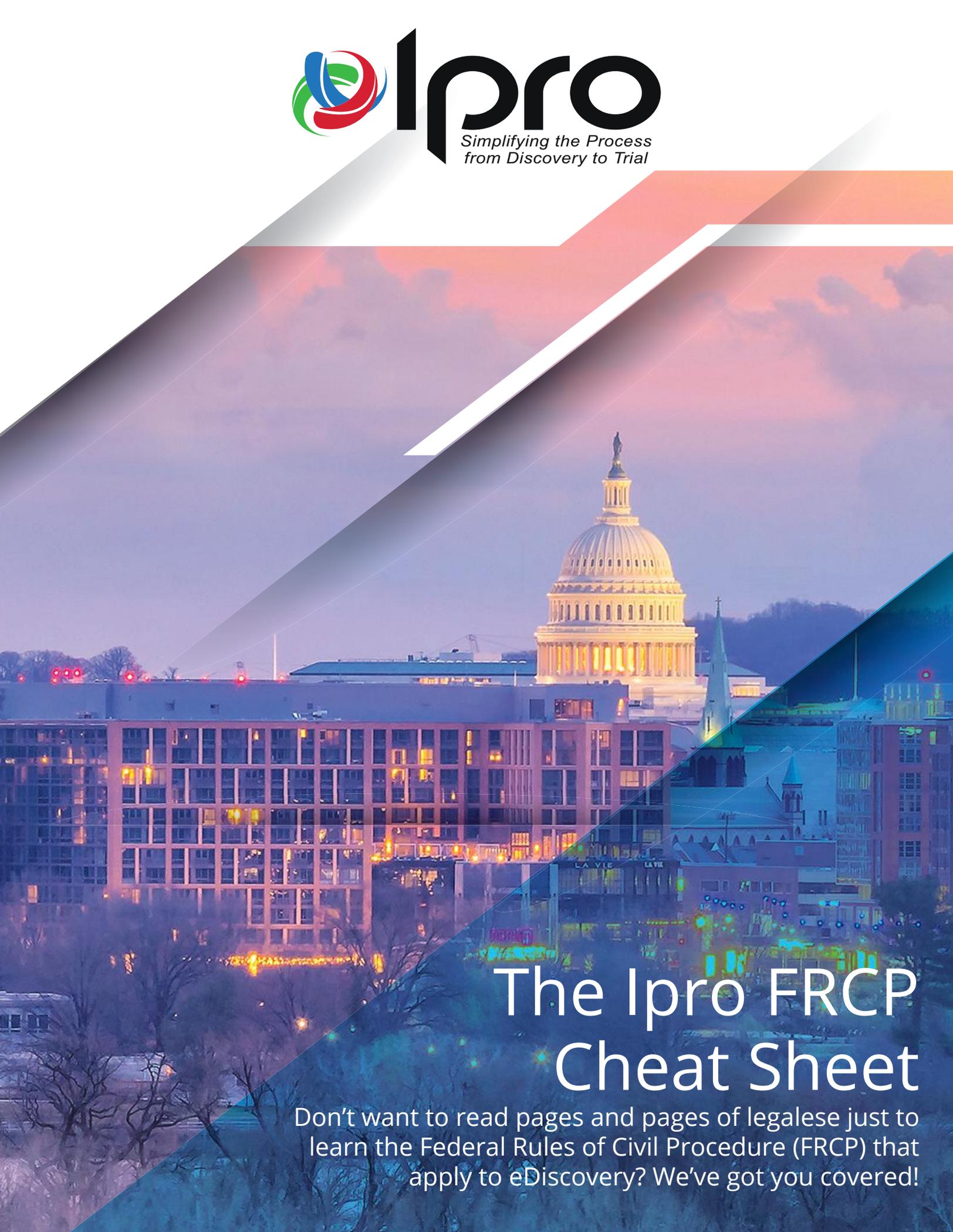




Simplifying the Process
from Discovery to Trial

A nighttime photograph of a cityscape, featuring the United States Capitol building in the center, illuminated with warm yellow lights. The sky is a mix of purple and blue. In the foreground, there are silhouettes of trees and other city buildings with lights. The image is overlaid with a large, diagonal, semi-transparent graphic element that is white and orange, creating a modern, geometric design.

