

**Amendments to the Federal Rules of Practice and Procedure:
Civil Rules 2015—Early and Active Case Management
(Video Transcript)¹**

Federal Judicial Center

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NARRATOR: Judge David Campbell (D. Ariz.)

Hello, I'm Judge Dave Campbell of the United States District Court for the district of Arizona. I am the former chair of the Advisory Committee on the Federal Rules of Civil Procedure.

As we have mentioned in earlier videos, one of the primary conclusions of the May 2010 Civil Rules Conference was that our civil litigation system should be improved significantly through earlier and more active management of cases by judges.

Surveys completed before the 2010 Conference reached the same conclusion. Seventy percent of respondents from the ABA Section of Litigation agreed that early intervention by judges helps to narrow issues and reduce discovery. Seventy-three percent agreed that litigation results are more satisfactory when a judge actively manages a case from the beginning and stays involved.

Results from the survey of the National Employment Lawyers Association were similar. Two-thirds of respondents agreed that overall litigation results are more satisfactory when a judge actively manages a case. One of the conclusions from the survey of the fellows of the American College of Trial Lawyers was phrased in this way: "Judges should have a more active role at the beginning of a case in designing the scope of discovery and the direction and timing of the case all the way to trial."

As you know, the idea of early and active case management is already found in the rules of civil procedure. Rule 16 was amended in 1983 to provide for early intervention by judges in the management of cases, the setting of clear litigation schedules tailored to the needs of the case, and thorough preparation for trial. The Advisory Committee note to this 1983 amendment included this still-relevant observation: "When a trial judge intervenes personally at an early stage to assume judicial control over a case and to schedule dates for completion by the parties of the principal pretrial steps, the case is disposed of by settlement or trial more efficiently and with less cost and delay than when the parties are left to their own devices."

1. This is a transcript of a video available at <http://fjconline.fjc.dcn/content/309289/rules-amendments-2015-civil-overview>.

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Despite the existing rules, including these 1983 amendments, participants in the 2010 Conference observed that many federal court cases receive little active management from the assigned district or magistrate judges.

The new amendments to the Federal Rules of Civil Procedure are designed to encourage more effective use of management tools already found in the civil rules. They do not break new ground, but instead emphasize the importance of early, hands-on, and continuing case management.

The rule amendments include four changes.

First, the time for service of a complaint is reduced from 120 days to 90 days, and the time for holding an initial case management conference is also reduced by 30 days. The conference will now be required 90 days after any defendant has been served or 60 days after any defendant has appeared.

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- Time for holding initial case management conference is reduced by 30 days.
- Conference now required 90 days after any defendant has been served or 60 days after any defendant has appeared.

The intent of these changes is to provide for earlier involvement by judges in the management of cases. The committee note recognizes that more time may be required in some cases, but the general intent is to launch judicial case management earlier in the majority of cases filed in federal court.

Second, Rule 16 is amended to encourage judges and parties to engage in live, interactive communication at the initial case management conference. The amendments delete the language in Rule 16(b)(1)(B) which says that such conferences may be held “by telephone, mail or other means.” Although the rules still permit judges to enter case management orders without a live conference, in cases where a conference truly is not necessary.

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The Committee Note emphasizes that such conferences are almost always the most effective way for a judge to identify the needs of a case and enter an order tailored to provide for its most efficient resolution. Live conferences may be held under the amended rule in person, by telephone, or by video or Internet link. The idea is to have a real-time exchange with the parties that results in fully-informed and active management by the judge.

Third, the amendments encourage judges and the parties to consider adopting a requirement that discovery disputes be discussed with the judge, in a hearing or telephone conference, before discovery motions are filed. The many federal judges who follow this practice now find that it is a process through which most discovery disagreements can be resolved in the conference, with no need for the costly and time-consuming process of briefing and deciding discovery motions.

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In addition to the cost and time savings, cases that include this procedure stay on schedule because discovery disagreements are resolved promptly. Many judges feel that this is the single most effective practice in keeping discovery on track and minimizing unnecessary discovery costs.

Fourth, the new amendments add two important topics to be considered and discussed at the Rule 16 conference: the preservation of electronically stored information, or ESI, and the entry of orders under Federal Rule of Evidence 502.

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Amendments add two topics to items discussed at Rule 16 conference: preservation of ESI and entry of orders under Rule of Evidence 502.

As you know, the growth of ESI has greatly complicated civil litigation at all levels. The loss of ESI that should have been preserved for a case often presents serious problems in resolving the case fairly and results in much satellite litigation

concerning reasons for the loss and possible sanctions. The amendment calls for the parties to discuss the preservation of ESI during their Rule 26(f) conference and in the initial case-management conference with the court. This practice may lead to the parties agreeing upon an ESI preservation and discovery protocol, or may result in the court entering orders that govern these issues. The hope is that such a focus early in the case will reduce the problems and expense created by the loss of relevant ESI.

The focus on Rule 502 of the evidence rules is similar. That rule was adopted to help streamline the review and production of large volumes of information by limiting the circumstances under which the attorney–client privilege and work product protection are waived through the inadvertent production of information in discovery. Despite its potential benefits, Rule 502 is still widely overlooked by litigants and by some courts. Adding it to the Rule 26(f) and the Rule 16 topics will require parties to address it early in the litigation and, hopefully, will result in more litigants taking advantage of its provisions.

The fundamental components of effective judicial case management remain the same: early court intervention; the setting of a reasonable but firm litigation schedule; requiring parties to show good cause before making changes to the litigation schedule; actively managing the scope of discovery; promptly resolving discovery disputes and other issues that may delay the case; holding a meaningful final pretrial conference; and setting firm and credible trial dates. For more than 50 years, study after study has confirmed that cases resolve more quickly, less expensively, and with greater satisfaction to the parties when judges work as active case managers. The amendments we have discussed in this segment are designed to encourage better case-management practices by all judges, but only you can make them effective in your cases. Please consider carefully the opportunity provided by these rule amendments to preserve and to improve your judicial case management. We will do the same. Thank you.