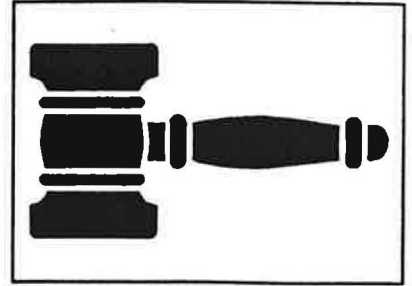


M E M O R A N D U M

TO: Chief Judge Gerry
FROM: Judge Hedges
DATE: May 19, 1993
RE: Proposed Amendments to the Federal Rules of Civil
Procedures



Attached is a worksheet on the proposed amendments to the Federal Rules of Civil Procedure transmitted by the Chief Justice to Congress. I thought it would be interesting to see how these might effect our General Rules and practices.

RJH:tlc
Attach.

cc: William T. Walsh, Clerk
Ronald Nau, Chief Deputy (Trenton)

WORKSHEET ON THE PROPOSED REVISIONS TO THE FEDERAL RULES OF CIVIL PROCEDURE

<u>New Rule No.</u>	<u>Change from Existing Rule</u>	<u>Effect of Change</u>	<u>Our Response (?)</u>
4(a)	Specific allowance for summons to be amended.	?	Adopt General Rule ("GR") to authorize Clerk to do.
4(c)(2)	At plaintiff's request, court may direct Marshal to make service; mandatory for IFP plaintiffs and seamen	Marshal now makes service for IFP plaintiffs who are incarcerated due to staff/fiscal restraints	(1) Adopt GR to limit service by Marshal to mandatory cases. (2) Adopt GR to allow Marshal to make service by "waiver" (see proposed Rule 4(d)). Also, adopt means for Marshal to submit affidavit when waiver not accepted and personal service made OSC issued why Marshal should not be reimbursed.
4(d)	Establishes procedure for waiver of summons	Builds into Federal Rules a possible delay of answer for 60 days (more if foreign defendant); see proposed Rule 12(a)(1)(B); may collapse time for service of filing Complaint within 120 days; note restriction on availability to certain classes of defendants	None, but effect may be to allow defendants to delay.

<u>New Rule No.</u>	<u>Change from Existing Rule</u>	<u>Effect of Change</u>	<u>Our Response (?)</u>
4 (m)	Makes 120-day service provision of existing Rule 4(j) less strict	makes 4(j) dismissals less available	None
5 (e)	Authorizes courts to permit filing by fax, etc.	Not allowed at present	Already rejected by Court.
11(c) (1) (A)	Gives "offending" party opportunity to withdraw challenged paper	Opportunity not formally available at present	None
11(c) (2)	Directs sanction for certain conduct to be paid as penalty "into Court"	Payment not formally available at present	Adopt GR so monies remain in District
12(a) (1) (B)	Provides that defendant who agrees to 4(d) waiver has 60 days from request to answer (90 for foreign defendant)	Substantially extends time to answer	None

<u>New Rule No.</u>	<u>Change from Existing Rule</u>	<u>Effect of Change</u>	<u>Our Response (?)</u>
12(a)(4)(A)	Provides for service of responsive pleading within 10 days after notice of denial of motion to dismiss in lieu of answer	<u>Ad hoc</u> orders to answer no longer needed	None
16(b)	"Scheduling and Planning" of cases; provides for issuance of scheduling order; directs that such order address certain topics; establishes deadlines for issuance of order.	Practical effects uncertain	(1) Revise GR to make specific reference to authority of U.S.M.J.s to issue order. (2) Revise GR 15 to delete "topics" referenced in proposed rule or other topics. (3) Revise GR 15 to delete our deadlines, etc.

Note: Setting of conference will effect dates for parties to meet under proposed Rule 26(f) and to exchange information under proposed Rule 26(a)(1). See Committee Note to "Subdivision (b)" at p. 199 of Communication from the Chief Justice.

<u>New Rule No.</u>	<u>Change from Existing Rule</u>	<u>Effect of Change</u>	<u>Our Response (?)</u>
16(c)	Speaks of subjects to be addressed at conferences; directs that parties or representatives may be required for settlement purposes.	Practical effects uncertain	Delete redundant features of GR 15 or other rules; how to deal with Track I and II and arbitration cases.
Note:	Not intended to limit power to require participation under CJRA. See Committee Note to "Subdivision (c)" at p. 202 of <u>Communication for the Chief Justice</u> .		
26(a) (1)	Provides for "required disclosure" of certain information within 10 days of meeting under proposed Rule 26(f).	Permits "automatic," early discovery without formal request. Will this give rise to Rule 11 or Rule 12(b) motions?	Adopt GR to prohibit/limit to Track II cases only [Note - our CJRA Advisory Committee rejected proposal for early discovery).
25(a) (2)	Provides for disclosure of expert instruction.	No practical effect as all (?) judges and magistrates provide for in scheduling orders.	None.

<u>New Rule No.</u>	<u>Change from Existing Rule</u>	<u>Effect of Change</u>	<u>Our Response (?)</u>
25(a) (3)	Provides for disclosure of trial witnesses and trial exhibits, etc.	Same as above.	None.
25(a) (4)	All 26(a) disclosures to be filed with the Court.	Increases Clerk's workload and storage.	Adopt GR to provide for service on parties only.
25(b) (2)	Authorizes courts to alter proposed restriction on numbers of depositions and interrogatories and on length of depositions.	If not altered, substantial (?) increase in applications for "more."	Adopt GR which places no restrictions unless application made by parties consistent with existing practice.
26(b) (5)	Directs preparation of "privilege log."	Makes GR on this redundant.	Delete redundant GR.
26(c)	Motions for protective orders to be accompanied by certification of good faith attempt to resolve dispute.	Makes GR on this redundant.	Delete redundant GR.

New Rule No.

Change from Existing Rule

Effect of Change

Our Response (?)

26(d)	No discovery to issue before proposed Rule 26(f) conference.	No such restriction at present; will delay discovery (?)	Adopt GR to allow discovery without restriction. Limit to Track II cases.
-------	--	--	---

26(f)	Directs parties to meet.	Not required in all cases; increases expenses of litigants	Adopt GR to limit to Track II cases.
-------	--------------------------	--	--------------------------------------

Note: These revisions to Rule 26 may require substantial modification of our GR 15.

30(a)(2)(A)	Limits parties to 10 depositions.	No such restrictions at present; may lead to applications for "more."	Adopt GR to place no such "automatic" restriction.
-------------	-----------------------------------	---	--

30(b)(2)	Provides for depositions by other than stenographic means.	No need to specifically authorize by <u>ad hoc</u> orders.	None.
----------	--	--	-------

<u>New Rule No.</u>	<u>Change from Existing Rule</u>	<u>Effect of Change</u>	<u>Our Response (?)</u>
30(d) (2)	Provides for limiting time for depositions	No such restrictions at present; may lead to applications for "more."	Adopt GR to place no such "automatic" restriction.
33(a)	Limits number of interrogatories to 25	See above.	See above.
<p>Note: If Court agrees with early disclosure provision of proposed Rule 26(a)(1), this limitation as well as limitation on number of depositions may be appropriate. See Committee Note to "Subdivision (a)" at p. 272 of <u>Communication from the Chief Justice.</u></p>			
54(d) (2) (B)	Provides that attorney fee motion be filed within 14 days of entry of judgment.	Modifies time set by GR 46A.	Revise GR 46A if desired.
54(d) (2) (D)	Allows establishment of "special procedures" for fee motions.	No such procedures at present.	Adopt GR.