

RECENT CHANGES TO THE FEDERAL RULES OF CIVIL PROCEDURE AND CHANGES APPLICABLE TO CERTAIN LOCAL COURTS

Effective December 1, 2000, several significant changes were made to the Federal Rules of Civil Procedure. Some of those changes are described below.

Perhaps the most substantive overall change is in the scope of discovery. Traditionally, all matters relevant to the issues involved in a case were arguably fair game. The recent amendments work a significant change in the scope, and logistics, of discovery.

Federal Rule of Civil Procedure 26(b) has been modified, and it is expected that discovery will now follow a two-tier approach. All parties will be entitled to discovery that is specifically "relevant to the claim or defense of any party". Further, with court approval, a party may obtain discovery of any matter discoverable under the old rule, which permitted discovery of matters relevant to the subject matter of the litigation or reasonably calculated to lead to the discovery of admissible evidence. It appears that parties seeking the broader scope of discovery will have to show "good cause" for doing so.

This rule change is likely to cause parties to alter the manner in which they plead in cases. Since discovery is only assured if it relates to the claim or defense of a party, the scope of discovery may well be restricted to matters set forth specifically in the pleadings filed. Otherwise, the availability of discovery on a particular issue will be dependent upon the court's determination of whether good cause has been shown. The Advisory Committee comments to the new rules reveal that the full impact of this change is not, and cannot be, fully appreciated at this time. Only time will tell the true significance and import of this change.

Among the other rule changes, depositions will be limited to one day of seven hours. No breakdown of that time period is offered in the rule, and parties are on their own to divide the time among the parties. The court can grant additional time, if necessary for fair examination.

The rules regarding cases involving Federal Government employees have been changed as well. In particular, when suing a Federal employee, service of process must be made on both the employee and the United States. Also, the time periods for the defendants to respond to the Complaint have been modified, generally to extend such deadlines.

Another change that has some impact locally is that courts are no longer able to "opt out" of the Rule 26(a) mandatory disclosures. The Eastern District of Virginia has historically "opted out" of that rule, and such disclosures were not necessary in that Court. However, courts cannot now "opt out" of the required disclosures. In keeping with the press of time on all matters before that Court (the so-called "Rocket Docket"), the Rule 26(a) disclosures are required on an expedited basis.

Other recent changes in the Eastern District of Virginia concern requirements for initial conferences of the parties to discuss the nature of the case and the preparation of a discovery plan and scheduling order (pursuant to Rule 26(f)), and the initial scheduling conference with the Court (pursuant to Rule 16(B)). At least one judge from that Court has opined that the bench of

that Court feels that these changes will work to grant parties before that Court some additional time to litigate cases. The new rules may also inject further tactical considerations into the decision as to when to file a new Complaint, since the scheduling of various conferences is dependent upon when the case is filed.