

A FRESH LOOK AT THE FEDERAL RULES IN STATE COURTS

John B. Oakley*

I. INTRODUCTION

In 1986, Arthur Coon and I published a detailed study of the procedural systems of the fifty states and the District of Columbia, comparing these local procedural systems to the Federal Rules of Civil Procedure (FRCP).¹ Our ambition was to carry forward the work of Judge Charles Clark and Professor Charles Alan Wright, who in earlier studies² had found an “accelerating trend in the states toward adoption of the federal rules.”³ We sought to determine whether, as commonly assumed, this trend had continued to the point where, in most states, there was “but one procedure for state and federal courts.”⁴

We found this a conceptually demanding inquiry. In unpacking the concept of the federal model of procedure, we discovered that a determination of the degree of affinity of a particular state’s system of civil procedure to the federal model required asking not one but rather a cluster of questions – some of which generated (as to particular states) contradictory answers. We likewise found that there was no single standard for determining nationwide whether the federal model of procedure was indeed dominant among the states. Again, we discovered that this inquiry dissolved into a cluster of questions capable of generating inconsistent answers. As I recount below in Part II’s summary of our 1986 report, we were surprised by some of the answers that our study generated.

Part III presents a new and briefer study directed exclusively to those jurisdictions that were previously identified as substantially conforming to the federal model of civil procedure. I examine the degree to which these states have continued to conform to the Federal Rules as amended over the past two decades. My present findings are not unexpected,⁵ but they are dramatic and,

* Professor of Law, University of California at Davis. I gratefully acknowledge the able research assistance of Gage Dungey and Jamie Mueller, both J.D. candidates at Davis in the class of 2003, and that of Jessica Hart, a J.D. candidate at Davis in the class of 2004.

¹ John B. Oakley & Arthur F. Coon, *The Federal Rules in State Courts: A Survey of State Court Systems of Civil Procedure*, 61 WASH. L. REV. 1367 (1986).

² See *id.* at 1369-72.

³ *Id.* at 1367, quoting 1 W. BARRON & A. HOLTZOFF, *FEDERAL PRACTICE AND PROCEDURE, Foreword* at iii (Wright ed. 1960) (hereinafter BARRON & HOLTZOFF).

⁴ *Id.* at 1371, quoting BARRON & HOLTZOFF, *supra* note 3, § 9, at 45.

⁵ Writing in 1989, Professor Subrin took stock of state incorporation of the 1983 amendments to Federal Rules 11 and 26 and found a marked decline in the number of state procedural systems that closely replicated the federal model. “At this point, there may be only eight or so current replica states: Minnesota, Montana, North Dakota, Tennessee, Utah, Vermont, Washington, and West Virginia.” Stephen N. Subrin, *Federal Rules, Local Rules, and State Rules: Uniformity, Divergence, and Emerging Procedural Patterns*, 137 U. PA. L.

at least to those who share Judge Clark's and Professor Wright's belief in the value of procedural uniformity, unsettling. Not only has the trend toward state conformity to the federal rules stopped accelerating – it has substantially reversed itself. The much-discussed (and generally lamented) phenomenon of disuniformity of procedure within the federal courts themselves, associated with the Civil Justice Reform Act of 1990 and the FRCP amendments of 1993, has been accompanied by a general disinclination of states to conform to the ever-changing contours of the FRCP. In the discovery context, the FRCP amendments of 2000 seek to restore federal uniformity. Whether they will succeed at the federal level remains to be seen. My fresh look at the federal rules in state courts reveals that, from a state perspective, the FRCP have lost credibility as avatars of procedural reform. Federal procedure is less influential in state courts today than at anytime in the past quarter-century. While the federal model of civil procedure remains substantially influential at the state level, it is no longer true that many state systems of civil procedure replicate the federal model. Indeed, it is arguable that there are no longer any true replicas of the FRCP to be found among the local procedural systems of the fifty states and the District of Columbia.

II. THE 1986 STUDY OF THE FEDERAL RULES IN STATE COURTS

When my coauthor and I sought in 1986 to determine the degree to which there was indeed “but one procedure for state and federal courts,” our principal difficulty turned out to be one of classification. It was not possible to classify procedural systems in “either/or” terms that neatly distinguished those that followed the federal model from those that did not. We found it necessary to develop a much more complex methodology of classification. I will leave a complete explanation of that methodology to our article, and summarize it here as involving a three-step classificatory process.

First, we sought to identify those procedural systems that were true “Federal Rules replicas” in the strong sense that “without significant qualification” in these jurisdictions “there is ‘but one procedure for state and federal courts.’”⁶ A jurisdiction classified as replicating the Federal Rules met each of the following nine criteria:⁷ (1) judicially promulgated rules of procedure rather than a statutory code; (2) general conformity to the FRCP in the organization and enumeration of procedural rules; (3) merger of law and equity into one form of civil action; (4) general conformity to federal joinder rules as amended in 1966; (5) general conformity to the federal discovery rules as amended in 1970; (6) provision for summary judgment according to the model of the FRCP; (7) a liberal regime of “notice pleading” that conforms without qualification to that prescribed by the federal rules as interpreted in *Conley v. Gib-*

REV. 1999, 2037 (1989). Professor Main looked at these eight states in 2001 and found that only two, Utah and Vermont, had maintained their replica status by adopting the subsequent 1993 amendments to Federal Rules 11 and 26. Thomas O. Main, *Procedural Uniformity and the Exaggerated Role of Rules: A Survey of Intra-State Uniformity in Three States That Have Not Adopted the Federal Rules of Civil Procedure*, 46 VILL. L. REV. 311, 323 & n.56 (2001).

⁶ BARRON & HOLTZOFF, *supra* note 3, at 1372.

⁷ See *id.* at 1374-75.

son;⁸ (8) to the extent that any aspect of procedural practice might be idiosyncratic or unconventional by federal standards, fundamental conformity to the Federal Rules' philosophy that procedure should serve justice rather than being an end in itself; and (9) adherence to precedent and commentary construing the FRCP as persuasive authority in the construction of local rules of procedure.

In classifying jurisdictions that did not thus qualify for federal-replica status, we identified two key points of comparison, one internal and one external to the rules of civil procedure of a given system.

The internal criterion was the type of pleading deemed sufficient by a procedural system: did it permit the "notice pleading" that is characteristic of the federal model, or demand the more specific "fact pleading" that characterizes "code pleading" systems based on the Field Code adopted in New York in 1848? Arguably, variation in pleading policy is not bipolar, and some jurisdictions ought to be classified as following idiosyncratic pleading rules that cannot be classified as either "notice pleading" or "fact pleading." Here, we found it useful to compress the range of variation, and to classify all procedural systems that did not fall into the "notice pleading" camp as "fact pleading" jurisdictions.

The external criterion was the structure of a procedural system: did it consist of judicially promulgated rules of procedure, and thus structurally resemble the FRCP, or did it consist of a statutory set of rules of procedure, and thus resemble the code-pleading model? Here, we found it necessary to include in our classificatory scheme the third possibility that a particular procedural system might feature various idiosyncratic features that distinguished it from both the federal model and the code-pleading model.

We determined that there were only twenty-two states, plus the District of Columbia, that could be classified as having procedural systems that were true replicas of the FRCP. These twenty-three jurisdictions, classified as "Federal Rules Replicas," were the following:⁹

Alabama
Alaska
Arizona
Colorado
District of Columbia
Hawaii
Indiana
Kentucky
Maine
Massachusetts
Minnesota
Montana
New Mexico
North Dakota
Ohio
Rhode Island
South Dakota
Tennessee

⁸ 355 U.S. 41 (1957).

⁹ BARRON & HOLTZOFF, *supra* note 3, at 1377.

Utah
Vermont
Washington
West Virginia
Wyoming

Three other states, however, featured procedural rules that varied only slightly from the FRCP. While not true federal replicas, the procedural systems of these states were unquestionably modeled on the federal system of procedure. These three states, classified as “Notice Pleading/Federal-Rules-Model Procedural Systems,” were the following:¹⁰

Idaho
Mississippi
Nevada

Another four states would have been classified as federal replicas but for the fact that their procedural rules, although closely paralleling the FRCP, were set forth in a statutory code rather than a set of judicially promulgated rules. These four states, classified as “Notice Pleading/Federal Code Procedural Systems,” were the following:¹¹

Georgia
Kansas
Oklahoma
North Carolina

Finally, three more states featured systems of procedure based on judicially promulgated rules that largely replicated the FRCP, except for the substitution of fact pleading for notice pleading. These three states, classified as “Fact Pleading/Federal-Rules-Model Procedural Systems,” were the following:¹²

Arkansas
Delaware
South Carolina

We concluded that while true replica jurisdictions were in the minority, the federal model of civil procedure was indeed the dominant model among the states – provided the criterion of dominance was the number of jurisdictions substantially following the federal model. As graphically depicted in Chart II of the Appendix to our article,¹³ the thirty-three jurisdictions identified above constituted sixty-five percent of the fifty-one local systems of civil procedure within the United States. To this extent, our study confirmed our presuppositions, and conventional wisdom. In a majority of states there was indeed “but one procedure for state and federal courts” in all but the most technical of senses. However, we noticed something discordant about the states not

¹⁰ *Id.*

¹¹ *Id.* at 1378.

