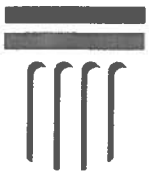

Legal Aid Society
OF THE DISTRICT OF COLUMBIA

MAKING JUSTICE REAL

February 14, 2014

Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle, NE
Washington, D.C. 20544

Re: Proposed Amendments to the Federal Rules of Civil Procedure

Dear Members of the Committee:

The Legal Aid Society of the District of Columbia ("Legal Aid") submits these comments on the recent proposed amendments to the Federal Rules of Civil Procedure. Legal Aid appreciates the Committee's efforts to improve the discovery process, but has significant concerns about several of the proposed amendments, particularly those that further curtail available discovery methods and impose a proportionality test on the scope of discovery.

The Legal Aid Society of the District of Columbia is the oldest and largest general civil legal services program in D.C. Legal Aid was founded in 1932 with the goal of *making justice real* — in individual and systemic ways — for persons living in poverty in the District of Columbia. For more than 80 years, Legal Aid lawyers have provided a continuum of legal services to clients in the areas of domestic violence/family, housing, public benefits, and consumer law. In addition to providing direct representation, we also help clients avoid unnecessary legal entanglements through outreach and education, and help them resolve their own disputes with advice and other brief assistance.

Legal Aid also works to identify systemic issues that have an impact beyond individual clients. In many cases, Legal Aid seeks broader, structural solutions — from changes in law or regulatory schemes to reform of government or court practices — to benefit the District's most vulnerable residents. We maintain a federal court presence, where we litigate cases related to unfair and deceptive practices, violations of federal consumer protection laws, and denials of Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits. We also maintain a docket of cases that, although primarily heard in D.C. Superior Court, can be removed to federal court and sometimes are. The recent proposed amendments may have a deleterious impact on Legal Aid's practice, particularly in disputes where the money at stake is low but the potential impact on the litigants high, as is often the case when one or more parties lives in poverty.

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With these considerations in mind, Legal Aid offers the following comments:

1. **Legal Aid strongly opposes the following proposed amendment to Rule 26(b)(1):**

> **Rule 26(b)(1): Scope in General.** Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the amount in controversy, the importance of the issues at stake in the action, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

Legal Aid believes that this amendment would unnecessarily and significantly threaten to restrict discovery in cases involving small monetary amounts regardless of the importance of the suit to the parties involved. Many of our cases involve small claims of a few thousand dollars or less, but for an individual living in poverty, such a comparatively small sum may have a substantial impact on quality of life. For an individual in poverty, a few thousand dollars may mean the difference between having a place to live and being out on the street, or between feeding a child and watching her go hungry.

In particular, this proposed amendment would threaten Legal Aid's ability to seek redress from government agencies with staffing or budget constraints. Legal Aid litigates hundreds of public benefits cases each year in administrative agencies, and also sues malperforming agencies to improve consumer services or remedy statutory violations. Such agencies might be able credibly to argue that a request for documents — perhaps even a small request — would impose undue burden or expense on the agency, thereby requiring Legal Aid to justify its need for the documents. In cases in which the ultimate amount in controversy is small, as is often true in the cases Legal Aid litigates, such a requirement would stack the deck against the plaintiff, who would have to convince the court that his need for the comparatively small amount of money at stake outweighs the parade of horribles the agency might offer.

Discovery is critical to Legal Aid's ability to build its cases. A consumer protection or debt relief statute may provide all the right to relief in the world, but without the ability to obtain discovery in order to prove violations of the statute, that right is largely meaningless. The same is true of the right to Social Security, Medicaid, or other public benefits. Without the ability to collect the information necessary to prove eligibility or to invoke remedial provisions, our clients stand little chance of vindicating their rights. Yet that is precisely the result this proposed amendment threatens. It would predicate the right to discovery — and hence the right to relief — not on relevance (or not solely on relevance), but rather on money, and on means. For these reasons, Legal Aid strongly opposes the amendment.

2. **Legal Aid opposes the following proposed amendment to Rule 30(a)(2):**

> **Rule 30(a)(2): With Leave.** A party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(1) and (2):

> (A) if the parties have not stipulated to the deposition and:
>
> (i) the deposition would result in more than ~~10~~ 5 depositions being taken under this rule or Rule 31 by the plaintiffs, or by the defendants; * * *

Many of our cases involve large institutional defendants or protracted disputes. In such cases multiple depositions may be needed because the number of potential witnesses is high or because the key information is spread across numerous individuals. The existing limit of 10 depositions can pose difficulty; limiting the availability of depositions even further, to 5, would compound these problems.

