



How New Rules Can Affect Your Business Lawsuits

Business Litigation Under the New Civil Access Pilot Project

There will be a dramatic change in the rules that govern business lawsuits filed after January 1, 2012 in five Denver metropolitan counties. These new rules, which are known as the **Civil Access Pilot Project**, will substantially change certain aspects of the business litigation process for the next two years. The Pilot Project rules constitute a significant departure from the manner in which most business litigation has been conducted in Colorado. Businesses should be aware of the additional burdens the new rules place on businesses and those representing businesses, as well as the potential benefits. Here are several key elements of the new rules that businesses should consider as they prepare to prosecute or defend themselves in civil lawsuits.

1 Nearly all business litigation cases filed in Denver, Jefferson, Gilpin, Adams and Arapahoe counties will be affected.

The new rules are mandatory, and there is no way to “opt out.” The new regulations apply to all business lawsuits filed after January 1, 2012, but will not apply to lawsuits filed prior to January 1, 2012. The rules do not apply in cases that involve physical injury to a person.

2 The nature of pleadings will change.

The plaintiff is required to plead all material facts in his complaint with specificity, and include any known monetary damages. The defendant must assert or deny all material facts with specificity, including any facts that support affirmative defenses. Any fact not specifically denied will be deemed admitted.

3 New deadlines for pleadings and disclosures.

A plaintiff must file his disclosures 30 days after serving the complaint. The defendant’s answer is not due until 30 days after the plaintiff’s disclosures are filed. A defendant must file an answer even if he files a motion to dismiss. The defendant’s disclosures are due 30 days after the answer is filed.

The new pleading and disclosure rules place a premium on “front loading” fact investigation, document production, and planning for discovery in a way that most businesses familiar with lawsuits are not accustomed. Essentially, the rules condense 6-9 months worth of legal work into a three month window at the inception of a lawsuit. As a result, it is crucial to involve your attorneys as soon as possible in a pending lawsuit or in matters which may result in litigation. By getting early involvement from these attorneys, businesses can be prepared for the substantial increase in legal tasks necessary in the first three months of a civil lawsuit.

4 Discovery will be governed by the theory of “proportionality.”

This is intended to reduce the cost of lawsuits by limiting written discovery and depositions, as well as other expenses in a manner that is “proportional” to the amount at issue. Under the new rules, an individualized plan for discovery and trial preparation must be negotiated on every case. The amount of discovery permitted and the complexity of the discovery permitted must be approved by the judge based under the proportionality theory. Experts are limited to one per side per issue, and the new rules do not allow depositions of experts.

5 **New deadlines for discovery plan, scope and cost.**

The new rules put a premium on being fully prepared with a comprehensive plan for discovery, as well as identifying the attorney who will actually try the case as early as three months from the time a case is filed. The new rules require that the “lead attorneys” appear at a scheduling conference before the judge within 49 days of a responsive pleading being filed to discuss and agree on a discovery plan which the parties may not be able to later modify. Whereas in the past the parties could just follow the presumptive deadlines, the new rules require the parties to discuss and agree on the scope and cost of discovery prior to appearing at the case management conference.

6 **Extensions of time discouraged.**

The new rules eliminate the ability of parties to routinely obtain extensions of time, even if all parties agree to the extension. It is a relatively common practice within civil cases for extensions of time to be granted as a matter of course. The rules, however, explicitly state that continuances and extensions are “strongly disfavored.” Absent “extraordinary circumstances,” continuances will not be granted. In one instance, a judge may deny a request for an extension upon receipt by the court, without waiting for any response. As a result, it is imperative that businesses act quickly and plan carefully when they file or are served with a lawsuit.

7 **Reduced discovery-related costs.**

The new rules are designed to reduce discovery related costs to parties. The benefits include the proportionality component (which is intended to limit the expense of the lawsuit by curtailing discovery), the elimination of expert depositions and requiring parties to narrow the scope of the lawsuit through specific factual allegations.

Moye White lawyers are knowledgeable about the new rules under the Civil Access Pilot Project, and we are ready and able to counsel businesses about how to maximize the advantages under the new rules. If you anticipate that your business will be involved in new litigation in the coming year, call Moye White now to start planning your strategy.

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