

Amendments to Federal Rules of Civil Procedure - Effective December 1, 2010

November 24, 2010

On April 28, 2010, the United States Supreme Court approved [amendments to three Federal Rules of Civil Procedure](#), as proposed by the Judicial Conference. These amendments become effective on December 1, 2010. The following is a brief summary of the various rules and the effect of the amendments.

- Rule 8 - This rule enumerates those affirmative defenses that must be pled in a responsive pleading. The amendment removes the defense of "discharge in bankruptcy" from the list.
- Rule 26 - This rule governs discovery, and expert disclosures in particular. As amended, the rule now provides work product protection for draft reports by testifying expert witnesses. The rule also now protects the discovery of communications between a testifying expert and the retaining lawyer, subject to three important exceptions - (1) compensation for the expert's work/testimony, (2) identify facts/data that were provided to the expert by the attorney that have been considered in formulating the expert's opinion, and (3) identify assumptions that were provided to the expert by the attorney that have been considered in formulating the expert's opinion. Additionally, the rule now provides that even with expert witnesses who are not required to prepare a Rule 26(a)(2) (B) report, the subject matter of their testimony and a summary of their facts/opinions that are expected to be offered must be disclosed.
- Rule 56 - This rule governs summary judgment. Although the standard for summary judgment remains the same, the amendments relate to the procedure for filing and resolving motions for summary judgment.

In sum, important changes concerning expert disclosure and summary judgment will now govern federal proceedings. Because these amendments are effective as of December 1, 2010, all

attorney's practicing in federal court should review the amendments before that date and become familiar with the substance of the amended rules.

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