

Proposed Amendments to the Federal Rules of Civil Procedure

Important Information & Instructions for Filing Comments and Testifying

Public Comment Period Is Open!

**Comments MUST be submitted by
February 16, 2026, at 11:59 pm EST**

The Committee on Rules of Practice and Procedure (“Standing Committee”) has published several proposed rule amendments to the Federal Rules of Civil Procedure that may affect your practice. These proposed amendments include:

- **FRCP 7.1 – Corporate Disclosure**
Would require disclosure of “business organizations” that directly or indirectly own 10% or more of a party, regardless of whether that ownership is designated as stock.
- **FRCP 41(a) – Voluntary Dismissal**
Would permit dismissal of an entire action or claims within an action and clarifies that only the parties remaining in the action must sign a stipulation of dismissal.
- **FRCP 45(b) – Service of a Subpoena**
Would expand the methods of serving a subpoena to make it easier to effect service to difficult-to-reach corporate representatives and gated community residents.
- **FRCP 45(c) & 26(a) – Subpoena for Remote Testimony**
*Would correct *In re Kirkland*, in which the Ninth Circuit determined that it did not have the authority to command witnesses to provide remote trial testimony because the witnesses are not within the “subpoena power” of the presiding court.*
- **FRCP 81(c) – Post-Removal Jury Demands**
Would eliminate uncertainty about whether or when to request a jury trial after removal.

AAJ encourages members to review the proposed amendments and [submit public comments](#) by **11:59 pm EST on February 16, 2026**. Members may also testify at one of two virtual public hearings before the Advisory Committee on Civil Rules on **January 13** or **January 27**, 2026.

This packet provides practical guidance for drafting and submitting comments or preparing to testify. It also includes the published rule text and draft committee notes for each proposed amendment, along with a list of potential issues for comment identified by AAJ staff.

Guidelines for Drafting Your Comment

By focusing your comment on practical suggestions and drawing on your real-world experience as a plaintiff-side practitioner, you can contribute meaningfully to the rulemaking process through an effective and impactful comment. You may write about one or more proposed amendments.

- ✓ **Review the full proposed rule** text, draft committee note, and AAJ-identified issues.
- ✓ **Draft your comment in advance** of the deadline.
- ✓ **Identify yourself** as a plaintiff-side practitioner.
- ✓ **Keep it concise** — a short comment is preferable to one that rambles.
- ✓ **Suggest improvements** to the proposed rule text and committee note.
- ✓ **Provide real-world examples** from your practice to illustrate your points.
- ✓ **Refer to [public comments](#)** that you agree or disagree with to bolster your arguments.
- ✓ **File your comment as a PDF on firm letterhead.** *DO NOT submit anonymous comments.*
- ✓ **Contact AAJ staff with any questions** or concerns throughout the comment period!

How to File Your Comment

Here are some helpful tips for filing your comment before 11:59 pm EST on February 16:

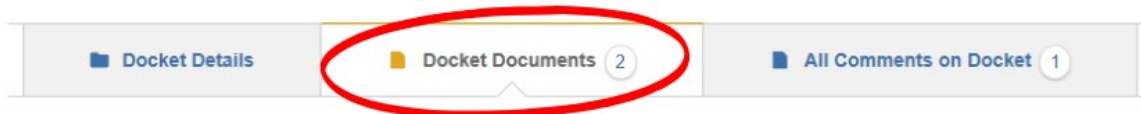
Step 1.

When you're ready to submit your comment, ensure it's formatted as a PDF, on firm letterhead, and addressed to the Standing Committee:

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

Step 2.

Visit the Rulemaking Docket for the Proposed Amendments to the Federal Rules of Civil Procedure on [regulations.gov](#) and open on the “Docket Documents” tab:



Then, click the blue “Comment” button to open the comment submission form:



Step 4.

The “Write a Comment” page will allow you to upload your comment as a PDF or type your comment directly into the provided text box. *AAJ strongly urges you to draft your comment using Microsoft Word and upload it as a PDF on your firm’s letterhead.*

Write a Comment

[Commenter's Checklist](#)
[Public Comments on Federal Regulations](#)

Comment*

Comment on proposed amendments to FRCP 41(a) from Jane Doe, Doe Law PLLC.

