

IN THE SUPREME COURT OF ALABAMA
November 18, 2009

ORDER

WHEREAS, on November 4, 2009, this Court issued an order amending, among other rules, Rule 34, Alabama Rules of Civil Procedure, those amendments to be effective February 1, 2010; and

WHEREAS, Rule 34, as amended, was attached to the order as Appendix G;

THEREFORE, IT IS ORDERED that Appendix G attached to this Court's November 4, 2009, order is withdrawn, and the attached Appendix G is substituted therefor;

IT IS FURTHER ORDERED that this substitution of Appendix G to this Court's November 4, 2009, order amending various rules of the Alabama Rules of Civil Procedure effective February 1, 2010, is effective immediately.

Cobb, C.J., and Lyons, Woodall, Stuart, Smith, Bolin, Parker, Murdock, and Shaw, JJ., concur.

APPENDIX G

RULE 34. PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES.

(a) Scope. Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect, copy, test, or sample any designated documents or electronically stored information (including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect, copy, test, or sample any designated tangible things that constitute or contain matters within the scope of Rule 26(b) and that are in the possession, custody, or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

(b) Procedure. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category and shall describe each item and category with reasonable particularity. The request may specify the form or forms in which electronically stored information is to be produced. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within thirty (30) days after the service of the request, except that a defendant may serve a response within forty-five (45) days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested unless the request is objected to, including an objection to the requested form or forms for

producing electronically stored information, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. If objection is made to the requested form or forms for producing electronically stored information -- or if no form was specified in the request -- the responding party must state the form or forms it intends to use. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

A party who produces hard copies of documents for inspection that are not electronically stored shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

Regarding the discovery of electronically stored information:

(i) if a request does not specify the form or forms for producing electronically stored information, a responding party must produce the information in a form or forms in which it is ordinarily maintained or in a form or forms that are reasonably usable; and

(ii) a party need not produce the same electronically stored information in more than one form.

(c) Persons Not Parties. A person not a party to the action may be compelled to produce documents, electronically stored information, and things or to submit to an inspection as provided in Rule 45.

(dc) District Court Rule. Rule 34 applies in the district courts in those instances where production and inspections are permitted by Rule 26(dc).