  
18 the property or any designated object or operation thereon, within the scope of Rule 36 B.

19                                   **B Procedure.**

20                                   B(1) **Generally.** A party may serve a request on the plaintiff after commencement of the  
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26                                   B(2) **Time for response.** A request shall not require a defendant to produce or allow

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4 may order or **to which** the parties may agree [*upon*] in writing, a party shall serve a response  
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6 B(2)(a) a statement that, except as specifically objected to, any requested item within  
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18 B(2)(d) any objection to a request or a part thereof and the reason for each objection.

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19 **request one or more meetings to confer about ESI production in that action. No meeting**  
20 **may be requested until all of the parties have appeared or have provided written notice of**  
21 **intent to file an appearance pursuant to Rule 69 B(1). The court may also require that the**  
22 **parties meet to confer about ESI production. Within 21 days of the request for a meeting,**  
23 **the parties must meet and confer about the scope of the production of ESI; data sources of**  
24 **the requested ESI; form of the production of ESI; cost of producing ESI; search terms relevant**  
25 **to identifying responsive ESI; preservation of ESI; issues of privilege pertaining to ESI; issues**  
26 **pertaining to metadata; and any other issue a requesting or producing party deems relevant**



1 **to the request for ESI. Failure to comply in good faith with this subsection shall be considered**  
2 **by a court when ruling on any motion to compel or motion for a protective order related to**  
3 **ESI. The requirements in this subsection are in addition to any other duty to confer created**  
4 **by any other rule.**

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1                                   **PRODUCTION OF DOCUMENTS AND THINGS AND [ENTRY**

2                                   **UPON LAND] ENTERING PROPERTY FOR INSPECTION AND OTHER PURPOSES**

3                                   **RULE 43**

4                                   **A Scope.** Any party may serve on any other party [*a request: (1)*] **any of the following**  
5 **requests:**

6                                   **A(1) Documents or things. A request** to produce and permit the party making the  
7 request, or someone acting on behalf of the party making the request, to inspect and copy any  
8 designated documents (including electronically stored information, writings, drawings, graphs,  
9 charts, photographs, sound recordings, images, and other data or data compilations from which  
10 information can be obtained and translated, if necessary, by the respondent through detection  
11 devices or software into reasonably usable form) or to inspect and copy, test, or sample any  
12 tangible things [*which*] **that** constitute or contain matters within the scope of Rule 36 B and  
13 [*which*] **that** are in the possession, custody, or control of the party [*upon*] **on** whom the request  
14 is served; [*or (2)*]

15                                   **A(2) Entering property. A request to enter** [*to permit entry upon designated*] land or  
16 other property in the possession or control of the party [*upon*] **on** whom the request is served  
17 for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the  
18 property or any designated object or operation thereon, within the scope of Rule 36 B.

19                                   **B Procedure.**

20                                   B(1) **Generally.** A party may serve a request on the plaintiff after commencement of the  
21 action and on any other party with or after service of the summons on that party. The request  
22 shall identify any items requested for inspection, copying, or related acts by individual item or  
23 by category described with reasonable particularity, designate any land or other property  
24 [*upon*] **on** which entry is requested, and shall specify a reasonable place and manner for the  
25 inspection, copying, entry, and related acts.

26                                   B(2) **Time for response.** A request shall not require a defendant to produce or allow

1 inspection, copying, entry, or other related acts before the expiration of 45 days after service of  
2 summons, unless the court specifies a shorter time. Otherwise, within 30 days after service of a  
3 request in accordance with subsection B(1) of this rule, or such other time as the court may  
4 order or **to which** the parties may agree [*upon*] in writing, a party shall serve a response that  
5 includes the following:

6 B(2)(a) a statement that, except as specifically objected to, any requested item within  
7 the party's possession or custody is provided, or will be provided or made available within the  
8 time allowed and at the place and in the manner specified in the request, [*which items*] **and**  
9 **that the items are or** shall be organized and labeled to correspond with the categories in the  
10 request;

11 B(2)(b)[*as to*] **a statement that, except as specifically objected to, a reasonable effort**  
12 **has been made to obtain** any requested item not in the party's possession or custody, [*a*  
13 *statement that reasonable effort has been made to obtain it, unless specifically objected to,*] or  
14 that no such item is within the party's control;

15 B(2)(c) [*as to*] **a statement that, except as specifically objected to, entry will be**  
16 **permitted as requested to** any land or other property[, *a statement that entry will be permitted*  
17 *as requested unless specifically objected to*]; and

18 B(2)(d) any objection to a request or a part thereof and the reason for each objection.

19 B(3) **Objections.** Any objection not stated in accordance with subsection B(2) of this rule  
20 is waived. Any objection to only a part of a request shall clearly state the part objected to. An  
21 objection does not relieve the requested party of the duty to comply with any request or part  
22 thereof not specifically objected to.

23 B(4) **Continuing duty.** A party served in accordance with subsection B(1) of this rule is  
24 under a continuing duty during the pendency of the action to produce promptly any item  
25 responsive to the request and not objected to [*which*] **that** comes into the party's possession,  
26 custody, or control.

1 B(5) **Seeking relief under Rule 46 A(2).** A party who moves for an order under Rule 46  
2 A(2) regarding any objection or other failure to respond or to permit inspection, copying, entry,  
3 or related acts as requested, shall do so within a reasonable time.

4 **C Writing called for need not be offered.** Though a writing called for by one party is  
5 produced by the other, and is inspected by the party calling for it, the party requesting  
6 production is not obliged to offer it in evidence.

7 **D Persons not parties.** A person not a party to the action may be compelled to produce  
8 books, papers, documents, or tangible things and to submit to an inspection thereof as  
9 provided in Rule 55. This rule does not preclude an independent action against a person not a  
10 party for permission to enter [upon] land.

11 **E Electronically stored information (“ESI”).**

12 **E(1) Form in which ESI is to be produced.** A request for [electronically stored  
13 information] **ESI** may specify the form in which the information is to be produced by the  
14 responding party but, if no such specification is made, the responding party must produce the  
15 information in either the form in which it is ordinarily maintained or in a reasonably useful  
16 form.

17 **E(2) Meetings to resolve issues regarding ESI production; relevance to discovery**  
18 **motions. In any action in which a request for production of ESI is anticipated, any party may**  
19 **request one or more meetings to confer about ESI production in that action. No meeting may**  
20 **be requested until all of the parties have appeared or have provided written notice of intent**  
21 **to file an appearance pursuant to Rule 69 B(1). The court may also require that the parties**  
22 **meet to confer about ESI production. Within 21 days of the request for a meeting, the parties**  
23 **must meet and confer about the scope of the production of ESI; data sources of the**  
24 **requested ESI; form of the production of ESI; cost of producing ESI; search terms relevant to**  
25 **identifying responsive ESI; preservation of ESI; issues of privilege pertaining to ESI; issues**  
26 **pertaining to metadata; and any other issue a requesting or producing party deems relevant**

1 **to the request for ESI. Failure to comply in good faith with this subsection shall be considered**  
2 **by a court when ruling on any motion to compel or motion for a protective order related to**  
3 **ESI. The requirements in this subsection are in addition to any other duty to confer created**  
4 **by any other rule.**

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