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WEDNESDAY, OCTOBER 8, 2014

Chicago Daily Law Bulletin®

Volume 160, No. 198

Taking time to reread the rulebook

Any attorney practicing in state or federal court, whether exclusively or only occasionally, probably knows the importance of the Federal Rules of Civil Procedure and the Illinois Supreme Court rules (plus any local court rules or individual judge's standing orders).

But how often do attorneys take the time to reread the rules they have been citing and using for years? As can be seen during any motion call in Cook County, the answer, all too frequently, is not often at all.

Often this merely results in a bit of embarrassment for the attorneys involved. But other amendments, including those changing deadlines or altering the parameters of discovery or litigation more generally, can change the outcome of any given case.

An example involving two amendments from the past 18 months illustrates each type of mistake that can result when an attorney does not stay current on the applicable rules.

Illinois Supreme Court Rule 707

Congratulations, an old friend from law school who practices in another state has a case pending in Illinois state court and has asked you to serve as local counsel. Here is an opportunity to impress a new client and an old referral source. The first step, naturally, is to seek pro hac vice admission for the out-of-state attorney.

If you haven't done so in the last 18 months, you may believe that Rule 707 merely required a brief, one- to two-page motion seeking permission for your friend to appear in the case. The problem is that Rule 707 was significantly overhauled effective July 1, 2013.

Under the new version of Rule 707, that simple motion has been replaced by a number of procedural requirements, including appearance of an Illinois attorney, a verified statement from the out-of-state attorney, a limit on the number of pro hac vice appearances in a calendar year, a list of other Illinois appearances in the same calendar year, familiarization with the Illinois Supreme Court rules and payment of fee.

These are just a few of the amended Rule 707's requirements. Of course, a deficient motion could be refiled. But filing a deficient motion because you did not check the current version of Rule 707 is a poor way to kick off a local counsel representation on behalf of a new client and an old friend who are now unlikely to view you as an expert on Illinois courts and procedure.

Rules 201, 204, 214, 216 and 218

Most practitioners are familiar with how the increasing existence and volume of electronically stored information (ESI) has dramatically altered the scope, cost and burden of litigation, particularly in the discovery stage.

Effective July 1, the state high court attempted to incorporate some of the numerous issues arising from ESI into its rules.

Rule 201(b) was amended to add an express definition of ESI. Rule 201(c) now imposes a proportionality requirement, authorizing a court to "determine whether the likely burden or expense of the proposed discovery, including [ESI], outweighs the likely benefit, taking into account the amount in controversy, the resources of the parties, the importance of the issue in the litigation and the importance of the requested discovery in resolving the issues."

Other rules were amended to incorporate the revisions to Rule 201, including Rules 204 (subpoenas) and 214 (discovery of documents), 218(a) (issues to be addressed at the initial case management conference). Notably, Rule 219, pertaining to consequences of failing to comply with discovery orders or rules, was not amended, but the rule's comment was to expressly reflect the view that the rule, as drafted, is sufficient to cover sanctions over issues related to ESI.

Although issues related to ESI have been prevalent for some time, these revisions to the rules can alter the course of litigation by setting the playing field uniformly in Illinois courts on an issue that had previously been addressed by individual judges on an ad hoc basis.

The revisions to Rules 201, 204, 214 and 218 will impact how discovery is drafted and how motions to compel discovery are decided. Accordingly, attorneys unaware of these amendments would find themselves at a severe disadvantage.

The moral of the story is both simple and helpful. When relying on one of the rules of procedure, it is a best practice for attorneys to make sure they are working off the most current version.

And once in a while, it makes sense to either reread the rules in general or to conduct a simple search on the Internet to determine if any of the procedural rules have been recently amended.

Helpfully, many of the myriad newsletters and topical e-mails available from The Chicago Bar Association, the Illinois State Bar Association, the American Bar Association and others will alert practitioners to upcoming changes to the rules.

Additionally, the Illinois Supreme Court's website makes this easy by giving attorneys the option to view amendments to the rules by year from 2011 to the present at state.il.us/court/SupremeCourt/Rules. Pending and proposed amendments to the federal rules can be found at uscourts.gov/rulesandpolicies/rules.aspx.

If nothing else, bookmarking these websites and visiting them every few months can alert attorneys, especially those who appear in court infrequently, of new or pending amendments to the rules of procedure, thereby avoiding embarrassment in court and obtaining the best results possible for the client.

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