¹² *Id.*

¹³ *Id.* at 1430 (Appendix, Chart II). The Appendix consists of three tables and eleven charts. The tables are reprinted in Westlaw’s electronic version of our article, 61 WALR 1367 in the JLR database, but the charts are not. They convey much useful information that readers may wish to consult by referring to the article as originally published in the Washington Law Review.

included in our list of thirty-three jurisdictions that substantially followed the federal model. These eighteen states fell into a variety of nonconforming categories when compared to the federal model, but there is no need to repeat here our detailed breakdown of the differences among their procedural systems. Grouped together, the eighteen states that we found to have procedural systems substantially dissimilar from the federal model were the following:¹⁴

California
Connecticut
Florida
Illinois
Iowa
Louisiana
Maryland
Michigan
Missouri
Nebraska
New Hampshire
New Jersey
New York
Oregon
Pennsylvania
Texas
Virginia
Wisconsin

At a second glance, if not a first, it should be apparent that this list of eighteen nonconforming states contains a disproportionate number of "big" states when compared to the preceding list of thirty-three states that substantially conform to the federal model of civil procedure. This led us to add population data to our list of conforming and nonconforming jurisdictions, using the 1980 census figures.¹⁵ This led, in turn, to a surprise. If the criterion of dominance is not a count of states, but rather a head count of populations served by local systems of procedure, the supposed dominance of the federal model is almost entirely reversed. We determined that only thirty-eight percent of the population of the United States lived in jurisdictions substantially conforming to the federal model of civil procedure, and sixty-two percent of that population was governed by substantially nonfederal systems of procedure.¹⁶

Another surprising discovery we made was that the pace of state procedural reform to either replicate or substantially emulate the federal model of procedure was noticeably slackening. In Chart X of our Appendix, we graphically depicted data that showed that, after a nearly constant rate of state-court replication of the FRCP from 1949 to 1975, a twenty-six-year period in which the number of replica jurisdictions rose from four to twenty-three, in the ensuing ten years from 1975 to 1985 not a single new state had joined the ranks of federal replicas.¹⁷ Charts XI and XII similarly demonstrated that the pace of state court procedural reform stopping short of replication but, nonetheless,

¹⁴ *Id.* at 1377-78.

¹⁵ *Id.* at 1428-29 (Appendix, Tables I-II).

¹⁶ *Id.* at 1431 (Appendix, Chart VI).

¹⁷ *Id.* at 1434 (Appendix, Chart IX).

moving state procedure substantially closer to the federal model had also slackened almost to a halt during 1975-1985.¹⁸

“By a strict test of replication,” we concluded, “in fewer than half the states is it true that there is ‘but one procedure for state and federal courts.’”¹⁹ Nonetheless, we observed, “the Federal Rules dominate the procedural systems of a substantial majority of state court civil procedural systems if the test for affinity to the Federal Rules is relaxed somewhat from the strict standard we devised in our search for unqualified federal replicas.”²⁰ We cautioned, however, “against exaggeration of the dominance of the Federal Rules in modern American state courts,”²¹ for two reasons:

First, populous states have proven unusually inert to procedural reform. Second, the era of an “accelerating trend” of state court reform of civil procedure in the image of the Federal Rules has ended. The trend continues, albeit slowly, but with ratchet-like effect. . . . [N]o jurisdiction, having adopted the Federal Rules in substantial part, has seen fit to return to its old ways.

But our survey warns that the old ways persist in more than a few jurisdictions, and that a majority of our national population lives in these jurisdictions. Now that the momentum of the Federal Rules as a model for state court reform has subsided, there remains much work to be done. For the Federal Rules to continue to win converts among the states it is more important than ever that the system of procedure embodied by those rules be shown to be not just the newest or most commonplace, but the best.²²

In Part III, I find that the ratchet has slipped. I do not here seek to investigate and evaluate the causes for the decline of state conformity to the federal model, although I admit to a present belief that not all the “newest” federal rules are “the best,” and from this perspective it seems to me more that the states have elected to abstain from experimenting with dubious “new ways” of adjudicating civil actions than that they have chosen “to return to . . . old ways”²³ that they had previously renounced. It is the Federal Rules that appear to have moved away from the states, rather than vice versa.

III. STATE ADOPTION OF RECENT AMENDMENTS TO THE FRCP

I selected thirteen relatively recent amendments to the FRCP as criteria for assessing the receptivity of states to continued conformity to the federal model of civil procedure. Each of these amendments seemed to me to be of sufficient significance (although some are surely more significant than others) to serve as a valid indicator of pro tanto textual disuniformity between state and federal procedure if not adopted by a state that otherwise conforms to the federal rules. I then examined each of the thirty-three jurisdictions identified in 1986 as substantially conforming to the federal model of procedure to determine whether

¹⁸ *Id.* at 1434 (Appendix, Charts X-XI).

¹⁹ Oakley & Coon, *supra* note 1, at 1427 (footnote omitted).

²⁰ *Id.*

²¹ *Id.*

²² *Id.* (footnote omitted).

²³ *Id.*

each of the thirteen sample amendments to the FRCP had been incorporated into their local systems of civil procedure.

I included the 2000 amendment of Federal Rule 26 among my thirteen sample amendments; but because of its recent enactment, I considered it apart from the other sample amendments as an index of state willingness to conform to the federal model. I accorded split treatment to the 1993 amendment to Federal Rule 33, because there is great variation among states in either adopting presumptive limits to the number of interrogatories, or adopting the content of new Rule 33 apart from limiting the number of interrogatories, or both. Thus, I concentrated my analysis on state adoption of twelve amendments of the Federal Rules from 1980 to 1993 (counting the two aspects of new Rule 33 as two separate sample amendments), while also tracking state conformity to the 2000 amendment to Rule 26 as my thirteenth criterion of comparison.

A. *Criteria for Comparison*

Listed chronologically, the thirteen amendments to the FRCP that I used to gauge continued state conformity to the federal model are the following:

(1) The 1980 amendment adding new subdivision (f) to Rule 26. Rule 26(f) authorized district courts to convene discovery conferences. Rule 26(f) was further amended in 1993 to require a discovery conference except as provided by local rule or court order, and again in 2000, to delete the power of district courts to opt out of the discovery-conference requirement by local rule. I checked for state adoption of any version of Rule 26(f).

(2) The 1983 amendment that substantially stiffened the certification obligations imposed by Rule 11. The effect of the 1983 amendment was substantially altered by the 1993 amendment of Rule 11. I checked for state adoption of the 1983 amendment independently of the 1993 amendment.

(3) The 1983 amendment of Rule 16 substantially expanding the pretrial case-management powers of the district courts and (subject to curtailment by local rule) requiring a scheduling conference within 120 days of the commencement of a civil action. The powers and duties conferred by the 1983 amendment were substantially altered by the 1993 amendment of Rule 16. I checked for state adoption of the 1983 amendment independently of the 1993 amendment.²⁴

(4) The 1991 amendment of Rule 45 substantially altering federal practice with regard to the use, issuance, and service of subpoenas.

(5) The 1991 amendment of Rule 50 substituting the motion for “judgment as a matter of law” as an omnibus replacement for motions for directed verdict or for judgment notwithstanding the verdict.

(6) The 1993 amendment of Rule 4(d) introducing a “waiver of service” procedure into federal practice regarding the service of a summons upon a defendant at the commencement of a civil action.

(7) The 1993 amendment of Rule 11 that softened the sanctions for violation of the certification standards of Rule 11 as amended in 1983 by, *inter alia*,

²⁴ See generally Jeffrey A. Parness & Mathew R. Walker, *Thinking Outside the Civil Case Box: Reformulating Pretrial Conference Laws*, 50 KAN. L. REV. 347, 349-53 (2002) (discussing 1983 and 1993 revisions of Federal Rule 16).

introducing “show cause” and “safe harbor” limitations on sanctions ordered *sua sponte* or on motion of a party.

(8) The 1993 amendment of Rule 16 further expanding the pretrial powers of district courts and limiting the degree of local variation in pretrial practice among district courts.

(9) The 1993 amendment of Rule 26(a) introducing mandatory-disclosure procedures subject to local opt-out. The widely implemented provision for particular districts to abstain from mandatory disclosure by local rule was repealed by the 2000 amendment of Rule 26(a). I checked for state adoption of the 1993 amendment independently of the 2000 amendment.

