



IN BRIEF

MALPRACTICE AVOIDANCE NEWSLETTER FOR OREGON LAWYERS

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NEW FEDERAL COURT RULES

New federal rules of evidence, criminal procedure and civil procedure will go into effect on December 1, 2000. Changes to the rules include:

CRIMINAL FORFEITURE: Under the new rules, proof that the assets belong to the defendant will be submitted to a judge in an ancillary hearing.

RULE 701: The rule is changed to state that a lay witness' opinion can not be based on "scientific, technical, or other specialized knowledge within the scope of Rule 702." The committee note states that the change was made to "eliminate the risk that the reliability requirement set forth in Rule 702 will be evaded through the simple expedient of proffering an expert in lay witness clothing." The committee note also states that the change does not affect many types of testimony.

RULE 702: Expert testimony is admissible only if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

RULE 703: The former rule provided that experts could rely upon otherwise inadmissible evidence, such as hearsay reports, in forming their opinions. The new rule continues to allow experts to rely on such facts or data, but states that such facts or data shall not be disclosed to

the jury "unless their probative value substantially outweighs their prejudicial effect." The committee note further states that, if such facts or data are revealed to the jury, the judge must give a limiting instruction upon request that informs the jury that "the underlying information must not be used for substantive purposes."

FRCP 26(a): Under the new rules, the disclosure requirements are amended so that a party must identify only witnesses and documents that the party "may use to support its claims or defenses" (unless used for impeachment purposes).

FRCP 26(b)(1): The scope of discovery rule is changed from allowing all discovery relevant to "the subject matter involved in the pending action" to matters that are relevant to the "claim or defense of any party." The committee note states that the change is intended to narrow the scope of discovery in order to eliminate the situation where a party's discovery request goes beyond the claims and defenses of the parties. However, the court may order discovery "of any matter relevant to the subject matter involved in the action" for good cause shown.

SANCTIONS: Failure to amend a discovery response as required by FRCP 26(a)(2) may result in sanctions under Rule 37(c)(1).

FRCP 30: The length of any deposition is limited to one day of seven hours unless the parties otherwise stipulate or the court so authorizes.

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