Obtaining leave of court is of course a potential escape valve. But the proposed Rule 26 balancing test for the scope of discovery would threaten to shut off that valve in suits where the amount of money at stake is low — the type of suits Legal Aid typically litigates. The proposed amendments to Rules 26 and 30, working together, would thus have a particularly pernicious effect on the most vulnerable members of our community.

3. **Legal Aid opposes (and does not understand the need for) the following proposed amendment to Rule 30(d)(1):**

> **Rule 30(d)(1): Duration**. Unless otherwise stipulated or ordered by the court, a deposition is limited to one day of ~~7~~ 6 hours.

Seven hours is often necessary to cover the relevant subject matter in a deposition. While our attorneys have no incentive to conduct a deposition any longer than it needs to be, witnesses can be evasive, meandering, or simply talkative, and often there is a great deal of ground to cover in the short space of seven hours. By virtue of its mission, Legal Aid often represents recent immigrants or individuals with limited English skills or who communicate through American Sign Language or other means; in some cases, both parties (or one or more potential witnesses) require translation assistance. Time limits can be particularly constraining when a deponent or party to a deposition requires a translator. Indeed, the time available for such a deposition is effectively halved, as each question and each answer must be separately translated. Legal Aid and its client community are thus likely to be particularly prejudiced by this proposed amendment.

Legal Aid further does not understand the need for this amendment. Seven hours is less than a full work day, and with breaks and lunch, approximately equivalent to one. Asking deponents to devote one full day to testimony is not unduly burdensome, particularly where substantial rights are at stake. Legal Aid is also unaware of complaints that seven-hour depositions are overly onerous. Indeed, among the clamor that modern discovery is too burdensome, one rarely hears the complaint that depositions are too long. Whatever slight benefit deponents might enjoy from shorter depositions would be outweighed by the prejudice to litigants.

4. **Legal Aid opposes (and does not understand the need for) the following proposed amendment to Rule 33(a)(1):**

> **Rule 33(a)(1): Number**. Unless otherwise stipulated or ordered by the court, a party may serve on another party no more than ~~25~~ 15 interrogatories, including all discrete subparts. * * *

Interrogatories are an important and efficient means of eliciting information, and when used properly can obviate the need for extensive document requests or even, sometimes, depositions. They are particularly important for legal services organizations such as Legal Aid, which operate solely on the basis of grants and donations and with significant budget constraints. A single well-written interrogatory can turn up more relevant information than a dozen document requests, and at far less time and cost. For this reason Legal Aid makes extensive use of interrogatories — often more than the proposed fifteen.

In Legal Aid's view, the Committee should encourage the use of interrogatories as a means of curbing the need for other, more costly forms of discovery, not the reverse. We therefore oppose this amendment.

5. **Legal Aid opposes (and does not understand the need for) the proposed amendment to Rule 36 that would add the following subsection:**

> **Rule 36(a)(2): Number**. Unless otherwise stipulated or ordered by the court, a party may serve no more than 25 requests to admit under Rule 36(a)(1)(A) on any other party, including all discrete subparts. * * *

Requests for admission are an important means of streamlining litigation and impose very little burden upon the parties upon whom they are served. The very purpose of such requests is to clarify which issues are actually in dispute. A well-phrased request for admission can avoid a dozen document requests, at a tiny fraction of the cost and time. A party that receives a request for admission need only respond "Admitted" or "Denied."

The advantages of requests for admission over other forms of discovery are incontestable. A party that receives a document request, for example, must comb its archive for responsive documents, then determine which ones are or may be privileged, then prepare a privilege log, and then assemble all of the responsive, non-privileged documents into a document production. The party making the document request must then perform its own evaluation of the documents, pulling out the ones that seem relevant and tracking all the others that have been reviewed. Interrogatories in turn require a party to investigate the relevant issues and then formulate a thoughtful and responsive answer to each question.

Legal Aid is unaware of complaints that litigants are abusing requests for admission or that the use of such requests is gumming up the wheels of discovery. As with interrogatories, in Legal

Aid's respectful view the Committee should be encouraging the use of requests for admission, not hindering it.

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Legal Aid greatly appreciates the Committee's consideration of our comments and concerns. We would be glad to further discuss or to provide further information regarding the issues addressed in this letter.

Sincerely,

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