The Ipro FRCP Cheat Sheet

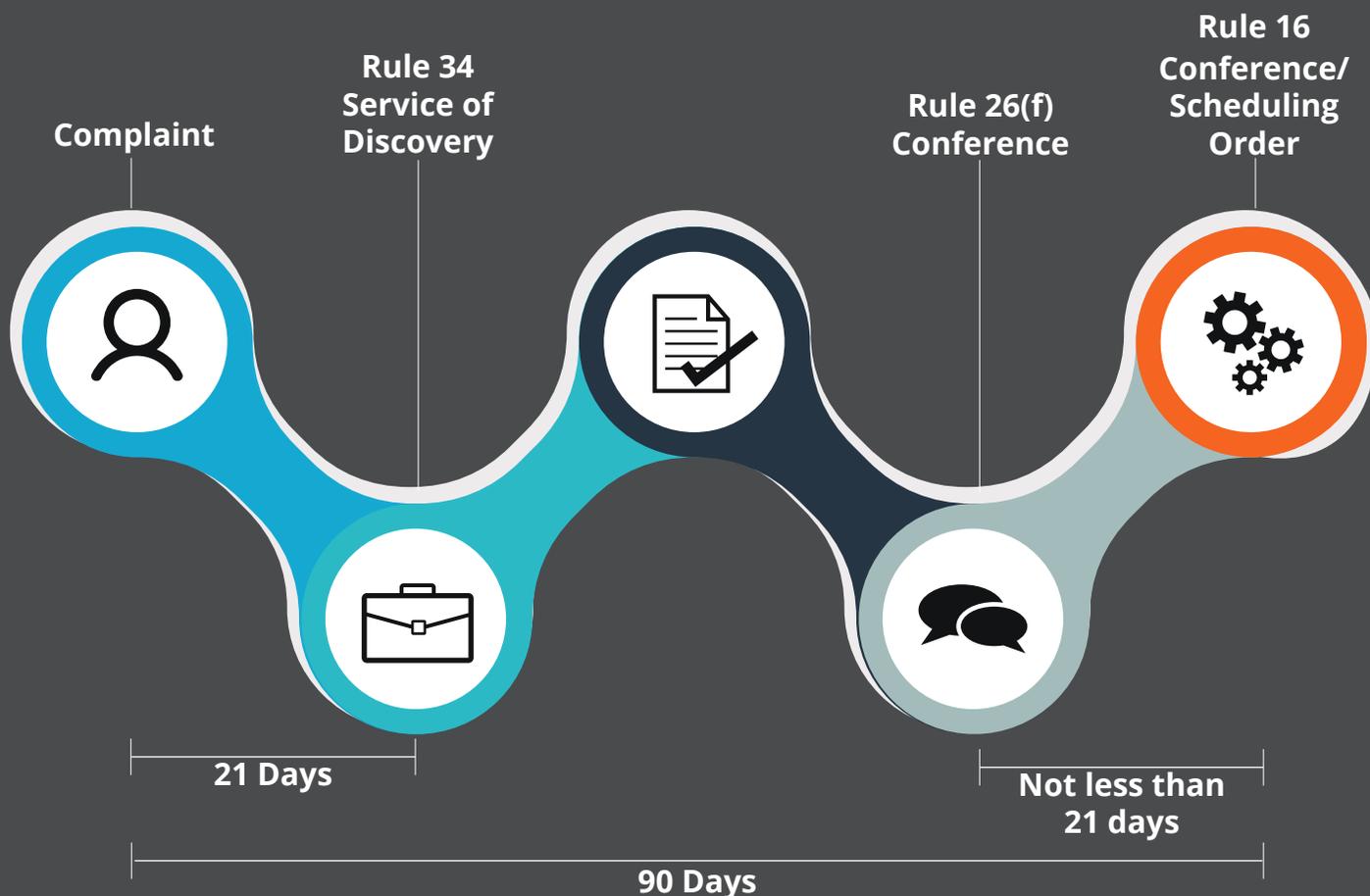
Don't want to read pages and pages of legalese just to learn the Federal Rules of Civil Procedure (FRCP) that apply to eDiscovery? We've got you covered!

RULE 1: JUST, SPEEDY, AND INEXPENSIVE

This one speaks for itself. And with the 2015 amendments, emphasis was placed on cooperation between the courts and the parties to ensure a “just, speedy, and inexpensive” resolution is the overall goal of every matter. All other rules refer back to this objective.

