

Lawyers Deeply Divided Over Federal Rule Changes



Minor changes to the Federal Rules of Civil Procedure took effect last month, but the debate over the major changes slated for December 2015 is still under way and dividing the bar.

Tension over some of those potential changes to the rules that govern practice in the federal courts was evident in the report adopted by the Philadelphia Bar Association in December, which endorsed more than a dozen noncontroversial changes, opposed one change, and remained neutral on three proposed changes.

"The committee takes no position on three proposed amendments because it could not agree on whether they are beneficial, with strongly held views on both sides," according to the report.

That report was a product of six months of vigorous debate among two-dozen volunteer members of a subcommittee to the federal courts committee of the bar association charged with weighing the proposed changes.

"It was heated the entire time," said Gregg Kanter, of the Gregg H. Kanter Law Office in Philadelphia, of the tenor. He was the chair of the subcommittee, which was composed of nearly half plaintiffs lawyers, some defense lawyers, and lawyers who represent both plaintiffs and defendants.

But, he said, "people tried to think outside of their particular practice areas" to consider what would be best for everyone—including both plaintiff and defense sides as well as the court.

U.S. District Judge Gene E.K. Pratter of the Eastern District of Pennsylvania, who sits on the Advisory Committee on Rules of Civil Procedure, which drafts the proposals for updates to the federal rules, called the bar's report one of the more thorough reactions that has been submitted during the public-comment period on the proposed changes.

The committee has received thousands of pages of written comment in addition to the oral input gathered at a recent public-comment session held in Washington, D.C. Next, there will be a public-comment session held in Phoenix and then a third in Dallas.

The advisory committee, made up of 15 members—judges, professors and practitioners—developed the proposed changes in response to concerns from the legal community, Pratter said. The changes are meant to encourage more attention and case management from judges and, in the absence of active case management, to speed up the life of a case by making pretrial proceedings faster and less expensive.

"The rules do not rob the judges of the case management function," Pratter said, but they do encourage the speedy execution of a case.