

## **Possible Revisions to the Federal Rules of Civil Procedure to Be Considered at the April 2013 Advisory Committee Meeting**

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On April 11-12, 2013, the Judicial Conference of the United States, Advisory Committee on Rules of Civil Procedure (“Advisory Committee”), will meet in Norman, Oklahoma. Up for discussion on those days will be a number of significant proposed revisions to the Federal Rules of Civil Procedure aimed at reducing the costs and delays in civil litigation, increasing realistic access to the courts, and furthering the goals set forth in Rule 1 “to secure the just, speedy, and inexpensive determination of every action and proceeding.” If ultimately approved and enacted (a process that will take months or even years), these proposed revisions will have far-reaching effects for practitioners and litigants.

The proposed revisions have been in development since 2010 by the Advisory Committee’s Duke Conference subcommittee and include the following:

### **Revisions That Would Advance Early and Effective Case Management**

- The reduction in time to serve process, as set forth in Rule 4(m), from 120 days to 60 days.
- The reduction in times for issuing a scheduling order, as set forth in Rule 16(b), from the earlier of 120 days after any defendant has been served or 90 days after any defendant has appeared to 90 or 60 days, respectively.
- An addition to Rule 16(b)(3) that would permit a scheduling order to direct that before moving for an order relating to discovery the movant must request a conference with the court. (This concept is already found in the local rules of many, but not all, federal district courts.)
- An allowance under Rule 26(d)(1) for service of Rule 34 document requests prior to the parties’ Rule 26(f) conference in order to facilitate discussion at that conference of specific requests. The time to respond to such early requests would not begin to run until after the Rule 26(f) conference.

## Revisions That Seek to Promote the Responsible Use of Discovery

- A change to the general scope of discovery allowed by Rule 26(b)(1) that would incorporate a limitation on that scope as to what is proportional to the needs of the case, as measured by the cost-benefit calculus now required by Rule 26(b)(2)(C)(iii) (which currently applies most frequently when a party moves to limit discovery).
- The reduction in the number of Rule 33 interrogatories permitted, from 25 to 15.
- A new limit of 25 Rule 36 requests for admission for each party, with requests to admit the genuineness of documents expressly exempted from the limit of 25.
- The reduction in the number of depositions allowed per side, from ten to five, and reduction in the time limit for each deposition, from seven hours to six hours, under Rules 30 and 31.
- Requirements that objections to Rule 34 document requests be stated with specificity and include a statement as to whether any responsive materials are being withheld on the basis of the objection.

## Revisions to Encourage Cooperation

- An aspirational addition to Rule 1 noting that effective advocacy is consistent with—and indeed depends upon—cooperative and proportional use of procedure.

While these revisions currently remain at the discussion stage, they could eventually change the way that many actions are litigated, so their progress before the Advisory Committee bears watching.

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