4927

Attach Files

You can attach up to 20 files, but each file cannot exceed 10MB. Valid file types include: bmp, docx, gif, jpg, jpeg, pdf, png, pptx, rtf, sgml, tif, tiff, txt, wpd, xlsx, xml.

Drop files here or [Browse...](#)

✓ Jane Doe Comment.pdf
Successfully Uploaded - File Size: 140.68 KB

Did you attach files that contain comments from more than one person/entity?

☐ Yes

Email Address

janedoe@doelawpllc.com

After uploading your PDF, you will be asked to identify: (1) as an individual, (2) as an organization, or (3) anonymously. *AAJ encourages you to file either as an individual or on behalf of your law firm. DO NOT file anonymously.*

 ✓
An Individual
Yourself or another person whom you represent with their consent

 ✓
An Organization
A company, organization, or government agency

 ✗
Anonymous
A person who does not want their name associated with the comment

Step 5.

The rules staff will review each comment to ensure that it is appropriate before it will be officially published on the associated rulemaking [docket](#).

If you do not see your comment on the docket within a week, contact the Rules Committee staff at RulesCommittee_Secretary@ao.uscourts.gov to ensure it was uploaded correctly.

How to Testify at a Hearing

There are currently two public hearings scheduled for proposed amendments to the Civil Rules:

Hearing Date		Registration Deadline
Tuesday, January 13 , 2026	→	Monday, December 15 , 2025
Tuesday, January 27 , 2026	→	Monday, December 29 , 2025

Step 1 — Register to testify.

If you want to testify at one of these hearings, you must submit a request at least 30 days before the hearing date by emailing RulesCommittee_Secretary@ao.uscourts.gov. You should receive a confirmation email shortly after submitting your request. *If you do not, please send another email to confirm receipt.*

Step 2 — Let AAJ know you'll be testifying.

After you submit your request, email Sue Steinman (susan.steinman@justice.org) and Kaiya Lyons (kaiya.lyons@justice.org) to let AAJ know that you intend to testify and which hearing date you've selected. *AAJ may schedule individual or group hearing prep sessions to make sure you have all the information you need prior to testifying!*

Step 3 — Submit written testimony.

You will be required to submit written testimony prior to the hearing. Most witnesses use their written testimony (or a truncated version) as prepared remarks during the first portion of their hearing time. *Keep an eye out for an email from the Rules Committee Secretary with a deadline for submissions.*

Your written testimony may also be submitted in lieu of a comment, so it is important that you submit your testimony on letterhead. Examples of testimony from previous comment periods is [located here](#).

Step 4 — Be prepared.

During the hearing, you may be subject to questioning by members of the Advisory Committee. These questions are not limited to your presentation or written testimony and may refer to prior testimony or public comments. *To ensure you're prepared to address these issues, AAJ encourages you to attend as much of the hearing as possible!*

* * * * *

***The following sections include the published rule text
and draft committee note for each proposed amendment,
as well as potential issues for your consideration.***

***Please use this information as a jumping-off point
for your comment and/or testimony.***

Proposed Federal Rule of Civil Procedure 7.1 Corporate Disclosure

Proposed Rule Text & Draft Committee Note

The Committee on Rules of Practice and Procedure (“Standing Committee”) has published a proposed amendment to FRCP 7.1 to expand the scope of disclosure requirements for parties that are nongovernmental business entities.

Currently, Rule 7.1 requires corporate parties to identify any parent corporation and any publicly held corporation owning 10% or more of its stock. The amendment makes two key changes: (1) it replaces the term “corporation” with the broader term “business organization” to capture entities that are not formally organized as corporations but may still pose similar conflicts of interest; and (2) it extends the disclosure obligation to include both direct and indirect owners of 10% or more of a party, regardless of whether ownership is in the form of stock.