(10) The 1993 amendment of Rule 30 to provide in Rule 30(a)(2)(A) that, without leave of court or written stipulation, plaintiffs, defendants, and third-party defendants may take no more than ten depositions. In a multiparty action, the ten-deposition limit applies collectively to each of these classes of parties of opposing parties.

(11) The 1993 amendment of Rule 33 to provide in Rule 33(a) that, without leave of court or written stipulation, a party may serve no more than twenty-five interrogatories on any other party.

(12) The 1993 amendment of Rule 33 revising its general content with respect to the use of interrogatories, apart from presumptive limitation of the number of interrogatories.

(13) The 2000 amendment of Rule 26(a) making the 1993 disclosure requirements mandatory nationwide in most civil actions, absent written stipulation or court order.

B. State-by-State Summaries

The following summaries of state responses to the thirteen sample amendments are organized, first, by the four categories of states previously identified: the twenty-two states and the District of Columbia that we identified in 1986 as “Federal Rules Replicas,” the three states classified as “Notice Pleading/Federal-Rules-Model Procedural Systems,” the four states classified as “Notice Pleading/Federal Code Procedural Systems,” and the three states classified as “Fact Pleading/Federal-Rules-Model Procedural Systems.” The states within each category are arranged alphabetically.

1. Federal Rules Replicas

ALABAMA²⁵

The Alabama Rules of Civil Procedure have incorporated most of the FRCP’s amendments, with a few notable exceptions. Alabama Rule 4 does not exist in the same format as in the FRCP and since 1977 has been fragmented into Rule 4 through Rule 4.4. Alabama’s Rule 4 series has not been revised significantly since 1992. It does not conform to the 1993 amendment of Federal Rule 4. Alabama Rule 11 underwent a technical revision in 1995, but has not been significantly revised since its 1973 adoption; it does not conform to either the 1983 or the 1993 amendments of its federal counterpart. Alabama

²⁵ See ALA. R. CT., R. CIV. P. (2001).

Rule 16 was revised in 1995 to conform to the 1983 version of its federal counterpart, rather than the 1993 version. Although revised in many technical respects in 1995, Alabama Rules 26, 30 and 33 remain patterned on the 1970 versions of their federal counterparts. They incorporate a local provision for discovery conferences loosely patterned on the 1980 amendment that added Federal Rule 26(f), and also incorporate the 1980 amendment of Federal Rule 33(b) requiring added specificity when a party provides access to business records in lieu of responding to interrogatories. Alabama Rule 30 does not limit the number of depositions. Alabama Rule 33 limits the number of interrogatories as of right to forty per party, but this reform was adopted in 1990 on the basis of the similar provision in Ohio's 1989 version of Rule 33, rather than on the basis of the reform of Federal Rule 33 that became effective in 1993.²⁶ Alabama Rule 33 does not conform to the 1993 version of Federal Rule 33. Alabama Rules 45 and 50 both incorporate, with a few minor exceptions, the terms of Federal Rules 45 and 50 as amended in 1991.

ALASKA²⁷

Alaska has only partially incorporated recent FRCP amendments into its own rules of civil procedure. Despite revisions in 1994 and 2001, Alaska Rule 4 continues to be modeled on the original, 1938 version of Federal Rule 4. It does not authorize waiver of service of process. Alaska Rule 11 conforms to the 1983 version of its federal counterpart, rather than the 1993 version. Alaska Rule 16 presently mirrors the 1993 version of Federal Rule 16, with a few local additions; previously it had tracked the 1983 version of its federal counterpart.²⁸ Alaska Rules 26(a) and 26(f) incorporate the FRCP's 1980 and 1993 amendments. Alaska Rule 26 was last revised in 1998, however, and therefore does not reflect the 2000 amendments of Federal Rule 26. Alaska has followed the FRCP 1993 revisions in Rule 30(a)(2)(A) with a stricter limit of three depositions. As to interrogatories, Alaska Rule 33(a) closely follows the FRCP 1993 amendments and limits the number of interrogatories to thirty. Although revised as recently as 1994, Alaska Rules 45 and 50 do not conform to the 1991 versions of their federal counterparts.

ARIZONA²⁹

The rules of civil procedure in Arizona vary in their present conformity to the federal model. Some rules have been revised to track recent FRCP amendments, while others have remained unchanged. Federal Rule 4(d) as amended in 1993 is closely mirrored by Arizona Rule 4.2(d)'s provisions for service of process outside of the state, as most recently revised in 1997. Arizona Rule 11 was revised in 1987 to track the text of the FRCP's 1983 amendment, with two

²⁶ See *id.*, Committee Comments to Amendment to Rule 33(a). Effective Oct. 1, 1990.

²⁷ See ALASKA CT. R., R. CIV. P. (Michie 2002).

²⁸ See *Howard S. Lease Constr. Co. & Assocs. v. Holly*, 725 P.2d 712, 720 (Alaska 1986) (referring to the 1983 version of Federal Rule 16(e) as "the federal analog to [Alaska] Civil Rule 16(e)").

²⁹ See ARIZ. REV. STAT. ANN., R. CIV. P. (West 2002).

additional subdivisions regarding the verification of pleadings. The FRCP's 1993 amendments have not been included. Arizona Rule 16, last revised in 1995, includes elements of both the 1983 and 1993 amendments of Federal Rule 16, along with many local additions. Arizona Rule 26 does not have the same structure as the FRCP and does not appear to conform to either the FRCP 1993 and 2000 amendments to Rule 26(a) or the 1980 amendments to Rule 26(f). Arizona Rules 30 and 33 were revised in 1996, but do not conform to the 1993 versions of their federal counterparts. Arizona Rule 30 imposes no limit on the number of depositions. Arizona Rule 33 similarly leaves unlimited the number of interrogatories that may be propounded as of right. Arizona Rules 45 and 50 conform fully to the FRCP's 1991 amendments, with minor local additions.

COLORADO³⁰

Colorado Rule 4 was revised in 1997 to incorporate the 1993 version of Federal Rule 4(d)(1) as Colorado Rule 4(i). The other 1993 amendments of Federal Rule 4 were not implemented. Colorado Rule 11 closely resembles the 1983 version of Federal Rule 11, but does not conform to the 1993 amendment of that rule. In 1988, Colorado Rule 16 was revised in rough conformity with Federal Rule 16.³¹ In 1995, Colorado adopted a completely rewritten Rule 16 that (to use the rule's official caption) covers the entire process of "Case Management and Trial Management." Among the many other topics covered by Colorado Rule 16 is the pretrial conference. This part of Colorado Rule 16 was manifestly influenced by the 1993 revision of its federal counterpart.³² Colorado's Rule 26 as revised in 2001 follows both the 1993 and 2000 amendments to Federal Rule 26, with some exceptions that are carefully noted in the accompanying Committee Comment.³³ Colorado does not have a Rule 26(f), but it has provided for discovery conferences in its revised and expanded Rule 16. Colorado Rule 30(a)(2)(A) mirrors the FRCP 1993 amendments, except that the rule does not specifically limit the number of depositions to which a party is entitled as of right. Rather, the judge is authorized to limit the number of depositions by appropriate provision in the case management order. Rule 33(a) similarly does not specifically limit the number of interrogatories, but Rule 16 again gives the judge discretionary power to set a limit on the number of inter-

³⁰ See COLO. REV. STAT. ANN., R. CIV. P. (West 2002).

³¹ See COLO. REV. STAT. ANN., COL. R. CIV. P., RULE 16, COMMITTEE COMMENT – HISTORY AND PHILOSOPHY (West 1990) (2001 Cumulative Annual Pocket Part at 58) (describing 1988 revision of Colorado Rule 16). See also *Freedman v. Kaiser Found. Health Plan of Colo.*, 849 P.2d 811, 815 (Colo. App. 1992) (describing pretrial conference standards and procedures under 1988 version of Colorado Rule 16).

³² See *id.* (describing process of 1995 revision of Colorado Rule 16); *id.*, COMMITTEE COMMENT – OPERATION (2001 Cumulative Annual Pocket Part at 58-60) (describing scope and content of 1995 revision of Colorado Rule 16).

³³ See COLO. REV. STAT. ANN., R. CIV. P., RULE 26 COMMITTEE COMMENT – COLORADO DIFFERENCES (West 1990) (2001 Cumulative Annual Pocket Part at 89) (comparing Colorado's "mandatory automatic disclosures" under Colorado Rules 16 and 26 with 1993 version of Federal Rule 26); *id.*, COMMITTEE COMMENT – NOTES TO CHANGES ADOPTED IN 2001 (2001 Cumulative Annual Pocket Part at 90) (describing latest technical amendments to Colorado Rule 26).

rogatories in the case management order. Although revised in 1998, Colorado Rule 45 does not conform to the FRCP 1991 amendments, retaining the format of the earlier federal version. Colorado has not adopted the terminology of new Federal Rule 50 and continues to provide for motions for directed verdict and JNOV.

