



## Toxicology Section – 2007

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### **K34 Discovery and the Forensic Toxicology Laboratory**

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After attending this presentation, attendees will understand which provisions of the voluminous Federal Rules of Civil and Criminal Procedure directly apply to them in their routine production and retention of data, records, and documentation.

This presentation will impact the forensic community and/or humanity by identifying the specific rules of discovery that obligate the forensic scientist to maintain forensically defensible records of their work. The focus will be on those rules that may conceal inherent legal pitfalls for the prosecutor, plaintiff, or defendant who is not diligent in their request for the production of documents and witnesses.

The Federal Rules of Civil Procedure (FRCP) were promulgated by The United States Supreme Court. They were subsequently modified, ratified, and adopted by the Congress in 1938. Rule 16 of the Federal Rules of Criminal Procedure was likewise adopted in 1946. During the intervening years the Rules have been further modified, amended, and expanded.

The term “discovery” encompasses the methods by which a party or a potential party to a lawsuit or prosecution obtains and preserves information regarding the action.

The Federal Rules of Civil and Criminal Procedure specify in considerable detail the means by which discovery may be used by plaintiffs, prosecutors, and defendants to compel the production of such data, witnesses, and documents as are needed at trial. It will also be emphasized that, while most states have adopted part or most of the Federal Rules, due diligence is essential in determining what deviation from the Federal Rules exists in a given jurisdiction, if the litigation is going to be heard in a state court.

Discovery in Civil matters is controlled by the Federal Rules of Civil Procedure, Rules 26 through 32. Discovery in criminal matters, greatly restricted by the constitutional protection against self-incrimination on the part of the defendant, is controlled by the Federal Rules of Criminal Procedure Rules 15 through 17 and Rule 26.2. Those instances where certain Federal Rules of Evidence are closely linked to the procedural rules will also be covered.

In civil matters, the duty to disclosure is essentially equal between the parties. This presentation will closely examine FRCP Rule 26 in particular and how it relates to the retention of experts. It will provide clear distinction between the consulting expert and the testifying expert in their obligation to disclose information.

### **Federal Rules, Discovery, Scientific Documents**