These changes are intended to better equip judges to meet their statutory and ethical obligations under 28 U.S.C. § 455 to recuse themselves when they or their family members have a financial interest in a party or in the outcome of litigation

AAJ-Identified Issues for Comments

- *Does replacing “corporation” with “business organization” improve the rule or risk creating ambiguity? Will unincorporated associations (e.g., partnerships, LLCs, professional associations) have difficulty determining whether they fall within the definition, leading to inconsistent disclosures across jurisdictions?*
- *Could the new disclosure requirements impose disproportionate burdens on smaller plaintiffs’ firms or on individual plaintiffs doing business as small LLCs, compared to large corporate defendants with more resources to track complex ownership structures? Should there be safeguards to ensure that disclosure obligations do not chill participation in litigation by individuals or small entities?*
- *Will the expanded disclosures meaningfully improve judges’ ability to comply with 28 U.S.C. § 455, or will the volume of new disclosures overwhelm clerks and chambers without producing clearer conflict identification?*
- *Is the 10% threshold appropriate, or should it be adjusted to better capture financially significant relationships while avoiding unnecessary disclosures?*
- *How feasible is it for parties to identify and disclose indirect owners at the 10% threshold, particularly when ownership interests may be layered through multiple private entities or foreign organizations?*

NOTE:

Proposed additions to the rule are underlined in red.

Proposed deletions are ~~struck through~~.

The draft Committee Note is the explanation of the textual changes.

Rule 7.1. Disclosure Statement

(a) Who Must File; Contents.

(1) Nongovernmental ~~Corporations~~ Business Organizations. A nongovernmental ~~corporate~~ business organization that is a party or a ~~nongovernmental corporation~~ that seeks to intervene must file a statement that:

(A) identifies any parent ~~corporation~~ business organization and any publicly held ~~corporation~~ business organization owning that directly or indirectly owns 10% or more of ~~its stock~~ it; or

(B) states that there is no such ~~corporation~~ business organization.

* * * * *

COMMITTEE NOTE

Rule 7.1(a)(1) is amended in two ways intended to better assist judges in complying with their statutory and ethical duty to recuse in cases in which they or relevant family members have “a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding.” 28 U.S.C. § 455(b)(4); Code of Conduct for United States Judges Canon 3C(1)(c).

First, the amended rule substitutes “business organization” in place of references to “corporation” to cover entities not organized as “corporations,” defined narrowly. “Business organizations” is a more capacious term intended to flexibly adapt to the ever-changing variety of commercial entities, and the term is generally accepted and well understood. *See, e.g.,* Uniform Business Organizations Code (2015).

Second, the rule is amended to require disclosure of business organizations that “directly or indirectly own 10% or more of” a party, whether or not that ownership interest is formally denominated as stock. Such a direct or indirect owner is presumed to hold a sufficient interest in a party to raise a rebuttable presumption that a judge’s financial interest in the owner extends to the party, warranting recusal. *See* U.S. Judicial Conference, Guide to Judiciary Policy § 220, Committee on Codes of Conduct, Advisory Opinion No. 57: Disqualification Based on a Parent-Subsidiary Relationship (Feb. 2024). Under the amended 45 rule, a party must disclose not only

a parent business organization but also any publicly held business organization that is a grandparent, great-grandparent, or other corporate relative that owns 10% or more of a party, whether directly or through another business organization. The requirement to disclose “indirect” owners of 10% or more of a party is a pragmatic effort to better inform judges of circumstances when their financial interests may be affected by a litigation or when further inquiry into the ownership interests in a party is appropriate.

As before, this rule does not capture every scenario that might require a judge to recuse. As reflected in the Committee on Codes of Conduct Advisory Opinion No. 57, a judge may need to seek additional information about a party’s business affiliations when deciding whether to recuse. And, as before, districts may promulgate local rules requiring additional disclosures.

Proposed Federal Rule of Civil Procedure 41(a) Voluntary Dismissal

Proposed Rule Text & Draft Committee Note

The Standing Committee published a proposed amendment to FRCP 41(a) to clarify and expand a plaintiff's ability to voluntarily dismiss claims or actions against individual defendants.

First, it expressly allows dismissal of "one or more of its claims" in a multi-claim case, resolving prior uncertainty in some courts that limited voluntary dismissal to entire actions or all claims against a party. This change aligns the rule with modern multi-claim, multi-party practice and promotes efficiency by simplifying cases and facilitating settlement.

Second, the amendment to Rule 41(a)(1)(A)(ii) clarifies that a stipulation of dismissal must be signed only by parties who have appeared and remain in the case, not by those previously dismissed. Together, these changes modernize the rule, reduce unnecessary procedural hurdles, and better support the goals of narrowing issues and streamlining litigation.