DISTRICT OF COLUMBIA³⁴

District of Columbia Rule 4 conforms to all but the most important of the 1993 amendments of Federal Rule 4. It makes no reference to waiver of service of process, and Rule 4(d) – where the waiver provision appears in Federal Rule 4 – has been left blank. District of Columbia Rule 11 was based on the 1983 version of Federal Rule 11 until 1995,³⁵ when it was amended to conform to the 1993 version of its federal counterpart.³⁶ Since 1985, the District of Columbia has operated under a highly complex, unique local version of Rule 16 that does not conform to either the 1983 or 1993 versions of Federal Rule 16.³⁷ District of Columbia Rule 26(a) also does not reflect the FRCP 1993 or 2000 amendments, even as most recently revised in 2001. District of Columbia Rule 26(g) mirrors the FRCP 1980 amendments to Rule 26(f) regarding discovery conferences. District of Columbia Rule 30(a)(2)(A) is identical to the FRCP 1993 amendments and limits the number of depositions to ten. Rule 33(a) is very similar to the FRCP 1993 amendments, with a few additions and with the limit on the number of interrogatories raised from twenty-five to forty. District of Columbia Rule 45 is almost identical to the 1991 version of Federal Rule 45, with a few local adjustments. District of Columbia Rule 50 has been revised to conform almost exactly to the revised terminology for judgment as a matter of law under the 1991 amendment of Federal Rule 50.

HAWAII³⁸

Hawaii Rule 4(d), although last revised in 2000, continues to replicate the 1963 version of Federal Rule 4. It does not conform to Federal Rule 4(d) or any other provision of Federal Rule 4 as amended in 1993. On the other hand, Hawaii Rules 11 and 16 were revised in 2000 to conform identically to the

³⁴ See D.C. RULES OF CT., R. CIV. P. (2002).

³⁵ A partial quotation of the pre-1995 text of D.C. Rule 11 appears in *Gray v. Washington*, 612 A.2d 839, 841 (D.C. 1992). The quoted language tracks exactly the 1983 version of Federal Rule 11, and the court commented that “[o]ur rule is identical to the federal rule.” *Id.* at 842.

³⁶ See *Peddlers Square, Inc. v. Scheuermann*, 766 A.2d 551, 556 (D.C. 2001) (describing the distinctive “safe harbor” provision of the 1993 version of Federal Rule 11 as having become effective under revised D.C. Rule 11 as of July 1, 1995).

³⁷ See Comment [on Superior Court Civil Procedure Rule 16] in *Lexis D.C. CT. RULES ANN.* at 348 (2002). See also *Solomon v. Fairfax Village Condo. IV Unit Owner’s Ass’n*, 621 A.2d 378, 380 (D.C. 1993) (discussing in detail the scope and ambitions of D.C. Rule 16 and describing it as “of fairly recent vintage” but antedating the filing in 1989 of the case before the court).

³⁸ See *HAW. CT. R. ANN., R. CIV. P.* (Michie 1999).

1993 amendments of Federal Rules 11 and 16.³⁹ Hawaii Rule 26(a) was most recently revised in 1997 and does not follow the 1993 FRCP discovery amendments; however Hawaii Rule 26(f) does track the 1980 FRCP amendment providing for discovery conferences. Hawaii Rules 30(a)(2)(A) and 33 have not been revised to conform to the 1993 versions of their federal counterparts; they impose no presumptive limits on the number of depositions and interrogatories. Hawaii Rule 45 was amended in 2000 to incorporate subdivision (d) of Federal Rule 45 as amended in 1991; but otherwise, Hawaii Rule 45 follows the pre-1991 text of former Rule 45 of the FRCP. Hawaii Rule 50 was recently amended to conform to the provisions of Federal Rule 50 regarding judgment as a matter of law.

INDIANA⁴⁰

Indiana calls its rules of civil procedure the Indiana Rules of Trial Procedure. Indiana's Rule 4 series (Rules 4-4.17) does not track the 1993 amendment of Federal Rule 4, and makes no mention of a procedure for waiving service of process. Subdivision (A) of Indiana Rule 11 is loosely based on the 1983 version of Federal Rule 11. Subdivisions (B) and (C) of Indiana Rule 11 are unique rules of local application, unrelated to provisions of the FRCP. No provision of the Indiana Rules incorporates the 1993 version of Federal Rule 11. Indiana Rule 16 was amended in 1992 to resemble the 1983 version of Federal Rule 16, but has not been revised since to reflect the 1993 version. The discovery provisions of Indiana Rule 26 remain modeled on the 1970 version of the FRCP. The Supreme Court Committee Note on the 1982 revision of the Indiana Rules made it clear that Indiana was not adopting the FRCP 1980 amendments to Rule 26(f).⁴¹ Indiana Rule 26(a), although last revised in 1995, does not incorporate the 1993 FRCP discovery amendments. Neither Indiana Rule 30 (last revised in 1991), nor Indiana Rule 33 (last revised in 1988), conform to the 1993 amendments of the FRCP. Indiana Rule 45 was revised in both 1993 and 1995, but mirrors the 1991 amendment of Federal Rule 45 only with respect to subdivision (A). Indiana Rule 50 was revised in 1989 to abolish JNOV, although a provision for a directed verdict (called "judgment on the evidence") was retained. Despite a further technical revision in 2001, Indiana Rule 50 stands apart from the 1991 version of Federal Rule 50, and does not provide for judgment as a matter of law.

³⁹ Hawaii Rule 11 had previously been amended in 1990 to replicate the 1983 version of Federal Rule 11. The 1990 amendments did not similarly conform Hawaii Rule 16 to the 1983 version of its federal counterpart. See HAW. R. CIV. P., *supra* note 38, at Rule 11 (last amended July 26, 1990) (conforms to 1983 text of Federal Rule 11); Rule 16 (last amended May 15, 1972) (conforms to 1938 text of Federal Rule 16).

⁴⁰ See IND. CODE ANN., R. TRIAL P. (West 1996).

⁴¹ IND. CODE ANN., Tit. 34, Appendix, R. TRIAL P., Rule 26, at 240 (West 1996) (Supreme Court Committee Note – 1982 Amendment).

KENTUCKY⁴²

Kentucky has not modified its Rule 4 series (Rules 4.01-4.16) since 1978. It does not provide for waiver of service of process. Kentucky Rule 11 mirrors the FRCP 1983 amendments, but was last revised in 1989; it does not conform to the 1993 FRCP amendments. Kentucky Rule 16 was last modified in 1978; it remains unaffected by the 1983 and 1993 FRCP amendments. The Kentucky series of basic discovery rules (Rules 26.01-26.06) have not been revised since the 1970s; they thus diverge from Federal Rule 26 as revised in 1980, 1983, 1993, and 2000. Kentucky has also failed to adopt Federal Rule 30(a)(2)(A) as amended in 1993 to limit the number of depositions. While not generally conforming to the 1993 version of Federal Rule 33, Kentucky Rule 33.01(3) does limit the number of interrogatories to 30. Kentucky's Rule 45 series (Rules 45.01-45.06) is not in accordance with the 1991 version of Federal Rule 45, nor has Kentucky adopted the 1991 amendments to Federal Rule 50 regarding judgment as a matter of law.

MAINE⁴³

Maine Rule 4 has not been revised to follow the 1993 FRCP amendments and does not permit the waiver of service of process. Maine Rule 11 is similar to the 1983 version of Federal Rule 11, but despite a revision in 2001, Maine Rule 11 does not follow the 1993 FRCP. In 1999, and again in 2002, Maine revised its provision for pretrial procedures in Rule 16. These revisions do not conform to either the 1983 or 1993 versions of Federal Rule 16. Maine Rule 26(a) does not conform closely to the 1993 or 2000 revisions of its federal counterpart. Maine Rule 26(g) as amended in 1999 is loosely modeled on Federal Rule 26(f) as amended in 1980. Maine Rule 30 was revised in 1999 and now limits the number of depositions to five, following a stricter approach than the 1993 FRCP amendments. Maine Rule 33 was also revised in 1999 and, although it otherwise retains the form and content of the 1970 version of its federal counterpart, Maine Rule 33(a) now limits the number of interrogatories to 30. The 1999 revision of Maine Rule 45 made it virtually identical to the 1991 version of Federal Rule 45 regarding subpoenas. In 1993, Maine embraced the terminology of judgment as a matter of law, revising its Rule 50 to conform to the 1991 version of Federal Rule 50.

MASSACHUSETTS⁴⁴

Massachusetts Rule 4, although most recently revised in 1997, does not conform to the 1993 version of Federal Rule 4 or otherwise authorize waiver of service of process. Massachusetts Rule 11 appears to have gone unrevised since 1973; it reflects neither the 1983 nor the 1993 amendments to Federal Rule 11. Massachusetts Rule 16 also dates to 1973 and does not incorporate any of the subsequent FRCP amendments. Save for a technical revision in

⁴² See KY. REV. STAT. ANN., R. CIV. P. (2002).

