



Report of the Civil Justice Reform Working Group

Limit Discovery

Feedback and New Developments as of May 15, 2007

FOR DISCUSSION PURPOSES ONLY

Recommendation 3.3 Limit available discovery, while requiring early disclosure of key information.

The Civil Justice Reform Working Group report, similar to Rule 68, sets out limits on pre-trial procedures based on the value of cases. Recommendation 3.3 (page 24) places different limits on oral discovery depending on whether the case is valued at more or less than \$100,000.

At some of the presentations given by Chief Justice Donald Brenner and Deputy Attorney General Allan Seckel there was discussion on the issue of whether a monetary threshold should be used. The alternative would be for the CPC judge or master to apply proportionality criteria in general, without determining whether a case's value was above or below a threshold. The proportionality criteria would be the value, complexity and importance (to the public interest) of the case.

The advantages of set thresholds are that they let the bar know what to expect and they provide the judiciary with guidance on the issue. The expected result would be a higher level of consistency in proportionality rulings. The disadvantage is that too much time and effort will be spent on establishing whether a case is below or above the threshold, instead of looking at all of the criteria behind proportionality. Also, even if the value of a case fell below the threshold, there will still be arguments to be exempted from the default. Based on the above, the current thinking is to abandon the \$100,000 threshold and allow the CPC judge or master to apply proportionality and matching principles to each case.

The concept of "matching" simply means that the judge or master would not only attempt to assess the appropriate quantity of process under proportionality principles, but would attempt to match the type of pre-trial process to the needs of a particular case. So it may be, for example, that different pre-trial processes would be ordered in a personal injury case compared to a multi-party commercial litigation case.

In the absence of thresholds, it will be necessary to set a default for the amount of discovery allowed in all cases. Under Rule 68, the default is no discovery without leave or consent. Feedback to date, however, claims that some amount of discovery is requested and granted in the majority of cases. Therefore, the default being considered is that every party is subject to being examined for discovery for a total of two hours.



The parties will be free to agree to extend the default, but they may not agree to more than two days of discovery of any one party. If more than two days of discovery is sought, the parties should go to a CPC.

Please email your comments on this issue or on any of the recommendations to:
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