AAJ-Identified Issues for Comments

- *Does the proposed text clearly reflect that plaintiffs may dismiss an entire action, one or more parties, or one or more claims, given the Advisory Committee's changes during deliberation? Is additional clarification needed to ensure plaintiffs understand the options available?*
- *Will the amendment reduce the need for amended complaints and motion practice under Rule 15, thereby saving time and resources for both parties and courts?*
- *How would the ability to dismiss individual claims help plaintiffs streamline cases after discovery, reduce unnecessary claims, and focus on viable issues? In particular, how might the amendment benefit employment, civil rights, and consumer plaintiffs who often must plead multiple claims at the outset due to limited access to evidence?*
- *Do you support the proposed change to subsection (a)(1)(A)(ii), which would require all remaining parties to stipulate to the dismissal after an answer or motion for summary judgment has been served? Is the proposed language sufficient to reduce burdens while still protecting fairness to other parties? Should the stipulation be further limited to address only the parties who are subject to the dismissal?*

Rule 41. Dismissal of Actions or Claims

(a) Voluntary Dismissal.

(1) By ~~the~~ a Plaintiff.

(A) **Without a Court Order.** Subject to Rules 23(e) , 23.1(c) , 23.2 , and 66 and any applicable federal statute, ~~the~~ a plaintiff may dismiss ~~an~~ its action or one or more of its claims without a court order by filing:

- (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or
- (ii) a stipulation of dismissal signed by all parties who have appeared and remain in the action.

* * * * *

(2) **By Court Order; Effect.** Except as provided in Rule 41(a)(1) , an action or one or more claims may be dismissed at ~~the~~ a plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action, claim, or claims may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice.

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COMMITTEE NOTE

Rule 41 is amended in two ways. First, Rule 41(a) has been amended to add language clarifying that a plaintiff may voluntarily dismiss “one or more of its claims” in a multi-claim case. A plaintiff may accomplish dismissal of either its action or one or more of its claims unilaterally prior to an answer or motion for summary judgment by a party opposing that claim, or by stipulation or court order. Some courts interpreted the previous language to mean that only an entire case, i.e. all claims against all defendants, or only all claims against one or more defendants, could be dismissed under this rule. The language suggesting that voluntary dismissal could only be of an entire case has remained unchanged since the 1938 promulgation of the rule. In the intervening years, multi-claim and multi-party cases have become more typical, and courts are now encouraged to both simplify and facilitate settlement of cases. The amended rule is therefore more consistent with widespread practice and the general policy of narrowing the issues during pretrial proceedings. This amendment to Rule 41(a), permitting voluntary dismissal of a claim or claims, does not affect the operation of Rule 41(d), whose applicability is limited to situations when

the plaintiff has previously dismissed an entire action.

Second, Rule 41(a)(1)(A)(ii) is amended to clarify that a stipulation of dismissal need be signed only by all parties who have appeared and remain in the action. Some courts had interpreted the prior language to require all parties who had ever appeared in a case to sign a stipulation of dismissal, including those who have dismissed all claims, or had all claims against them dismissed. Such a requirement can be overly burdensome and an unnecessary obstacle to narrowing the scope of a case; signatures of the parties currently litigating claims at the time of the stipulation provide both sufficient notice to those actively involved in the case and better facilitate formulating and simplifying the issues and eliminating claims that the parties agree to resolve.

Federal Rule of Civil Procedure 45(b) Service of a Subpoena

Proposed Rule Text & Draft Committee Note

The Standing Committee published a proposed amendment to FRCP 45(b) related to subpoena delivery. This amendment is designed to address practical problems resulting from the ambiguity of the phrase “delivering a copy to the named person” within the current version of Rule 45(b)(1).

AAJ-Identified Issues for Comments

- *Does the amendment sufficiently address the practical challenges of serving individuals in gated communities or other secured locations?*
- *In subsection (b)(1)(A)(ii), does limiting service to someone “who resides there” unnecessarily exclude reliable household staff such as nannies, housekeepers, or personal assistants who may not reside on the property?*
- *Should the Committee Note clarify the meaning of “suitable age” in subsection (b)(1)(A)(ii)? Is a 10-year-old of suitable age? What about a teenager?*
- *Does delivery by commercial carrier with in (b)(1)(A)(iii) provide adequate notice to the named party? Does the confirmation of “actual” receipt raise any issues that require clarification?*
- *Should the Committee Note define or give examples of what “reasonably calculated” means in subsection (b)(1)(A)(iv)? Should service by social media be mentioned when the person is an active user?*
- *Is the “good cause” standard for permitting alternative service methods sufficient, or should the rule provide more guidance on what constitutes good cause in the subpoena context?*
- *To what extent will these changes reduce litigation costs, delays, and disputes over subpoena service, particularly for non-party witnesses?*
- *Are there categories of cases (e.g., employment, consumer, or complex civil litigation) where the amended service methods are especially likely to improve efficiency, or conversely, to raise fairness concerns?*

Rule 45. Subpoena.