⁴³ See ME. R. CT., R. CIV. P. (West 2002).

⁴⁴ See MASS. GEN. LAWS ANN., R. CIV. P. (West 2002).

1996, Massachusetts Rule 26 was last amended in 1981. It does not conform to Federal Rule 26(f), as amended in 1980, or to any of the series of amendments of Rule 26(a) in 1983, 1993, and 2000. Recent revisions to Massachusetts Rule 30(c) and Rule 30(d) in 1998 have brought these provisions, which deal with the conduct of depositions and procedures for objecting to questions, largely into conformity with their federal counterparts. In other respects, however, Massachusetts Rule 30 remains modeled on the 1970 version of Federal Rule 30. Massachusetts imposes no presumptive limit on the number of depositions that may be taken by a party. Massachusetts Rule 33, although revised in 1982 and again in 2002, remains structurally based on the 1970 version of Federal Rule 33. Although not patterned on the 1993 version of Federal Rule 33, Massachusetts Rule 33 does limit the number of interrogatories to thirty. Massachusetts Rule 45 was most recently revised in 1987 and does not reflect 1991 FRCP amendments. Although revised in other respects in 1998, Massachusetts Rule 50 does not conform to the terminology of the 1991 FRCP amendment regarding judgment as a matter of law.

MINNESOTA⁴⁵

Minnesota has not conformed its Rule 4 series (Rules 4.01-4.07) to correlate with the 1993 FRCP amendments to Federal Rule 4(d), authorizing waiver of service of process. Some parts of Minnesota's Rule 4 series were revised in 1996 to conform to the FRCP, but the waiver of service was not part of these revisions. In 2000, Minnesota adopted an amended Rule 11 series (Rules 11.01-11.04) that is identical to the 1993 version of Federal Rule 11.⁴⁶ Minnesota has fully adapted its Rule 16 series to follow the 1983 FRCP amendments and in 1996 adopted the 1993 version of Federal Rule 16(c) – but not the 1993 version of Federal Rule 16(b). Minnesota's Rule 26 series does not conform to the 1993 and 2000 amendments to Federal Rule 26(a), but it does have discovery conference provisions identical to those of the 1980 amendment that added Federal Rule 26(f). In 1996, Minnesota revamped its Rule 30 series to coincide with the 1993 FRCP amendments, except for Minnesota Rule 30.01 (the counterpart to Federal Rule 30(a)). As a consequence of this exception, Minnesota imposes no presumptive limits on the number of depositions that may be taken by a party. When revising Minnesota Rule 33.01 in 1996, the state rule makers noted that a fifty-interrogatory limit had been a feature of Minnesota Rule 33.01 since 1975. They determined that “this limit has worked well in practice” and that there was no need to emulate the content or the lower, twenty-five-interrogatory limit of the 1993 version of Federal Rule 33.⁴⁷ Minnesota's Rule 45 series and Rule 50 series have not been amended to follow the 1991 FRCP amendments.

⁴⁵ See MINN. STAT. ANN., R. CIV. P. (West 2002).

⁴⁶ Between 1989 and 2000, Minnesota Rule 11 was virtually a mirror image of the 1983 version of Federal Rule 11. See *Uselman v. Uselman*, 464 N.W.2d 130, 142 (Minn. 1990) (noting that “there are only minor and insignificant differences between MINN. R. CIV. P. 11 (1989) and FED. R. CIV. P. 11, as amended in 1983”).

⁴⁷ MINN. STAT. ANN. § 48, R. CIV. P., Rule 33.01 (West 1996) (2002 Cumulative Annual Pocket Part at 47) (Advisory Committee Comments – 1996 Amendments).

MONTANA⁴⁸

Montana has not implemented the 1993 FRCP amendments to Federal Rule 4(d) in its Rule 4 (most recently revised in 2001) and does not provide for waiver of service of process. Montana Rules 11 and 16 were last amended in 1990 and are identical to the 1983 versions of their federal counterparts. Neither conforms to the 1993 FRCP amendments. Montana Rule 26(f) is in accordance with the FRCP 1980 amendment regarding discovery conferences. Montana Rule 26(a), Rule 30, and Rule 33 have not been amended to follow the 1993 FRCP amendments (or the 2000 amendment of Federal Rule 26(a)). Although Montana Rule 33 limits the number of interrogatories per party to fifty, its format does not coincide with its federal counterpart. Montana Rule 45 was revised in 2000 to mirror the 1991 version of Federal Rule 45. Montana Rule 50 was revised in 1999 and is now identical to the 1991 FRCP amendments regarding judgment as a matter of law.

NEW MEXICO⁴⁹

New Mexico enumerates its rules of civil procedure by reference to the FRCP, but not in the same format. All of New Mexico's rules of civil procedure bear the prefix "Rule 1-00", followed by a number that corresponds to the FRCP counterpart. Hence, New Mexico Rule 1-004 corresponds to Federal Rule 4. New Mexico Rule 1-004, although last amended in 1998, does not include a provision permitting waiver of service of process. Rule 1-011 is identical to the 1983 FRCP amendments, but even with a 1997 revision, it has not been updated to follow the 1993 FRCP amendments. Rule 1-016 was last amended in 1990 and is identical to the 1983 version of Federal Rule 16 with respect to pretrial conferences. Although revised in 1998, Rule 1-026 does not incorporate the 1993 FRCP amendments to Federal Rule 26(a). However, Rule 1-026 does include a discovery-conference provision identical to the 1980 amendment that added Federal Rule 26(f). In 1999, Rule 1-030 was amended to conform more closely to the 1993 FRCP amendments, but without imposing a presumptive limit on the number of depositions. Rule 1-033 has been left unchanged and does not conform to the 1993 FRCP amendments, nor does it impose a limit on the number of interrogatories. New Mexico Rule 1-045 and Rule 1-050 are virtually identical to the 1991 versions of their federal counterparts.

NORTH DAKOTA⁵⁰

North Dakota Rule 4 does not follow the 1993 FRCP amendment of Federal Rule 4, and does not authorize waiver of service of process. North Dakota Rule 11, previously based on the 1983 version of Federal Rule 11,⁵¹ was

⁴⁸ See MONT. CODE ANN., R. CIV. P. (2002).

⁴⁹ See N.M. STAT. ANN., R. CIV. P. (Michie 2002).

⁵⁰ See N.D. CENT. CODE, R. CIV. P. (2002).

⁵¹ The previous version of North Dakota Rule 11, which tracked the 1983 version of Federal Rule 11 with only minor exceptions, is quoted in its entirety in *Soentgen v. Quain & Ramstad Clinic, P.C.*, 467 N.W.2d 73, 85 n.3 (N.D. 1991), and *Williams v. State*, 405 N.W.2d

revised in 1996 to conform to the 1993 version of its federal counterpart.⁵² North Dakota Rule 16 was also based on the 1983 version of its federal counterpart until 1996,⁵³ when it was revised to conform to the 1993 version of Federal Rule 16, but with the omission of Federal Rule 16(b) regarding the issuance of a scheduling order. North Dakota Rule 16(b)-(e) exactly tracks Federal Rule 16(c)-(f). North Dakota Rule 26 is virtually identical to its federal counterpart prior to the 1993 FRCP amendments, including Rule 26(f)'s provision for discovery conferences. North Dakota Rule 26(a) has not been revised to conform to the 1993 and 2000 FRCP amendments. Even as revised in 2000, North Dakota Rule 30 does not limit the number of depositions in accordance with 1993 FRCP amendments. North Dakota Rule 33 also does not limit the number of interrogatories, but in most other respects conforms to the 1993 version of its federal counterpart. In 1995, North Dakota revised its Rule 45 to mirror the 1991 version of Federal Rule 45. After a 1994 revision, North Dakota Rule 50 similarly mirrors the 1991 version of its federal counterpart by providing for judgment as a matter of law.

OHIO⁵⁴

Ohio's Rule 4 series does not include a waiver-of-service provision that mirrors the 1993 amendment of Federal Rule 4(d). Ohio Rule 11 was most recently revised in 1995; it mirrors the 1983 version of Federal Rule 11, ignoring the different tack taken by the 1993 FRCP amendments. Although Ohio Rule 16 was revised in 1993, it does not incorporate the provisions added to Federal Rule 16 by either the 1983 or the 1993 FRCP amendments. Indeed, pretrial procedure in Ohio is *sui generis*. Ohio Rule 16 vaguely resembles the original, 1938 version of its federal counterpart, but has virtually no resemblance to contemporary Federal Rule 16. Ohio Rule 26 generally conforms to the 1970 version of Federal Rule 26. Although it was revised in 1994, it has

615, 623 n.12 (N.D. 1987). Former North Dakota Rule 11 followed the 1983 version of Federal Rule 11 word for word, except for an apparent typographical error in the text of the North Dakota rule. That rule, as quoted identically in both opinions, began with the words "Every pleading of a party . . ." Former Federal Rule 11, as amended in 1983, began with the words "Every pleading, motion, and other paper of a party . . ." In every other instance but this opening phrase, former North Dakota Rule 11 followed exactly the 1983 version of its federal counterpart by referring to "every pleading, motion, and other paper." The fact that the oddly truncated language of former North Dakota Rule 11 was quoted identically in both opinions makes it implausible that the typographical error occurred in the drafting of both opinions, rather than in the drafting of the text of the rule itself.

