

1 **ORCP 43**

2 **PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY**
3 **UPON LAND FOR INSPECTION AND OTHER PURPOSES**

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

18 **B Procedure.**

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

25 **B(1)(a) Unless discovery in the action requests electronically stored information, a**
26 **request for production of documents pursuant to this rule does not encompass, and the**

1 response is not required to include, electronically stored information. The request may
2 specify the form or forms in which electronically stored information is to be produced. If a
3 request does not specify a form for producing electronically stored information, a party
4 shall produce it in a form or forms in which it is ordinarily maintained or in a reasonably
5 usable form or forms. A party need not produce the same electronically stored information
6 in more than one form.

7 B(1)(b) Within 20 days of service of a request for production that requests
8 electronically stored information (“ESI”), the requesting and producing parties shall in
9 good faith begin conferring about the request for ESI with respect to the scope of the
10 production of ESI; data sources of the requested ESI; form of the production of ESI; cost
11 of producing ESI; search terms relevant to identifying responsive ESI; preservation of ESI;
12 issues of privilege pertaining to ESI; and any other issue a requesting or producing party
13 deems relevant to the request for ESI. No motion regarding ESI can be filed unless the
14 moving party, before filing such motion, complies with this section and any other duty to
15 confer required by the Uniform Trial Court Rules.

16 B(2) A request shall not require a defendant to produce or allow inspection, copying,
17 entry, or other related acts before the expiration of 45 days after service of summons, unless the
18 court specifies a shorter time. Otherwise, within 30 days after service of a request in accordance
19 with subsection B(1) of this rule, or such other time as the court may order or the parties may
20 agree upon in writing, a party shall serve a response that includes the following:

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

25 B(2)(b) as to any requested item not in the party’s possession or custody, a statement that
26 reasonable effort has been made to obtain it, unless specifically objected to, or that no such item

1 is within the party's control;

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

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

5 **B(2)(e) The response may state an objection to a request for producing**
6 **electronically stored information.**

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

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

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

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

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

1 **ORCP 43**

2 **PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY**

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

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

18 **B Procedure.**

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

25 **B(1)(a) Unless discovery in the action requests electronically stored information, a**
26 **request for production of documents pursuant to this rule does not encompass, and the**

1 response is not required to include, electronically stored information. The request may
2 specify the form or forms in which electronically stored information is to be produced. If a
3 request does not specify a form for producing electronically stored information, a party
4 shall produce it in a form or forms in which it is ordinarily maintained or in a reasonably
5 usable form or forms. A party need not produce the same electronically stored information
6 in more than one form.

7 B(1)(b) Within fourteen (14) days of service of a request for production that
8 requests electronically stored information (“ESI”), the requesting and producing parties
9 shall in good faith begin conferring about the request for ESI with respect to the scope of
10 the production of ESI; data sources of the requested ESI; form of the production of ESI;
11 cost of producing ESI; search terms relevant to identifying responsive ESI; preservation of
12 ESI; issues of privilege pertaining to ESI; and any other issue a requesting or producing
13 party deems relevant to the request for ESI. No motion regarding ESI can be filed unless
14 the moving party, before filing such motion, complies with this section and any other duty
15 to confer required by the Uniform Trial Court Rules.

16 B(2) A request shall not require a defendant to produce or allow inspection, copying,
17 entry, or other related acts before the expiration of 45 days after service of summons, unless the
18 court specifies a shorter time. Otherwise, within 30 days after service of a request in accordance
19 with subsection B(1) of this rule, or such other time as the court may order or the parties may
20 agree upon in writing, a party shall serve a response that includes the following:

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

25 B(2)(b) as to any requested item not in the party’s possession or custody, a statement that
26 reasonable effort has been made to obtain it, unless specifically objected to, or that no such item

1 is within the party's control;

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

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

5 **B(2)(e) The response may state an objection to a request for producing**
6 **electronically stored information.**

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

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

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

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

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

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5 party making the request, or someone acting on behalf of the party making the request, to inspect
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7 drawings, graphs, charts, photographs, [*phono-records*], **sound recordings, images**, and other
8 **data or** data compilations from which information can be obtained, and translated, if necessary,
9 by the respondent through detection devices into reasonably usable form), or to inspect and copy,
10 test, or sample any tangible things which constitute or contain matters within the scope of Rule
11 36 B and which are in the possession, custody, or control of the party upon whom the request is
12 served; or (2) to permit entry upon designated land or other property in the possession or control
13 of the party upon whom the request is served for the purpose of inspection and measuring,
14 surveying, photographing, testing, or sampling the property or any designated object or operation
15 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 identify
19 any items requested for inspection, copying, or related acts by individual item or by category
20 described with reasonable particularity, designate any land or other property upon which entry is
21 requested, and shall specify a reasonable place and manner for the inspection, copying, entry,
22 and related acts. **If documents consisting of electronically stored information are requested**
23 **to be produced in electronic form, the request may specify the form or forms in which such**
24 **documents are to be produced.**

