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2010 Updates to Federal Rules of Civil Procedure

AMENDMENTS AT A GLANCE

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Absent contrary action by Congress, these important changes to Rule 8, Rule 26, Rule 56, and Form 52 will take effect on December 1, 2010. Below is an overview of the significant amendments for your quick reference.

Rule 8

- “discharge in bankruptcy” is no longer listed as an affirmative defense

Rule 26

- Rule 26(a)(2) now requires more comprehensive disclosures from experts that do not have to submit a full expert report (e.g., treating physicians)
 - Include a description of the subject matter of the testimony and a summary of the expected opinions and facts relied upon.
 - Disclosures should be thorough, because the scope of an expert’s testimony will be limited by the information stated in the disclosures. *See* FRCP 37(c)(1).
- Rules 26(b)(4)(B) and (C) extend work-product protection to drafts of expert reports and to most communications between attorneys and *retained* experts
 - Except communications regarding expert’s compensation and communications identifying facts or assumptions for the expert to rely upon

Rule 56

- Completely rewritten and restructured, though the content remains largely the same
 - Courts “*shall* grant summary judgment if the movant shows that there is no genuine *dispute* as to any material fact and the movant is entitled to judgment as a matter of law.”
- Courts “should state on the record the reasons for granting or denying the motion”
- Removes the “point-counterpoint” procedure as the required procedure for briefing summary judgment motions
 - Individual districts may retain this procedure if they choose (and many have), so check the Local Rules before discarding this approach.
- Allows for *sua sponte* summary judgments, after notice and time to respond

Form 52

- Amended to include disclosure of electronically stored information and a statement regarding any agreement between the parties for the protection of privileged materials

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