

District of Oregon Takes Steps to Control the Cost of Litigation

By Susan Marmaduke

Hon. Ann Aiken, chief judge of the U.S. District Court for the District of Oregon, has made controlling the cost of litigation a priority. Chief Judge Aiken instructed the Local Rules Advisory Committee to search for ways of furthering that goal. The committee proposed four ideas that were implemented in the District of Oregon, effective March 1, 2013.

Streamlining Discovery in Employment Cases Alleging Adverse Action

Under the auspices of the Federal Judicial Center, a nationwide committee of experienced plaintiff and defense employment lawyers developed protocols for discovery in certain employment cases alleging adverse action. To frame the issues early and to minimize unnecessary legal fees, the protocols require the parties automatically to exchange the most relevant information and documents soon after the responsive pleading or motion is filed. The Federal Judicial Center implemented the protocols as a pilot project available to individual district court judges. The District of Oregon adopted the protocols, with only minor modifications, as LR 26-7.

Because the information and documents identified in the new rule are those most likely to be requested by experienced lawyers in such cases, the committee has received informal reports that new lawyers are finding the rule useful as a guide for discovery in other types of cases, as well.

Controlling the Cost of E-discovery in Patent Cases

The Federal Circuit's Chief Judge Randall Rader has developed a model order regarding e-discovery in patent cases. The model order requires the parties to exchange basic documentation concerning the patent, the product or process accused of infringement, prior art, and the relevant financial information. It sets presumptive limits on the number of custodians and search terms for email production requests unless the parties agree otherwise or the court modifies the limits for good cause. The cost of any email discovery beyond those limits is borne by the requesting party.

Recognizing that a major cause of high costs is the pre-production review of documents that lawyers undertake to avoid disclosure of privileged documents, the model order states that, pursuant to Federal Rule of Evidence 502(d), the inadvertent production of work product or other privileged electronically stored information does not waive the privilege.

The District of Oregon adopted LR 26-6, providing that, unless otherwise ordered, the model order governs in all cases in which a claim of patent infringement is asserted.

Providing Tips on Obtaining Testimony in Other Countries

More and more often, litigants need the testimony of witnesses located outside the United States. The committee developed a brief list of authoritative resources on taking depositions in other countries and related procedures, which the Oregon District adopted as a Practice Tip to supplement LR 28 ("Depositions in a Foreign Country").

Posting Court-Approved Forms of Stipulated Protective Orders

Because protective orders are so often needed in federal litigation, the lawyers and judges on the Committee worked together to develop two forms of stipulated protective order that are intended to satisfy the requirements of current Ninth Circuit case law, including *Foltz v. State Farm Mut. Ins. Co.*, 331 F3d 1122 (9th Cir 2003). The district court posted the two forms on its website at www.ord.uscourts.gov/index.php/component/phocadownload/category/54-forms-of-protective-order.

The committee continues to develop other court-approved forms with the twin goals of avoiding the cost to litigants of drafting such forms and streamlining the work of the judges who are presented with them.



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