⁵² The 1996 version of North Dakota Rule 11 (like its predecessor, *see supra* note 51) does not conform exactly to the text of the Federal Rule on which it was based. But the latter disparity was clearly intended.

Rule 11 was revised, effective March 1, 1996, in response to the 1993 revision of FRCP 11. North Dakota's rule differs from the federal rule in the following respects: 1) North Dakota's rule requires attorneys to cite their State Board of Law Examiners identification number when signing papers; and 2) North Dakota's rule does not require allegations or denials to be specifically identified when immediate evidentiary support is lacking.

See N.D. R. Civ. P., *supra* note 50, Rule 11, at 42 (Explanatory Note).

⁵³ See *Gohner v. Zundel*, 411 N.W.2d 75, 78 (N.D. 1987) (discussing 1986 amendment of North Dakota Rule 16 to conform to the 1983 version of Federal Rule 16).

⁵⁴ See OHIO REV. CODE ANN., R. CIV. P. (West 2002).

not incorporated the 1993 and 2000 amendments of Federal Rule 26(a) and 1980 amendment adding Rule 26(f). Ohio Rule 30 does not set a limit on the number of depositions available. As revised in 1999, Ohio Rule 33 remains based on the 1970 version of its federal counterpart, but does impose a presumptive limit of forty interrogatories per party. Ohio Rule 45 was revised in 1993 to follow closely the 1991 amendment of its federal counterpart. Ohio Rule 50 has remained unchanged since its adoption in 1970; it does not conform to the 1991 version of Federal Rule 50.

RHODE ISLAND⁵⁵

Rhode Island Rule 4(d) tracks almost exactly the waiver-of-service provision of Federal Rule 4(d) as amended in 1993.⁵⁶ Rhode Island Rule 11 conforms, with one exception, to the 1983 version of its federal counterpart, but not the 1993 version.⁵⁷ Rule 16 was last amended in 1995 and does not follow either the 1983 or 1993 FRCP amendments regarding pretrial conferences. Rhode Island Rule 26 was comprehensively rewritten in 1995 but, with a few narrow exceptions, is based on the 1970 text of Federal Rule 26 and does not follow later changes to its federal counterpart. Rhode Island has incorporated neither the 1980 change adding a provision for a discovery conference as Federal Rule 26(f), nor the mandatory-disclosure provisions of the 1993 version of Federal Rule 26(a). Although Rhode Island Rule 30 was revised in 1995 to follow closely its federal counterpart as amended in 1993, it does not impose any presumptive limit on the number of depositions per party. On the other hand, Rhode Island Rule 33 remains modeled on the 1970 version of Federal Rule 33, but does presumptively limit the number of interrogatories to thirty per party.⁵⁸ Rhode Island Rules 45 and 50 (regarding judgment as a matter of law) conform closely to their 1991 federal counterparts.

SOUTH DAKOTA⁵⁹

Like New Mexico, South Dakota enumerates its rules of civil procedure by reference to the FRCP, but in a different format. All of South Dakota's

⁵⁵ See R.I. R. Ct., R. Civ. P. (2002).

⁵⁶ As used in the principal text, "Rhode Island Rule" refers to the Rhode Island Superior Court Rules of Civil Procedure, which govern civil litigation in Rhode Island's trial court of general civil jurisdiction. The rules applicable in inferior courts, the Rhode Island District Court Civil Rules, appear to have been modeled originally on the FRCP, but to have been infrequently revised. In their present form, for instance, both Rule 4 and Rule 11 remain modeled on the original, 1938 version of the FRCP, without incorporating the amendments of 1963 and 1993 to Rule 4, or the amendments of 1983 and 1993 to Rule 11. Similarly, Rules 26, 30, and 33 remain modeled on the 1938 version of the FRCP, without incorporating the amendments of 1970, 1980, 1983, 1993, or 2000.

⁵⁷ See R.I. R. Civ. P., *supra* note 55, Rule 11 (1995 Committee Note). Rhode Island Rule 11 "depart[s] from the 1983 version of the federal model in one respect. That federal rule states that upon finding a violation the court 'shall' impose a sanction, while the text of [Rhode Island Rule 11] provide[s] that the court 'may' impose a sanction." *Id.*

⁵⁸ Although the federal limit of twenty-five interrogatories was inserted in 1993 into Federal Rule 33(a), Rhode Island's limit of thirty interrogatories appears in Rhode Island Rule 33(b).

⁵⁹ See S.D. CODIFIED LAWS, R. CIV. P. (Michie 2001).

rules of civil procedure bear the prefix “Rule 15-6-”, followed by a number that corresponds to the FRCP counterpart. Hence, South Dakota Rule 15-6-4 corresponds to Federal Rule 4. In South Dakota’s Rule 15-6-4 series, there is no provision that parallels the 1993 FRCP amendment adding a waiver of service provision to Federal Rule 4(d). South Dakota Rule 15-6-11 was last revised in 1996; it remains unaffected by either the 1983 or 1993 amendments of Federal Rule 11. Likewise, South Dakota Rule 15-6-16, regarding pretrial conferences, does not conform to either the 1983 or the 1993 FRCP amendments. South Dakota’s Rule 15-6-26 series does not incorporate any of the amendments of Federal Rule 26 adopted in 1980 and later years. South Dakota Rule 15-6-30 and Rule 15-6-33 have not been revised since 1966; neither sets any presumptive limits on the number of depositions or interrogatories. Also unchanged since 1966 are South Dakota Rule 15-6-45 and Rule 15-6-50; hence neither tracks the current provisions of Federal Rules 45 and 50.

TENNESSEE⁶⁰

Tennessee Rule 4.07, adopted in 1995, tracks the language of Federal Rule 4(d) regarding waiver of service. Tennessee Rule 11 was revised in 1987 to track the 1983 version of its federal counterpart, and again in 1995 to track the 1993 revision of Federal Rule 11.⁶¹ Tennessee’s Rule 16 series was extensively revised in 1995, but the advisory commission opted to model the new set of pretrial conference rules on the 1983 rather than the 1993 version of its federal counterpart.⁶² Tennessee’s Rule 26 series does not incorporate the 1993 and 2000 amendments of Federal Rule 26(a). Tennessee Rule 26.06, however, replicates Federal Rule 26(f) as added by the 1980 FRCP amendments. Most revisions to Tennessee’s Rule 26 series last took effect in 1984, with the exception of Rule 26.02(5), which was added in 2000 to mirror Federal Rule 26(b)(5) regarding claims of privilege or work-product protection. Tennessee Rule 30.01 and Rule 33.01 have not been revised since 1979; neither parallels the 1993 version of its federal counterpart, nor imposes a presumptive limit on the number of depositions or interrogatories. Tennessee’s Rule 45 series and Rule 50 series do not conform to the 1991 FRCP amendments.

UTAH⁶³

Utah Rule 4(f), as amended in 2001, provides for waiver of service of process in terms similar but not identical to Federal Rule 4(d) as amended in 1993. Utah Rule 11, which had earlier been revised to conform to the 1983

⁶⁰ See TENN. CODE ANN., R. CIV. P. (2002).

⁶¹ See TENN. R. CIV. P., *supra* note 60, Rule 11, at 177 (Advisory Commission Comments [1987]; Advisory Commission Comment [1995]). See also *Andrews v. Bible*, 812 S.W.2d 284, 287 & n.1 (Tenn. 1991) (quoting text of former Tennessee Rule 11 that is identical to text of the 1983 version of Federal Rule 11, and declaring that “Tennessee’s Rule 11 was not amended to conform to its federal counterpart until 1987”).

⁶² See TENN. R. CIV. P., *supra* note 60, Rule 16, at 214 (Advisory Commission Comments [1995]).

