

Client Alert

New Year, New Rules: Recent Amendments to Federal Rules

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To put it mildly, 2020 was a year full of changes—including changes to the federal court rules of procedure. As litigants prepare for a new year of court proceedings, they should bear in mind several of these rule changes.

Federal Rules of Civil Procedure

Rule 30(b)(6) of the Federal Rules of Civil Procedure – which governs depositions of corporate representatives – has been amended to add a meet and confer requirement. The amendment provides:

“Before or promptly after the notice or subpoena is served, the serving party and the organization must confer in good faith about the matters for examination. A subpoena must advise a nonparty organization of its duty to confer with the serving party and to designate each person who will testify.”

Proponents hope the requirement to confer before or promptly after serving the notice or subpoena will avoid common disputes over the scope of corporate deposition notices and compliance with those notices. The amendment also adds new requirements for subpoenas on nonparty organizations, mandating that a subpoena notify a nonparty organization of its duty to meet and confer with the serving party, and to identify all individuals who will testify pursuant to the subpoena.

The Advisory Committee noted that the amendment is intended in large part to address issues that often arise with Rule 30(b)(6) depositions. Particular concerns include overly lengthy or ambiguously worded lists of topics for examination, as well as witnesses who have been inadequately prepared for their testimony. As the Committee put it, “[c]andid exchanges about the purposes of the deposition and the organization’s information structure may clarify and focus the matters for examination, and enable the organization to designate and to prepare an appropriate witness or witnesses, thereby avoiding later disagreements.”

Federal Rules of Appellate Procedure

Previously, Rules 35 and 40 of the Federal Rules of Appellate Procedure instituted length limits that applied to petitions under either rule, but did not restrict the length of responses. Effective December 1, 2020, both rules have been modified to remedy this omission.

The amendment to Rule 35, applicable to petitions for en banc determinations, clarifies that the length limits applicable to a petition for hearing or rehearing en banc also apply to a response to such a petition, if the court orders a response. Similarly, the amendment to Rule 40, applicable to petitions for panel rehearings, clarifies

that the length limits applicable to a petition for panel rehearing also apply to a response to such a petition, if the court orders a response.

Local Rules for District Courts Continue to Evolve

Numerous district courts across the country have also made amendments to their local rules within the last year. For example, the Central District of California introduced a whopping 31 amendments to existing local rules, as well as 12 entirely new local rules last summer, then instituted 17 additional amendments effective in December. While some of these changes appear to be in direct response to the pandemic and new challenges posed by remote work—for example, one new rule prohibits the use of electronic devices from remote locations to photograph or record any part of a court proceeding—other changes are unrelated to the pandemic, such as a new time limit for motions for reconsideration.

As federal courts across the United States implement these and other amendments, litigants should be sure to continually check applicable rules and their effect on pending litigation in federal district and appellate courts.

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