RULES 16, 26(F), AND 34: THE FIRST 90 DAYS

These three rules establish timing around that which must take place between the filing of a complaint and the scheduling order. The 2015 amendments shortened this from 120 days to 90 days in order to support the mandate of Rule 1.



Rule 34 establishes guidelines for discovery requests. Both the requests and any objections to the requests must be specific, describing “with reasonable particularity each item or category of items to be inspected, a reasonable time, place, and manner for the inspection and for performing the related acts, and may specify the form or forms in which electronically stored information is to be produced.”

Rule 26(f) establishes guidelines for the conference of the parties or “meet and confer,” which must take place at least 21 days before the Rule 16 scheduling order. This is where a discovery plan is worked out. Before 2015, parties usually didn’t do any real eDiscovery until after this meeting, but with Rule 1’s emphasis on a speedy resolution, both sides are expected to come into this meeting with a strategy for discovery, ready to discuss any issues, and above all else, cooperate in order to get to the facts of the case.

Rule 16 establishes guidelines around the scheduling order, which the judge must apply as soon as possible, no more than 90 days from the initial complaint. The order can modify the extent of discovery, include agreements around privilege and inadvertent production under Federal Rule of Evidence 502, or any other appropriate matters.

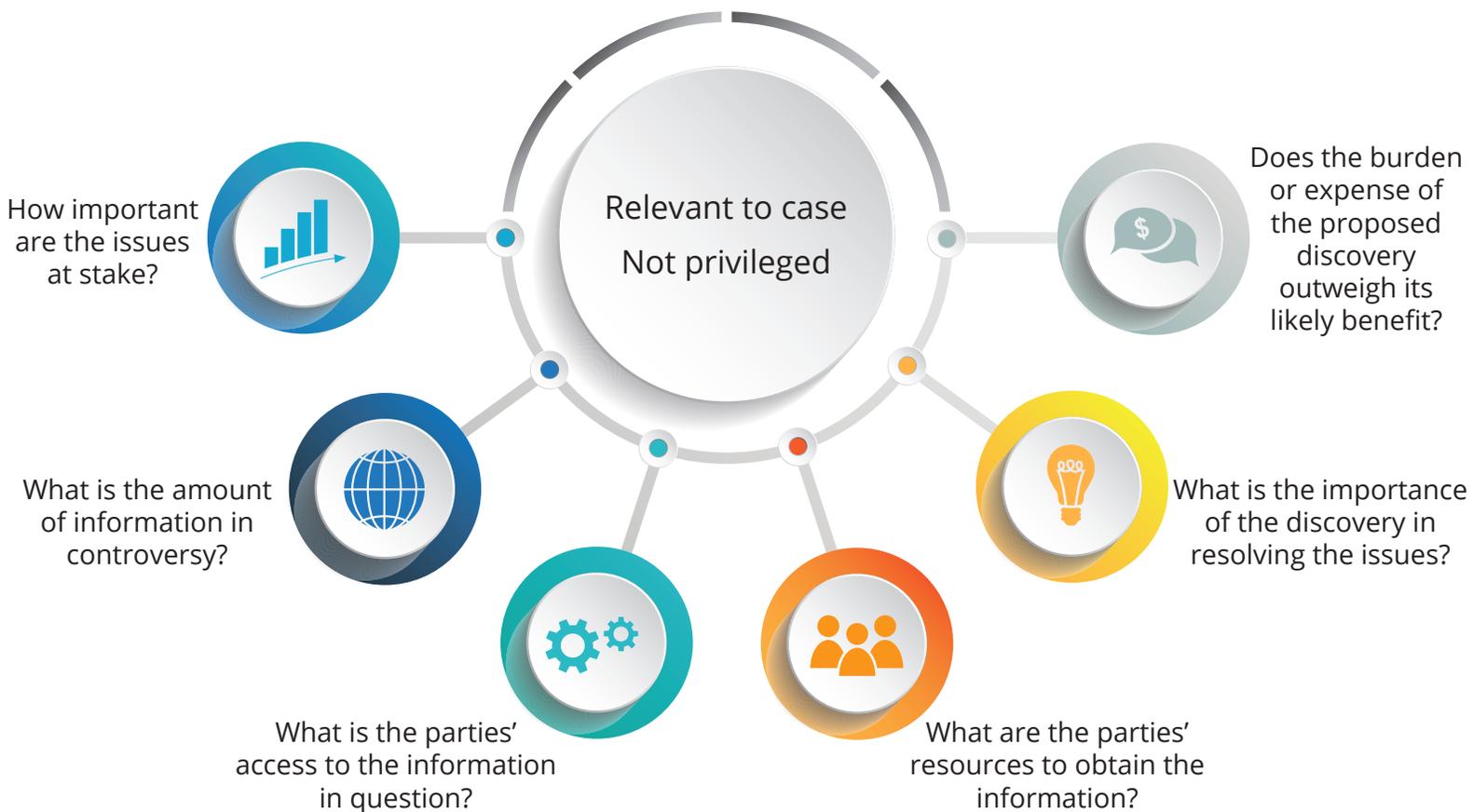
“Recognizing the evolving role of information technology in virtually every detail of life, the amended rules specifically address the issue of ‘electronically stored information (ESI).’ Rules 16 and 26(f) require the parties to reach agreement on the preservation and discovery of ESI, Rule 26(b)(1) crystallizes the concept of reasonable limits on discovery through increased reliance on the common-sense concept of proportionality, and amendments to Rule 37(e) effect a further refinement by specifying the consequences if a party fails to observe the generally recognized obligation to preserve ESI in the face of foreseeable litigation.”

