

In the United States Court of Federal Claims

NOTICE OF ADOPTION OF AMENDMENTS TO RULES

On September 11, 2008, the court posted notice on its website advising of the proposed amendments to its rules. The notice invited the submission of public comments no later than October 14, 2008.

The court has received one set of comments—from the Court of Federal Claims Bar Association. After considering these comments, the court announces the adoption of its rules effective November 3, 2008. As provided by Rule 86, the amendments shall have such effect on pending proceedings as each presiding judge may order.

Except in one instance, the amendments now adopted correspond to those originally proposed by the court. The single exception concerns an incorrect cross-reference in Rule 4.1(a)(2) (“Proof of Service”). As pointed out in the Bar Association’s comments, the correct reference is to RCFC 45(b)(4). The rule, as adopted, reflects this correction.

In addition to the noted correction to Rule 4.1, the Bar Association’s comments also urged the court to consider several other changes to the proposed rules.

First, the court was urged to restore in Rule 3 (“Commencing an Action”) the parenthetical reference to Rule 40.2(a) (“Directly Related Cases”). The court declines to do so. The reference to Rule 40.2(a) was originally introduced into Rule 3 as part of the May 2002 revision of the court’s rules to call attention to the then newly framed related cases rule—a rule that has no counterpart in the Federal Rules of Civil Procedure. The court is of the view that such guidance is no longer necessary; hence, the continued inclusion in Rule 3 of a parenthetical reference to Rule 40.2(a) would, at best, be a distraction and perhaps even a source of confusion.

Second, the court was urged to delete from Rule 16(b)(3)(B)(i) (“Pretrial Conferences; Scheduling; Management”) the added reference to Rule 26(e)(1). The reference to Rule 26(e)(1), however, was added to conform to the Federal Rules of Civil Procedure. Given the court’s commitment to the adoption of rules of practice and procedure that mirror the Federal Rules of Civil Procedure, this suggestion for departure from the text of the Federal Rules of Civil Procedure must be declined.

Third, the Bar Association suggested that the court adopt restyled FRCP 23(h)(3) (“Attorney’s Fees and Nontaxable Costs”) as-is. Because the court has in fact adopted restyled FRCP 23(h)(3) as-is, no change is necessary.

Fourth, the Bar Association requested that the court retain the original language of Rule 26(a)(1)(C) (“Time for Initial Disclosures—In General”)—directing that initial disclosures be made within 14 days after the filing of the Joint Preliminary Status Report—rather than adopting the amended language requiring that such disclosures be made within 14 days after the Early Meeting of Counsel. The court, however, deems the amendment desirable. The amended rule conforms to

the Federal Rules of Civil Procedure and thus makes practice before this court compatible with practice before the district courts. In addition, the conforming amendment has the beneficial effect of providing counsel with the disclosures in advance of preparing the Joint Preliminary Status Report.

Finally, the court was asked to amend the text of Rule 40.2 (“Related Cases”) to eliminate a perceived overlap in the responsibilities of the clerk and counsel in serving notice of a directly or indirectly related case. Specifically, the Bar Association expressed the view that under the proposed rule service to the parties in directly or indirectly related cases is accomplished twice: first by the party under Rule 40.2(a)(3)(C) and (b)(3)(C) and again by the clerk under Rule 40.2(a)(3)(B)(ii) and (b)(3)(B) (through the filing of the notice in the related cases). The filing of such notice by the clerk in the directly or indirectly related cases, however, does not accomplish service. The court thus elects to retain the rule as proposed, requiring that: (i) the initial notice of directly or indirectly related case(s) be filed by counsel and be served on the parties in the related cases by counsel and (ii) the subsequent filing of that notice in the directly or indirectly cases be accomplished by the clerk.

The court is genuinely appreciative of the time and effort spent by the Bar Association in reviewing the proposed amendments.

The rules as amended by this notice are available on the court’s website at <http://www.uscfc.uscourts.gov/rulesuscfc>.

Issued: November 3, 2008

s/John Buckley
John Buckley
Acting Clerk of Court