

Amendments to the Federal Rules of Practice and Procedure: Civil Rules 2015—Cooperation (Video Transcript)¹

Federal Judicial Center

December 1, 2015

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Hello, I'm Judge Gene Pratter from the Eastern District of Pennsylvania, and I am a member of the Advisory Committee on the Federal Rules of Civil Procedure.

As you know a number of amendments to the civil rules went into effect on December 1st of 2015.

The genesis for many of these changes was a 2010 conference sponsored by the Civil Rules Advisory Committee on the state of civil litigation in the federal courts. The Advisory Committee took the conference findings and, over the course of about four years and many meetings, we developed amendments to several rules. Those amendments have now been approved unanimously by the Advisory Committee, the Standing Committee on the Rules of Practice and Procedure, the Judicial Conference of the United States, and the Supreme Court. Because Congress did not act to reject or alter the proposed amendments, they have now taken effect.

The rule amendments are designed to achieve four main goals:

Increased cooperation among civil litigants and lawyers; greater proportionality in discovery; earlier and more active case management by judges; and guidance for the preservation and loss of electronically stored information.

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Four Main Goals

- Increased cooperation among civil litigants and lawyers.
- Greater proportionality in discovery.
- Earlier and more active case management by judges.
- Guidance for the preservation and loss of electronically stored information.

1. This is a transcript of a video available at <http://fjconline.fjc.dcn/content/309287/rules-amendments-2015-civil-overview>.

We have prepared four videos to address these four subjects. And this is the first. We hope these videos will help you understand the nature of the new amendments and how they can be used by judges and lawyers to make civil litigation more efficient and less expensive.

I will describe an important change made to Rule 1 of the Federal Rules of Civil Procedure. The 2010 Conference included some 200 judges, lawyers, and academics from all around the country. The participants were selected to represent a wide range of views, including the views of plaintiffs and defendants in large cases and small ones. A number of surveys were also completed before the conference and included members of the ABA Section of Litigation, Fellows of the American College of Trials Lawyers, and members of the National Employment Lawyers Association among other many members.

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Surveys Completed

ABA Section of Litigation

Fellows of the American College of Trials Lawyers

National Employment Lawyers Association

The survey respondents and the 2010 conference participants agreed that civil litigation is resolved more quickly and less expensively when parties and lawyers cooperate. As just one example, some 95% of the members surveyed in the ABA Litigation Section agreed that collaboration and professionalism by attorneys reduce client costs.

To encourage greater cooperation, the Advisory Committee has amended Rule 1, which, as you know, addresses the Scope and Purpose of all the rules of civil procedure.

Before the amendment, the second sentence of Rule 1 said the rules “should be construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding.”

The new rule as amended says the civil rules “should be construed, administered *and employed by the court and the parties* to secure the just, speedy, and inexpensive determination of every action and proceeding.”

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Amended Rule 1

The civil rules “should be construed, administered and employed *by the court and the parties* to secure the just, speedy, and inexpensive determination of every action and proceeding.”

Now, this may seem to be a fairly minor change in wording, but its purpose is quite important. Rule 1 now makes clear that just as the court should construe and administer the civil rules to secure the just, speedy, and inexpensive determination of every action, the parties and the lawyers share the responsibility to employ the rules in the same way.

The Advisory Committee note for this amendment observes that “effective advocacy is consistent with—and indeed depends on—cooperative and proportional use of procedure.”

The note also makes clear that the change does not create a new, independent source for litigants to seek sanctions against each other. That, of course, would defeat the purpose of the amendment.

The committee note further states that this change does not abridge the scope of any other rules addressing a lawyer’s responsibility to vigorously and zealously represent his or her client.

As you know, the idea of cooperation is already found in the civil rules. It is found in provisions such as Rule 26(f), which requires the parties to meet and agree upon a proposed litigation schedule for the case, and also in Rule 26(c), which requires the parties and lawyers to meet and confer before bringing a discovery dispute to the court. The amendment to Rule 1 now will give more prominence to the parties’ obligation to make the civil litigation process work efficiently, and will provide a standard judges can use to encourage efficient and cooperative behavior among the litigants and the lawyers. We hope you will use Rule 1 to achieve this objective. Thank you.