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# Finding the New Federal Civil Procedures

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151 F.R.D. 177

**Federal Rules Decisions**

December, 1993

FINDING THE NEW FEDERAL CIVIL PROCEDURES

Carl Tobias<sup>a</sup>

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This issue includes a notice informing subscribers that Congress took no action on the package of amendments to the Federal Rules of Civil Procedure which the Supreme Court transmitted on April 22, 1993 and that those amendments became effective on December 1, 1993. Readers might assume that the amendments which are reprinted in Volume 146 of Federal Rules Decisions now have nationwide applicability. This assumption is correct for most of the amendments, such as the significant revisions in Rule 4 governing service and in Rule 11 covering sanctions.

The assumption is *not* true, however, for some of the amendments, several of which relate to discovery. The most important of these amendments, prescribing mandatory prediscovery, or automatic, disclosure and imposing presumptive numerical limitations on interrogatories and depositions, expressly provide for all ninety-four federal districts to adopt local procedures that vary from the new Federal Rules amendments or to reject the new amendments.

This means that attorneys must consult the provision for local procedures applicable in all of the federal districts where they practice. Unfortunately, the provision for local procedures governing automatic disclosure and presumptive limits may not be included in the same compilation in different districts. Perhaps the most likely source of provision for these local procedures will be the local rules. The provisions may also be in general orders or standing orders or in the civil justice expense and delay reduction plan which each district was to adopt by December 1, 1993. The most difficult provision to find will be the decision of a district to adopt no procedures governing automatic disclosure or presumptive limits because a district may simply fail to state expressly that fact in any of the above sources.

Approximately fifty districts issued their plans in the last several months. A number of these courts may have not yet promulgated local rules which address automatic disclosure or presumptive limits. The districts which intend to provide in their local rules for the procedures' amendment or \*178 rejection should at least mention that intent in the plans. The remaining courts may prescribe, reject, or delay implementation of, or a decision on, the procedures in general or standing orders.

The thirty-four Early Implementation District Courts issued their plans by December, 1991. Most of the more than twenty districts which adopted local procedures covering automatic disclosure and presumptive limits prescribed procedures that conflict with the new Federal Rules amendments or rejected the new amendments. It now appears that most of these districts plan to retain their inconsistent procedures or to continue eschewing the new Federal requirements. A number of the districts are achieving these results by issuing general or standing orders which so provide, while a few may amend their local rules or simply do nothing, essentially assuming that the approach previously adopted remains in effect.

Even in those districts in which counsel are satisfied that the new Federal Rules amendments apply, the lawyers must make additional determinations. The attorneys must remember that the requirements governing automatic disclosure and presumptive limits may be modified in specific cases by judges or by stipulation of the parties.

Of course, counsel will want to consult and comply with all of the other local procedures imposed in each district under the Civil Justice Reform Act. The procedures will appear in the local rules, general orders, standing orders and the civil justice expense and delay reduction plans. Most, but not all, of these local procedures are consistent with the Federal Rules of Civil Procedure.

When this essay went to press on December 10, the developments described in it were very much in flux. For example, numerous districts reportedly had issued, were in the process of issuing, or were considering issuing, local rules, general orders or standing orders to address the issues raised above in a host of ways. Correspondingly, when Congress returns in late January, it could pass legislation changing the new Federal amendments relating to automatic disclosure and presumptive limits. For now, the only safe course of action is to consult local procedures applicable in districts where lawyers practice and to track possible congressional action.

The views expressed are those of the author and do not necessarily reflect the views of the publisher.

#### Footnotes

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