

The Court should not approve proposed rule 6.8. Although the proposed rule tracks the language of Federal Rule of Civil Procedure 37(e), it does not contain the protections provided by Federal Rule of Civil Procedure 26. The scope of discovery is narrower in federal court than under the Georgia Civil Practice Act. Under the Civil Practice Act, "parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action..." However, under the Federal Rules, as set forth below, discovery must be relevant to a claim or defense and proportional to the needs of the case. The Civil Practice contains no such proportionality requirement. The proportionality requirement is specifically included in the FRCP 37(e) Decision Tree that is attached to the proposed rule but is not part of the Civil Practice Act. Because of the time and expense involved in preserving, searching, and producing electronic discovery, the Court should not adopt a piecemeal rule that does not also address the scope of discovery and the proportionality to the needs of the case. In relation to electronic discovery, Federal Rule of Civil Procedure 26 provides in pertinent part:

b) DISCOVERY SCOPE AND LIMITS.

(1) Scope in General. Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable

...(2)

(B) Specific Limitations on Electronically Stored Information. A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party

shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(C) When Required. On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that:

(i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;

(ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or

(iii) the proposed discovery is outside the scope permitted by Rule 26(b)(1).

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