25 B(2) A request shall not require a defendant to produce or allow inspection, copying,
26 entry, or other related acts before the expiration of 45 days after service of summons, unless the

1 court specifies a shorter time. Otherwise, within 30 days after service of a request in accordance
2 with subsection B(1) of this rule, or such other time as the court may order or the parties may
3 agree upon in writing, a party shall serve a response that includes the following:

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

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

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

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

14 B(3) Any objection not stated in accordance with subsection B(2) of this rule is waived. Any
15 objection to only a part of a request shall clearly state the part objected to. An objection does not
16 relieve the requested party of the duty to comply with any request or part thereof not specifically
17 objected to. **If documents consisting of electronically stored information are requested to be**
18 **produced in electronic form, before the response is due the parties must begin conferring**
19 **in good faith about such request. The conferral may address the scope, data sources, cost,**
20 **search strategies, and other matters concerning such production. A party must make a**
21 **good faith effort to confer before bringing a motion concerning the discovery of**
22 **electronically stored information pursuant to ORCP 36C or 46A.**

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

26 B(5) A party who moves for an order under Rule 46 A(2) regarding any objection or other failure

1 | to respond or to permit inspection, copying, entry, or related acts as requested, shall do so within
2 | a reasonable time.

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

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

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7 drawings, graphs, charts, photographs, [*phono-records*,] **sound recordings, images**, and other
8 **data or** data compilations from which information can be obtained[,] and translated, if
9 necessary, by the respondent through detection devices **or software** into reasonably usable
10 form)[,] or to inspect and copy, test, or sample any tangible things which constitute or contain
11 matters within the scope of Rule 36 B and which are in the possession, custody, or control of the
12 party upon whom the request is served; or (2) to permit entry upon designated land or other
13 property in the possession or control of the party upon whom the request is served for the
14 purpose of inspection and measuring, surveying, photographing, testing, or sampling the
15 property or any 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 identify
19 any items requested for inspection, copying, or related acts by individual item or by category
20 described with reasonable particularity, designate any land or other property upon which entry is
21 requested, and shall specify a reasonable place and manner for the inspection, copying, entry,
22 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 the
25 court specifies a shorter time. Otherwise, within 30 days after service of a request in accordance
26 with subsection B(1) of this rule, or such other time as the court may order or the parties may

1 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 the
3 party's possession or custody is provided, or will be provided or made available within the time
4 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;

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7 reasonable effort has been made to obtain it, unless specifically objected to, or that no such item
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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, shall
21 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 production
24 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 provided

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

3 **E Electronically Stored Information.**

4 **Electronically stored information may be produced in printed format unless**
5 **specifically requested in an electronic form. A request seeking electronically stored**
6 **information in an electronic form may specify the form in which the information shall be**
7 **produced. If a request for electronically stored information in electronic form does not**
8 **specify the form in which the information is to be produced, the responding party may**
9 **produce it in either the form in which it is ordinarily maintained or in a reasonably usable**
10 **form.**

1 **PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY**
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3 **RULE 43**

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5 party making the request, or someone acting on behalf of the party making the request, to inspect
6 and copy[,] any designated documents (including **electronically stored information**, writings,
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8 **data or** data compilations from which information can be obtained[,] and translated, if
9 necessary, by the respondent through detection devices **or software** into reasonably usable
10 form)[,] or to inspect and copy, test, or sample any tangible things which constitute or contain
11 matters within the scope of Rule 36 B and which are in the possession, custody, or control of the
12 party upon whom the request is served; or (2) to permit entry upon designated land or other
13 property in the possession or control of the party upon whom the request is served for the
14 purpose of inspection and measuring, surveying, photographing, testing, or sampling the
15 property or any designated object or operation there- on, 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 identify
19 any items requested for inspection, copying, or related acts by individual item or by category
20 described with reasonable particularity, designate any land or other property upon which entry is
21 requested, and shall specify a reasonable place and manner for the inspection, copying, entry,
22 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 the
25 court specifies a shorter time. Otherwise, within 30 days after service of a request in accordance
26 with subsection B(1) of this rule, or such other time as the court may order or the parties may

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

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14 does not relieve the requested party of the duty to comply with any request or part thereof not
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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, shall
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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 production
24 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 provided

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

3 **E Electronically Stored Information.**

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