



Turning Rule 26(a) Initial Disclosures into Rule 26(e) Supplemental Disclosures

By Joshua C. Gilliland, Esq
Professional Development Manager

Smarter Discovery™

What happens if more responsive documents are found after the case management order setting a required disclosure deadline?



Answer: You must supplement your disclosure.

In *Kutrip v. City of St. Louis*, 2009 U.S. Dist. LEXIS 60199 (E.D. Mo. June 30, 2009), the deadline for discovery was November 30, 2006 and initial disclosures were set for May 8, 2006. Discovery deadlines were extended to the summer of 2007 in a second case management order. *David Thomas Kutrip*, 1-2.

In March 2009, the Plaintiff sent the Defendant a letter request for additional discovery. *David Thomas Kutrip*, 2-3. The Defendant responded that if “public records are identified, [we] will provide you with an

estimate of costs associated with this request prior to commencing any gathering of records. We will attempt to provide you with this information as soon as is feasible.” *David Thomas Kutrip*, 3.

Federal Rule of Civil Procedure Rule 26(a)(1)(A)(ii) requires a party to disclose to their opponents “... a copy—or description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims, unless the use would be for impeachment.” *David Thomas Kutrip*, 3-4.

Rule 26(e)(1)(A) requires that a party “must supplement . . . its disclosure . . . in a timely manner if the party learns that in some material respect the disclosure . . . is incomplete . . . and if the additional . . . information has not otherwise been made known to the other parties during the discovery process or in writing[.]” *David Thomas Kutrip*, 4, citing Fed.R.Civ.P. 26(e)(1)(A).

The Court held that the Defendants were to produce any additional responsive documents. The Court’s reasoned the Defendant’s letter waived the disclosure deadline when they agreed to produce additional documents. *David Thomas Kutrip*, 4. Moreover, the Defendant had a “continuing obligation” to produce responsive discovery under Federal Rule of Civil Procedure Rule 26(e)(1)(A).