- Chief Justice John Roberts, US Supreme Court

RULE 26: SCOPE AND PROPORTIONALITY

This rule determines what information falls within the scope of the case, and if that information is proportional to the needs of the case. In other words: what information can be requested as evidence?

If the data in question passes these two tests for scope (yes, it’s relevant to the case, and no, it’s not privileged information) then the courts look at the following six factors laid out in FRCP Rule 26(b)(1) to help determine rulings on proportionality.



RULE 37(E): SANCTIONS FOR SPOILIATION OF DATA

Sometimes data gets lost or there are problems producing a discovery request. Yes, sanctions can be levied against parties for data spoliation, but don't worry - just be reasonable!

The threshold for sanctions is as follows:

01 If Electronically Stored Information (ESI) was lost because a party didn't take reasonable steps to preserve it when they should have (i.e. because they knew litigation was imminent) and...

02 If the lost ESI can't be restored or replaced by simply doing discovery again and...

03 If there was an intent to deprive the party of information by the loss of the ESI and...

04 If the lost ESI actually affects the outcome of the case then...

...the courts may consider sanctions



“The Federal Rules of Civil Procedure will achieve the goal of Rule 1 only if the entire legal community, including the bench, bar, and legal academy, step up to the challenge of making real change. Judges and lawyers [have an obligation] to work cooperatively in controlling the expense and time demands of litigation. Lawyers—though representing adverse parties—have an affirmative duty to work together, and with the court, to achieve prompt and efficient resolutions of disputes.”

-Chief Justice John Roberts, US Supreme Court

Federal Rules of Evidence (FRE) BONUS:

A few FRE also apply to eDiscovery, so we didn't want them to feel left out.

Rule 502: Clawback

Sometimes privileged information is accidentally produced. That's why parties should, as a best practice, file a clawback agreement with the Rule 16 scheduling order as a protection in case that happens.

“When made in a federal proceeding or to a federal office or agency, the disclosure does not operate as a waiver in a federal or state proceeding if: the disclosure is inadvertent; the holder of the privilege or protection took reasonable steps to prevent disclosure; and the holder promptly took reasonable steps to rectify the error.”

Rule 902: Authentication

This rule simply states that electronic data is self-authenticated by hash-value* and doesn't have to be corroborated by an expert witness, which allows law-enforcement, investigators, and attorneys can request data from email, mobile devices, social media, and other ESI without needing a witness to testify to its authenticity.

*A hash value is a number that is often represented as a sequence of characters and is produced by an algorithm based upon the digital contents of a drive, medium, or file. If the hash values for the original and copy are different, then the copy is not identical to the original. If the hash values for the original and copy are the same, it is highly improbable that the original and copy are not identical. Thus, identical hash values for the original and copy reliably attest to the fact that they are exact duplicates.



Where Vision Meets Experience...

Ipro is a global leader in eDiscovery technology used by legal professionals to streamline discovery of electronic data through presentation at trial. Ipro draws upon decades of innovation to deliver high-performance software, services and support; bundled as a solution and deployed the way you want it—Desktop, On-prem or Cloud—significantly reducing the cost and complexity of eDiscovery.

**Consider Ipro when looking for a true hybrid eDiscovery partner.
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