Questions for the Dallas Mini-Conference.

Overview

1. Please review the sketched Rules changes . We value your thoughts on whether individual proposals are worthwhile, how they could be improved, what other proposals should be considered, and whether the proposals together are likely to increase the efficiency and effectiveness of civil litigation.

Changes in the Initial Stage of the Litigation Process

1. Is it useful to shorten the time limits for the initial service of the summons and complaint and for the scheduling of the Rule 26(f) and Rule 16 Conferences? Are the proposed shortened time limits reasonable?

2. In your experience do lawyers hold meaningful Rule 26(f) conferences and do judges hold Rule 16 case management conferences? Are such conferences effective in managing the litigation and controlling costs? Are there specific techniques or procedures used by some judges that improve the effectiveness of these conferences?

3. Do you find that litigation is more effective when the judge confers with the parties to resolve discovery disputes before discovery-related motions are filed?

4. Do lawyers understand and follow the current moratorium on discovery imposed by Rule 26(d)? If parties are allowed to serve discovery requests before a Rule 26(f) conference is held, but responses are not required until after the Rule 16 case management conference has occurred, would parties file such requests? Would it be useful to be able to discuss such requests at the Rule 26(f) conference or the Rule 16 case management conference?

5. Rule 26(a)(1)(B) exempts eight categories of cases from initial disclosures; the same categories are exempt from the Rule 26(f) conference and the Rule 26(d) discovery moratorium. It is proposed to adopt these same categories as exemptions from the scheduling order requirement of Rule 16(b), displacing local rule exemptions. Is it useful to establish uniformity? Are these the right categories of cases to exclude? Should the uniform set of exemptions be included in Rule 16(b) rather than in Rule 26(a)(1)(B)?

Other Discovery Issues

1. Are the initial disclosures required by Rule 26(a)(1)(A) helpful? Should they be abandoned as largely useless, amended in some way, made more demanding for the purpose of accelerating inevitable discovery, or left as written?
2. Does the concept of "proportionality" in civil discovery have meaning to civil litigants and judges? Do you find that it is regularly considered in the cases that you handle? Would adding proportionality as an explicit limit on the scope of discovery in the first sentence of Rule 26 (b)(1) increase the efficiency and effectiveness of civil litigation? Is this more effective than the cross reference to Rule 26(b)(2)(C) in the final sentence of Rule 26 (b)(1) which does not explicitly use the term "proportionality," and should that sentence then be deleted?

3. Some are of the view that civil litigators – even those who are efficient civil litigators – conduct more discovery than is necessary to try a case, settle it, or brief a motion for summary judgment. The amount of such discovery is plainly far in excess of what occurs in a criminal case. In your view, do civil litigators conduct more discovery than is necessary and what, if anything, should be done to curtail unnecessary discovery?

4. Are the proposed numerical limits on depositions, interrogatories, document requests, and requests to admit reasonable?

5. Some believe that document requests are overused because they are essentially free and impose the costs and burdens on the producing party. Are there any reasonable ways of limiting the amount of free discovery, and then imposing on the requester the cost of the additional discovery, subject to reasonable exceptions for parties who could not afford to pay for the opponent's production costs? Don't courts currently have the power to allocate costs if the production sought is unwarranted? Do they not use whatever power they have? Are there any additional ways that the Rules should address the issue of cost-sharing or the reduction of costs?

6. The proposed changes to Rules 26, 34, and 37 are intended to modernize the way in which document requests are answered in light of the way documents are actually produced, to eliminate evasive responses, and avoid delay in the production of documents. Are these changes reasonable?

7. Is it useful to defer the responses to contention interrogatories and requests to admit with respect to opinions, until the close of discovery, subject to the ability to obtain earlier responses by stipulation or court order?

8. Is it useful to make preservation a specific subject for the Rule 26(f) conference and the Rule 16(b) scheduling order?

Cooperation

1. Does the concept of "cooperation" in civil discovery have meaning to civil litigants and judges? Do you find that it is regularly considered in the cases that you handle? Would adding the concept to Rule 1 increase the efficiency and effectiveness of civil litigation? Is it useful to make it clear that Rule 1 is directed at the parties and not only at the Court?

Overall Issues

1. Are any of the proposals unreasonable for pro se litigants? Do any accommodations need to be made?

2. What can be done to educate the Bench and the Bar about the current means of reducing the cost and expense of litigation and the implementation of any changes?

3. What other suggestions do you have for improving the efficiency and reducing the cost of civil litigation in federal court?

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