⁶³ See UTAH CODE ANN., R. CIV. P. (2002).

version of its federal counterpart,⁶⁴ was again amended in 1997 to conform to most of the 1993 version of Federal Rule 11.⁶⁵ Utah Rule 16 was revised in 1999 and now partially resembles the structure of the 1993 version of Federal Rule 16, but with some omissions and variations tailored to local conditions. Utah Rule 16 had previously been revised in 1987 to track virtually exactly the 1983 version of Federal Rule 16.⁶⁶ In 1999 Utah Rule 26(a) was revised to bring it into close conformity not only with the 1993 version of Federal Rule 26, but also the then-proposed (but not yet effective) FRCP 2000 amendments requiring mandatory initial disclosures. The 1999 amendments also conformed Utah Rule 26(f) to the substance of its federal counterpart by providing, in roughly similar terms, for the routine scheduling of discovery conferences. Utah Rule 30(a)(2)(A) is almost identical to the 1993 FRCP amendments and imposes a limit of ten depositions. Utah Rule 33(a) also identically follows the 1993 FRCP amendments and imposes a limit of twenty-five interrogatories. A 1994 revision of Utah Rule 45 made it almost identical to the 1991 version of Federal Rule 45. Utah Rule 50, however, has not been amended to follow the terminology of the 1991 FRCP amendments, and continues to provide for motions for directed verdicts and JNOV.

VERMONT⁶⁷

Vermont Rule 4 substantially follows the original, 1938 version of Federal Rule 4, but was amended in 1996 to make Vermont Rule 4(l) substantially identical to the waiver-of-service provision of Federal Rule 4(d), as amended in 1993.⁶⁸ Vermont Rule 11 was amended in 1984 to conform to the 1983 version of its federal counterpart, and again in 1996 to conform to the 1993 amendment of Federal Rule 11.⁶⁹ Vermont Rule 16 has not been revised since its adoption; it does not conform to either the 1983 or 1993 amendments to its federal counterpart. In 1996, Vermont adopted a few of the provisions included in the 1993 amendments to Federal Rule 26. Vermont's discovery practice otherwise remains (as it has since 1984) modeled primarily on the 1970/1980 version of Federal Rule 26, including Rule 26(f)'s discovery-conference provi-

⁶⁴ See *Jeschke v. Willis*, 811 P.2d 202, 205 n.3 (Utah Ct. App. 1991) ("We note that UTAH R. CIV. P. 11 mirrors its federal counterpart.").

⁶⁵ Utah Rule 11(C)(1)(A) purposefully differs from Federal Rule 11(c)(1)(A) by dropping the language of the federal rule presumptively imposing law-firm liability for a Rule 11 violation by one of its attorneys. The Utah rule does not presume institutional liability in these circumstances, but permits it to be imposed in the discretion of the judge. See UTAH R. CIV. P., *supra* note 63, Rule 11, at 37 (Advisory Committee Note).

⁶⁶ See *Arnold v. Curtis*, 846 P.2d 1307, 1309-10 (Utah 1993) (describing the 1987 amendment of Utah Rule 11 as "virtually identical" to the 1983 version of Federal Rule 16).

⁶⁷ See VT. STAT. ANN., R. CIV. P. (2002).

⁶⁸ In one respect, Vermont's waiver-of-service rule is broader than its federal counterpart. Federal Rule 4(d)(2) makes the federal waiver-of-service provision applicable only to an "individual, corporation, or association." Vermont Rule 4(l)(2) was purposefully written more broadly to apply to any defendant in a civil action commenced by the filing of the complaint. See VT. R. CIV. P., *supra* note 67, Rule 4, at 21 (Reporter's Note - 1996 Amendment).

⁶⁹ See VT. R. CIV. P., *supra* note 67, Rule 11, at 88 (Reporter's Notes - 1996 Amendment); *id.* at 91 (Reporter's Notes - 1984 Amendment).

sion. Vermont did not adopt the mandatory-disclosure provisions of the 1993 amendment to Federal Rule 26(a). As stated in the Reporter's Notes:

The extensive 1993 amendments to Federal Rule 26, requiring mandatory disclosure of discoverable information at the outset of the proceeding, have not been adopted in view of the fact that implementation of these requirements is currently suspended in the United States District Court for Vermont and many other federal districts.⁷⁰

While 1996 revisions to Vermont Rule 30 conformed most of it to the 1993 version of Federal Rule 30, Vermont Rule 30(a) was left unchanged. There have been no recent revisions to Vermont Rule 33. Thus, Vermont does not limit either the number of depositions a party may take, or the number of interrogatories that a party may be asked to answer. Vermont Rule 45 was amended in 1995 and follows the basic subpoena structure set forth in the 1991 FRCP amendments. Vermont Rule 50 was also revised in 1995 to adopt the terminology of judgment as a matter of law, conforming to the 1991 version of Federal Rule 50.

WASHINGTON⁷¹

Washington Rule 4 is loosely modeled on the original, 1938 version of Federal Rule 4. Washington has not added a provision for waiver of service of process, such as that found in the 1993 version of Federal Rule 4(d). Washington Rule 11 conforms almost identically to the 1983 version of Federal Rule 11, but has not been revised to match the 1993 FRCP amendments. Washington Rule 16 has not been revised to conform to either the 1983 or 1993 FRCP amendments regarding pretrial conferences. There have also been no revisions to Washington Rule 26 to incorporate the 1993 and 2000 amendments of Federal Rule 26(a). Washington Rule 26(f) does conform to its federal counterpart, as amended in 1980 to require discovery conferences. Washington Rules 30 and 33 are loosely modeled on the 1970 version of their federal counterparts; neither follows the 1993 FRCP amendments by imposing limits on the number of depositions or interrogatories. Washington Rule 45 does not conform to the 1991 FRCP amendments. On the other hand, Washington Rule 50 follows closely the 1991 version of Federal Rule 50.

⁷⁰ See Vt. R. Civ. P., *supra* note 67, Rule 26, at 161 (Reporter's Notes – 1996 Amendment). It should be noted that the power of the Vermont District Court to “suspend” the 1993 mandatory-disclosure provisions was conferred by former Federal Rule 26(a)(1), which as adopted in 1993 permitted district courts to adopt a local rule exempting all cases in a particular district from compliance with the duty of pretrial disclosure. Current Federal Rule 26(a)(1) as amended in 2000 no longer permits a blanket local exemption from the newly nationwide duty of pretrial disclosure, although ad hoc orders exempting particular cases from the mandatory-disclosure provisions are still permissible. Thus, it is no longer true that the FRCP's mandatory-disclosure provisions are “suspended” in the United States District Court for the District of Vermont. Nonetheless, the Vermont Rules of Civil Procedure have remained unchanged since 1996.

⁷¹ See WASH. REV. CODE ANN. (West 2002).

WEST VIRGINIA⁷²

West Virginia Rule 4 is loosely modeled on the 1963 version of Federal Rule 4; although revised as recently as 1998, it does not incorporate the waiver-of-service provision added to its federal counterpart by the 1993 amendment of Federal Rule 4(d). The 1998 revisions of West Virginia Rules 11 and 16 brought both into close conformity with the 1993 versions of their federal counterparts.⁷³ West Virginia Rule 26(a) remains based almost exactly on the 1970 version of its federal counterpart, with the inclusion of a replica of the 1980 FRCP amendment that added Federal Rule 26(f)'s discovery-conference provision. West Virginia Rules 30 and 33 are modeled closely on the 1993 versions of their federal counterparts, but with significant variations as to discovery limits. West Virginia Rule 30(a) leaves out the presumptive ten deposition limit imposed by Federal Rule 30(a)(2), and West Virginia Rule 33(a) raises the presumptive limit on the number of interrogatories imposed by Federal Rule 33(a) from twenty-five per party to forty per party. Since 1998, West Virginia Rules 45 and 50 both conform closely to their federal counterparts.

WYOMING⁷⁴

A 1995 revision of Wyoming's Rule 4 added subdivision (o), which consists of a waiver-of-service provision identical to the 1993 FRCP amendment of Federal Rule 4(d). As revised in 1994, Wyoming Rules 11 and 16 are mirror images of the 1993 versions of Federal Rules 11 and 16.⁷⁵ Although updated in 1994, Wyoming Rule 26(a) does not conform to the 1993 FRCP amendments. Wyoming Rule 26(f) does follow the FRCP 1980 amendments regarding discovery conferences. Wyoming Rules 30 and 33 were both amended in 1994 to replicate their federal counterparts, with one minor exception. While Wyoming Rule 30(a)(2) matches its federal counterpart exactly by presumptively limiting a party to ten depositions, Wyoming Rule 33(a) raises the limit on interrogatories per party from twenty-five to thirty. As amended in 1993,

⁷² See W. VA. CODE., R. CIV. P. (2002).

⁷³ Between 1988 and 1998, West Virginia Rule 11 was based on the 1983 version of Federal Rule 11. See *Kincaid v. Morgan*, 425 S.E.2d 128, 135 (W. Va. 1992) (quoting part of West Virginia Rule 11 that is identical to Federal Rule 11 as amended in 1983). Before its 1998 revision, West Virginia Rule 16 was similarly based on the 1983 version of Federal Rule 16. See *Woolwine v. Raleigh Gen. Hosp.*, 460 S.E.2d 457, 462 n.6 (W. Va. 1995) (quoting part of West Virginia Rule 16(f) that is identical to Federal Rule 16(f) as added by the 1983 amendment of that rule).