* * * * *

(b) Service.

(1) ~~By Whom and How; Tendering~~ Means; Notice Period; Fees.

(A) By Whom and How. Any person who is at least 18 years old and not a party may serve a subpoena. Serving a subpoena requires:

(i) delivering a copy to the named person personally;

(ii) leaving a copy at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(iii) sending a copy to the person's last known address by a form of United States mail or commercial-carrier delivery, if the selected method provides confirmation of actual receipt; or

(iv) using another means that is authorized by the court for good cause and is reasonably calculated to give notice.

(B) Time to Serve if Attendance Is Required; Tendering Fees.

~~and, if~~ the subpoena requires that the named person's attendance, a trial, hearing, or deposition, unless the court orders otherwise, the subpoena must be served at least 14 days before the date on which the person is commanded to attend. In addition, the party serving the subpoena must tendering the fees for 1 day's attendance and the mileage allowed by law at the time of service, or at the time and place the person is commanded to appear. Fees and mileage need not be tendered when the subpoena issues on behalf of the United States or any of its officers or agencies.

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COMMITTEE NOTE

Rule 45(b)(1) is amended to clarify the means of serving a subpoena. Courts have disagreed about whether the rule requires hand delivery. Though service of a subpoena usually does not present problems—particularly with regard to deposition subpoenas—uncertainty about what the rule requires has on occasion caused delays and imposed costs.

The amendment removes that ambiguity by providing that methods

authorized under Rule 4(e)(2)(A) and (B) for service of a summons and complaint constitute effective service of a subpoena. Though the issues involved with service of a summons are not identical with service of a subpoena, the basic goal is to give notice and the authorized methods should assure notice. In place of the current rule's use of "delivering," these methods of service also are familiar methods that ought easily adapt to the subpoena context.

The amendment also adds another option—service by United States mail or commercial carrier to the person's last known address, if the selected method provides confirmation of actual receipt. The rule does not prescribe the exact means of confirmation, but courts should be alert to ensuring that there is reliable confirmation of actual receipt. *Cf.* Rule 45(b)(4) (proving service of subpoena). Experience has shown that this method regularly works and is reliable.

The amended rule also authorizes a court order permitting an additional method of serving a subpoena so long as that method is reasonably calculated to give notice. A party seeking such an order must establish good cause, which ordinarily would require at least first resort to the authorized methods of service. The application should also demonstrate that the proposed method is reasonably calculated to give notice.

The amendment adds a requirement that the person served be given at least 14 days' notice if the subpoena commands attendance at a trial, hearing, or deposition. Rule 45(a)(4) requires the party serving the subpoena to give notice to the other parties before serving it, but the rule does not presently require any advance notice to the person commanded to appear. Compliance may be difficult without reasonable notice. Providing 14-day notice is a method of avoiding possible burdens on the person served. In addition, emergency motions for relief from a subpoena can burden courts. For good cause, the court may shorten the notice period on application by the serving party.

The amendment also simplifies the task of serving the subpoena by removing the requirement that the witness fee under 28 U.S.C. § 1821 be tendered at the time of service as a prerequisite to effective service. Though tender at the time of service should be done whenever practicable, the amendment permits tender to occur instead at the time and place the subpoena commands the person to appear. The requirement to tender fees at the time of service has in some cases further complicated the process of serving a subpoena, and this alternative should simplify the task.

Federal Rule of Civil Procedure 45(c) & 26(a) Subpoena for Remote Testimony

Proposed Rule Text & Draft Committee Note

The Standing Committee published two proposed rule changes related to expanding the availability of remote trial testimony. The draft amendment to FRCP 45(c) is designed to correct the Ninth Circuit's holding in *In Re Kirkland*, 75 F.4th 1030 (9th Cir. 2023), which held that district courts lack the "subpoena authority" to command a distant witness to provide remote trial testimony, despite a 2013 revision of Rule 45 permitting a presiding court to issue a subpoena commanding a witnesses to testify that can be served anywhere in the United States. A corresponding change would further clarify that remote witnesses are covered by the pretrial disclosure requirements in FRCP 26(a).

