

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA
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November 9, 2015

Honorable John D. Bates
United States District Court
District of Columbia
333 Constitution Avenue, N.W.
Washington, D.C. 20001

Re: Proposed Amendment to the Rules of Civil Procedure

Dear John:

Congratulations on your becoming Chairman of the Advisory Committee on Civil Rules. As a former member of the Committee, I am sure that you will cherish and enjoy your tenure as Chair.

I request the Committee to consider a new rule which I have tentatively entitled 26.1 "Mini Discovery and Prompt Trial" ("MDPT"). This rule would allow the court, at the pretrial conference required by Rule 16, to designate relatively simple and non-complex cases as subject to a separate "mini discovery track" where the extensive discovery procedures allowed by Rules 30-36 would not apply.

After discovery, the Rule would provide for a prompt trial. Motions for summary judgment would not be permitted without good cause and leave of court.

Specifically, I propose that if the parties agreed, and/or the court concluded, that the case could proceed fairly with mini-discovery, the court could enter an order as follows:

1. Requiring exchange of relevant documents without a specific request, followed by a certification by the party and its counsel that it had conducted a reasonable search and produced all documents that were within the scope of issues, as alleged in the complaint and answer, and a privilege log of any documents withheld or redacted on account of privileges.
2. Interrogatories would be allowed but objections would be served within seven (7) days and responses served within fourteen (14) days.
3. Intra-party depositions would be limited to four (4) per side, of not more than four (4) hours each.
4. Third party discovery would be allowed only on a showing of good cause.

5. Requests for admissions would be limited to not more than ten (10), following depositions.
6. Any expert reports would be served within the time allowed for discovery.
7. Discovery would be limited to a period of ninety (90) days.
8. The court could modify the above deadlines at or following the Rule 16 Conference.
9. No motions for summary judgment would be permitted, unless specifically allowed by the court for good cause shown (such as a potentially meritorious “legal” defense under the statute of limitations, qualified immunity, etc., but not on grounds of insufficient evidence).
10. Promptly following the conclusion of discovery, the case would be listed for trial.

Although many cases filed in a district court do require the extensive procedures allowed by the current federal rules, the rules can be burdensome and expensive for the many relatively simple cases for which federal jurisdiction exists, such as single party employment discrimination cases, civil rights cases filed against police officers, prison guards, etc., and simple personal injury cases, etc.

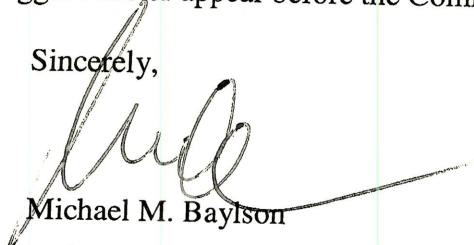
I know my proposal that a motion for summary judgment be eliminated, unless the court specifically allows it, may be controversial. However, in some cases, the time necessary for parties to prepare and the court to review a motion for summary judgment is greater than it would take to prepare and try the case. Although some might think abrogating summary judgment motions is unfair to defendants, the fact of the matter is that few of these motions, when based on insufficiency of plaintiff’s evidence, are granted. Overall, I think lawyer time, district court time, and appellate court time, would be saved if the legal issues often presented by motion for summary judgment were reserved for trial and could be better determined by post-trial motions in the event of a plaintiff’s verdict, with the benefit of a trial transcript, with direct and cross of witnesses, review of exhibits admitted into evidence, and the court’s jury charge.

I really do not see any substantial prejudice to defendants, since the court will be better prepared to decide the legal issues that would ordinarily be presented by a motion for summary judgment based on the trial record with introduction of direct and cross-examination introduction of exhibits, etc.

The other main advantage of my proposal is that it will shorten the length of time for pretrial proceedings in all of these cases, and will result in many more jury trials. Many lawyers and judges, myself included, have noted with alarm the disappearing jury trial. This proposal will help restore jury trials to their rightful place in our justice system and give young lawyers the opportunity to try cases.

I am sending a copy of this proposal to my colleague on your Committee, Gene Pratter. I would be happy to prepare more detailed suggestions or appear before the Committee.

Sincerely,



Michael M. Baylson

MMB:jb

cc: Honorable Gene E.K. Pratter
Professor Edward Cooper
Secretary, Rules Committee, Administrative Office, U.S. Courts

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