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Business Briefs
Legal Update

Say what? Litigation just got *LESS* expensive?

Amendments to the civil rules of federal procedure are designed to promote more efficient, less expensive litigation

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In advising clients who are contemplating filing suit, or who have been sued, sage counsel will always forewarn the client that the most expensive portion of any lawsuit is the discovery phase. Effective December 1, 2015 the Federal Rules of Civil Procedure, the rules which govern how cases are adjudicated in the Federal Court system, were amended, largely in an attempt to reduce those costs.

Great. What does this mean to me?
The amendments are the latest effort by the Federal Judiciary to help parties involved in a lawsuit obtain a just, speedy and inexpensive determination of an action or proceeding. Whether this goal will be accomplished through the amendments remains to be seen.

What brought about the change?
The Rules were amended to reduce time limit to serve a Complaint from 120 days to 90 days, and also reduced the time for the parties to file their initial scheduling order with the Court.

What are the major changes?

- Discovery, the portion of a lawsuit in which parties conduct depositions and obtain documents in order to investigate and evaluate the strengths and weaknesses of their opponent's positions, is now limited and to be proportional to the amount in controversy and the nature of the dispute.
- Mechanisms have been put in place to allow parties to go to the Court to seek Protective Orders to prevent the requested discovery or shift the expenses of discovery to the requesting Party in cases of discovery abuse.
- Conferences with the Court must now be requested before motions to compel discovery are filed.
- Objections must be stated with specificity as to the grounds for the objections to the production of documents and tangible things. Previously, parties would merely state that they objected for general reasons. They must now provide tangible reasons.

It is hoped that these amendments may limit the scorched earth discovery tactics, in which the requesting party asks for every conceivable document under the sun, which have become prevalent in almost all civil matters. Perhaps the most significant change allows the Courts to impose sanctions for the failure to provide ESI (electronically stored information) where it cannot be produced because it was lost as a result of a party failing to take reason-

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able steps to preserve it. Think accidental email deletion. Even though such failure was unintentional, upon a finding of prejudice to the other party, the Court can order sanctions. These sanctions can be no greater than necessary to cure any resulting prejudice to the other party. However, upon a finding that the party *intended* to deprive another party of ESI's use in the litigation, the Court can impose sanctions ranging from an adverse presumption and jury instruction to dismissal. The former rule provision did not allow the Court to impose sanctions for the failure to provide ESI lost as a result of the routine, good faith operation of computer systems. This amendment in and of itself may greatly limit the amount of time necessary to resolve the litigation.

So what do I do with this information?

In the event you are faced with litigating a matter in Federal Court, being cognizant of these changes will help you in reacting and planning how you will proceed. We are now operating in an electronic world, and the preservation of ESI is critical in helping you and your counsel in planning your strategy moving forward.

Don Adams'*s practice focuses on civil litigation in the area of medical defense litigation, transportation, maritime and wrongful death and injury. He counsels clients on risk management and quality assurance matters. Don has successfully tried numerous jury trials, bench trials, and arbitrations as lead counsel in state and federal courts in Ohio and Kentucky.*