The Advisory Committee on Civil Rules will continue to discuss potential additional changes to FRCP 43 and 45(b) to broaden the use of videoconferencing technology in federal courts, but has not submitted a final proposal for public comment.

AAJ-Identified Issues for Comments

- *Does the proposed amendment to Rule 45(c) effectively resolve the problem identified in In re Kirkland by confirming courts' authority to compel remote testimony nationwide, so long as travel burdens are not exceeded?*
- *Should the Committee Note further emphasize that the amendment is intended to expand access to justice by ensuring plaintiffs and nonparties are not excluded from proceedings solely because of geography?*
- *Should the rule text or Committee Note address best practices for ensuring technological access and reliability, particularly for individual plaintiffs and nonparty witnesses?*
- *Does the addition to Rule 26(a) provide sufficient notice to opposing parties about whether testimony will be presented remotely?*

Rule 45. Subpoena.

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(c) Place of Compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Remote Testimony. Under Rule 45(c)(1), the place of attendance for remote testimony is the location where the person is commanded to appear in person

(32) For Other Discovery. A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

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COMMITTEE NOTE

In 2013, Rule 45(a)(2) was amended to provide that a subpoena must issue from the court where the action is pending, and Rule 45(b)(2) now provides that such a subpoena can be served at any place within the United States.

Since the 2013 amendments, however, some courts have concluded that they are without authority to command witnesses to provide remote trial testimony because the witnesses are not within the “subpoena power” of the presiding court. *See, e.g., In re Kirkland*, 75 F.4th 1030 (9th Cir. 2023) (holding that a subpoena can compel remote trial testimony from a witness only if the witness resides or transacts business in person within 100 miles of the court or within the state in which the court sits). Questions have also been raised about whether a subpoena can compel a

nonparty to provide discovery if the nonparty witness is located outside the geographical scope of the subpoena power to command the witness to appear in court. *See, e.g., York Holding, Inc. v. Waid*, 345 F.R.D. 626 (D. Nev. 2024) (rejecting the argument that a Nevada district court subpoena could not command production of documents within 100 miles of the nonparty’s place of business in New Hampshire).

This amendment clarifies that the court’s subpoena power for in-court testimony or to provide discovery extends nationwide so long as a subpoena does not command the witness to travel farther than the distance authorized under Rule 45(c)(1), which provides protections against undue burdens on persons subject to subpoenas. It specifies that, for purposes of Rule 45(c)(1), the witness “attends” at the place where the person must appear to provide the remote testimony. For purposes of Rule 43 and Rule 77(b), such remote testimony occurs in the court where the trial or hearing is conducted.

The amendment does not alter the standards for deciding whether to permit in-court remote testimony. Instead, it applies to any subpoena for witness testimony. Ordinarily, court approval is required for remote testimony in court. Rule 43, for example, authorizes remote testimony in trials and hearings but depends on court permission for such testimony. Rule 26(a)(3)(A)(i) requires that the parties disclose the identities of witnesses whose testimony will be presented, without distinguishing between in-person and remote testimony. Even remote deposition testimony is authorized only by stipulation or court order. *See* Rule 30(b)(4).

When a subpoena commands a witness to provide remote testimony, it is the responsibility of the serving party to ensure that the necessary technology is available at the remote location for such testimony.

Rule 26. Duty to Disclose; General Provisions Governing Discovery

(a) Required Disclosures.

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(3) Pretrial Disclosures.

(A) *In General*. In addition to the disclosures required by Rule 26(a)(1) and (2), a party must provide to the other parties and promptly file the following information about the evidence that it may present at trial other than solely for impeachment:

(i) the name and, (if not previously provided), the address and telephone number of each witness—separately identifying those the party expects to present and those it may call if the need arises, and whether the testimony will be in person or remote;

(ii) the designation of those witnesses whose testimony the party expects to present by deposition and, if not taken stenographically, a transcript of the pertinent parts of the deposition; and

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COMMITTEE NOTE

Under Rule 43, the court may permit remote testimony at trial. Because Rule 26 requires disclosure of witnesses a party “expects to present,” it should be understood to include witnesses who will testify remotely upon court approval. This amendment clarifies that the disclosure requirement applies whether or not the witness is testifying in person or remotely and alerts the parties and the court that a party proposes to present one or more witnesses remotely.

Federal Rule of Civil Procedure 81(c) Post-Removal Jury Demands

Proposed Rule Text & Draft Committee Note

The Standing Committee has published a proposed amendment to address an unintended consequence of the Judicial Conference's 2007 restyling project, which altered the operative verb tense in FRCP 81(c) and created confusion about when and whether to demand a jury trial after removal. As currently worded, the rule suggests that a party need not demand a jury trial after removal only if the state court never requires such a demand, leaving uncertainty in cases where state law requires a jury demand, but the deadline for the demand had not passed at the time of removal. This ambiguity has produced inconsistent results regarding whether, and when, a party must serve a demand for jury trial in removed actions.

To ensure that no one misses the deadline to demand a jury trial, the proposed change to subsection (c) clarifies that Rule 38 governs jury demands in removed cases and preserves the right of any party who properly demanded a jury trial in state court before removal.

AAJ-Identified Issues for Comments

- *Does the proposed amendment adequately safeguard the right to trial by jury in removed cases and prevent technical defaults that could deprive a party of that right?*
- *For states that do not require an express jury demand (e.g., Arizona, Georgia, Minnesota, Mississippi, Missouri, Nebraska, Oklahoma, and Oregon), does the amendment make clear how a party should demand a jury trial once the case is removed to federal court?*
- *Is the language of the proposed amendment sufficiently clear? If not, what revisions would improve its clarity and precision?*
- *Are there revisions that should be made to the Draft Committee Note to better guide courts and practitioners?*

Rule 81. Applicability of the Rules in General; Removed Actions.

* * * * *

(c) Removed Actions.

(1) **Applicability.** These rules apply to a civil action after it is removed from a state court.

* * * * *

(3) *Demand for a Jury Trial.*

(A) ***Before Removal***~~As Affected by State Law~~. A party who, before removal, expressly demanded a jury trial in accordance with state law need not renew the demand after removal. ~~If the state law did not require an express demand for a jury trial, a party need not make one after removal unless the court orders the parties to do so within a specified time. The court must so order at a party's request and may so order on its own. A party who fails to make a demand when so ordered waives a jury trial.~~

(B) ***After Removal***. If no demand has been made before removal, Rule 38(b) governs a demand for a jury trial. If all necessary pleadings have been served at the time of removal, a party entitled to a jury trial under Rule 38(b) must be given one if the party serves a demand within 14 days after.

~~(B) ***Under Rule 38***. If all necessary pleadings have been served at the time of removal, a party entitled to a jury trial under Rule 38 must be given one if the party serves a demand within 14 days after:~~

- (i) it files a notice of removal; or
- (ii) it is served with a notice of removal filed by another party.

COMMITTEE NOTE

Rule 81(c) is amended to remove uncertainty about when and whether a party to a removed action must demand a jury trial. Prior to 2007, the rule said no demand was necessary if the state court “does” not require a jury demand to obtain a jury trial. State practice on jury demands varies, and it appears that in at least some state courts no demand need be made, although it is uncertain whether those states actually guarantee a jury trial unless the parties affirmatively waive jury trial. In other state courts, a jury demand is required, but only later in the case than the deadline in Rule 38 for demanding a jury trial. A number of states have rules similar

to Rule 38, but time limits for making a jury demand differ from the time limit in Rule 38.

This amendment is designed to remove uncertainty about whether and when a jury demand must be made after removal. It explicitly preserves the right to jury trial of a party that expressly demanded a jury trial before removal. But otherwise it makes clear that Rule 38 applies to removed cases. If all pleadings have been served at the time of removal, the demand must be made by the removing party within 14 days of the date on which it filed its notice of removal, and by any other party within 14 days of the date on which it was served with a notice of removal. If further pleadings are required, Rule 38(b)(1) applies to the removed case.

When no demand has been made either before removal or in compliance with Rule 38(b), the court has discretion under Rule 39(b), on motion, to order a jury trial on any issue for which a jury trial might have been demanded.

The amendment removes the prior exemption from the jury demand requirement in cases removed from state courts in which an express demand for a jury trial is not required. Courts no longer have to order parties to cases removed from such state courts to make a jury demand; the rule so requires.