⁷⁴ See WYO. STAT. ANN., R. CIV. P. (2002).

⁷⁵ See generally *The 1994 Amendments to the Wyoming Rules of Civil Procedure*, 30 LAND & WATER L. REV. 151 (1995) (describing terms and effect of 1994 amendments in maintaining Wyoming's tradition of close conformity to the FRCP). Between 1987 and 1994, Wyoming Rule 11 replicated the 1983 version of Federal Rule 11. See *Wyoming Sawmills, Inc. v. Morris*, 756 P.2d 774, 778 (Wyo. 1988) (quoted part of Wyoming Rule 11 is identical to Federal Rule 11 amended in 1983). Wyoming Rule 16 was not similarly conformed to the 1983 version of its federal counterpart, and remained based on the original Federal Rule 16 of 1938 until its revision in 1994 to track the 1993 version of Federal Rule 16. See *Salveson v. Cubin*, 791 P.2d 581, 582 (Wyo. 1990) (quoted part of Wyoming Rule 16 is identical to 1938 version of Federal Rule 16).

Wyoming Rules 45 and 50 conform almost exactly to the 1991 versions of Federal Rules 45 and 50.

2. *Notice Pleading/Federal-Rules-Model Procedural Systems*

IDAHO⁷⁶

Idaho's Rule 4 series has not been revised to follow the 1993 amendments of Federal Rule 4, and does not provide for a waiver of service of process. Idaho Rule 11 was last amended in 1985; it conforms closely to the 1983 version of Federal Rule 11. Idaho Rule 16 was most recently revised in 1995, but it remains patterned on the 1983 version of its federal counterpart, and does not track the 1993 amendments of Federal Rule 16. Idaho Rule 26 conforms almost exactly to the 1970 version of Federal Rule 26, but takes no account of the 1993 and 2000 FRCP amendments of Rule 26(a), nor of the 1980 amendment of Rule 26(f). Idaho Rule 30(d) was amended in 1998 to conform to the 1993 version of Federal Rule 30(d); otherwise, Idaho Rule 30 remains patterned on the 1970 version of its federal counterpart. Idaho imposes no presumptive limit on the number of depositions a party may take, but does presumptively limit the number of interrogatories that one party may propound to another party to forty-five. Idaho Rule 33 otherwise remains based on the 1970 version of Federal Rule 33, unmodified to take account of the 1993 FRCP amendments. Idaho Rules 45 and 50 remain patterned on the original text of the FRCP as first effective in 1938, save for the incorporation in Idaho Rule 50 of the text added by the 1963 FRCP amendments. Neither rule has been revised to track Federal Rules 45 and 50 as rewritten in 1991.

MISSISSIPPI⁷⁷

Mississippi Rule 4(e) permits the waiver of service of process, but not in terms that parallel Federal Rule 4(d). For the most part, Mississippi Rule 4 is patterned on the 1963 version of Federal Rule 4. Mississippi Rule 11(a) is similar to the 1983 version of Federal Rule 11, with Mississippi Rule 11(b) added as an additional provision regarding sanctions. Mississippi Rule 11 does not follow the 1993 version of Federal Rule 11. Mississippi Rule 16 deals with pretrial conferences but otherwise bears little similarity to any version of Federal Rule 16. Mississippi Rule 26 is patterned on the 1970 version of its federal counterpart and does not include provisions based on the 1993 or 2000 FRCP disclosure and discovery amendments. Mississippi Rule 26(c) provides for a discovery conference upon court order or party request; it is only roughly comparable to the discovery conference required by Federal Rule 26(f) as amended in 1980. Mississippi Rules 30 and 33 remain patterned closely on the 1970 versions of their federal counterparts, with the exception of Mississippi Rule 33(a)'s numerical limit of thirty interrogatories that may be served as of right on another party. Mississippi Rule 30 imposes no presumptive limit on the number of depositions that a party may take. Although Mississippi Rule 45

⁷⁶ See IDAHO CODE, R. CIV. P. (2002).

⁷⁷ See MISS. CODE ANN., R. CIV. P. (2002).

was substantially revised in 1997 and is now clearly patterned on (but not identical to) Federal Rule 45 as amended in 1991. Mississippi Rule 50 remains unchanged and unreflective of the 1991 amendments of its federal counterpart.

NEVADA⁷⁸

Nevada Rule 4 remains patterned on the 1963 version of its federal counterpart; it does not contain a provision such as that found in the 1993 version of Federal Rule 4(d), permitting waiver of service of process. Nevada Rule 11 was revised in 1986 to replicate the 1983 version of Federal Rule 11, but has not been further revised to conform it to the current version of its federal counterpart as amended in 1993. Nevada Rule 16 was revised in 1988 to conform to the 1983 FRCP amendments regarding pretrial conferences, and has not since been amended to incorporate the 1993 FRCP amendments. Nevada Rule 26 is substantially identical to the 1970 version of its federal counterpart, as amended in 1980, to add Rule 26(f) relating to discovery conferences, and does not conform to either the 1993 or 2000 amendments of Federal Rule 26(a). With some local variations, Nevada Rules 30 and 33 are also modeled on the 1970 versions of their federal counterparts. Nevada Rule 30 imposes no limit on the number of depositions that may be taken as of right. However, Nevada Rule 33 was amended in 1986 to add Rule 33(d), which presumptively limits the number of interrogatories that one party may propound to another party to forty. Nevada's Rules 45 and 50 remain patterned on the original versions of their federal counterparts; neither reflects the changes to Federal Rules 45 and 50 effected in 1991.

3. *Notice Pleading/Federal Code Procedural Systems*

GEORGIA⁷⁹

Georgia has codified its version of the FRCP as a series of statutes. Each rule is codified as a section of Title 9, Chapter 11, of the Official Code of Georgia Annotated, and as such is designated by the prefix "9-11-" followed by the number of the statute's counterpart in the FRCP. In this format, Georgia Code Annotated § 9-11-4 corresponds to Federal Rule 4. As amended in 2000, § 9-11-4 is closely patterned on its federal counterpart, and includes an identical provision for waiver of service of process.⁸⁰ Georgia has not revised § 9-11-11 since its adoption in 1966 and, therefore, has not incorporated the 1983 and 1993 amendments to Federal Rule 11. Although a technical revision of § 9-11-16 was enacted in 1993, there have been no substantive amendments to conform it to the 1983 or 1993 amendments to Federal Rule 16.⁸¹ Georgia's

⁷⁸ See NEV. REV. STAT. ANN., R. CIV. P. (Michie 2002).

⁷⁹ See 36 GA. CODE ANN., 1984 Revision, § 9, Ch. 11, Civil Practice Act (Harrison 1994 & Supp. 1998).

⁸⁰ Georgia's emulation of Federal Rule 4 was further enhanced by Section 1 of 2002 Georgia Laws Act 949 (S.B. 346) (May 16, 2002), which added a virtually verbatim copy of Federal Rule 4(f), dealing with service upon individuals in a foreign country, as GA. CODE ANN. § 9-11-4(f)(3).

⁸¹ Georgia's procedural statute on pretrial conferences remains based on, and very nearly identical to, the 1938 version of Federal Rule 16. GA. CODE ANN. § 9-11-16 breaks the two

discovery statutes were enacted in 1972 as an almost exact copy of the 1970 FRCP discovery amendments, and have remained substantially unchanged since, except for limiting the number of interrogatories. Georgia Code Annotated § 9-11-26 has not incorporated the 1980 addition of Federal Rule 26(f) or the 1993 and 2000 amendments of Federal Rule 26(a). Georgia Code Annotated § 9-11-30 does not limit the number of depositions. However, § 9-11-33(a)(1) does impose a limit of fifty interrogatories that any one party may propound on any other party absent leave of court. Georgia Code Annotated § 9-11-33 does not otherwise conform to the structure of the 1993 version of Federal Rule 33, and neither § 9-11-45 nor § 9-11-50 conform to the 1991 versions of their federal counterparts.

KANSAS⁸²

Kansas has a procedural code that is generally based on the FRCP. The procedural code is Article 2 of Chapter 60 of the Kansas Statutes Annotated, so that the Kansas counterpart of each federal rule bears a section number that begins with the prefix "60-2" and is followed by the number of the federal rule, in a two digit format. Thus, § 60-204 corresponds to Federal Rule 4. It incorporates by reference the service-of-process provisions of Article 3 of Chapter 60 of the Kansas Statutes Annotated, which do not follow the federal model and do not provide for waiver of service of process. Kansas Statute Annotated § 60-211 closely follows the 1983 version of Federal Rule 11, without incorporation of the subsequent 1993 amendment of its federal counterpart. Kansas Statute Annotated § 60-216 is loosely based on the 1983 version of Federal Rule 16 and does not incorporate the 1993 amendments to that rule. Kansas Statute Annotated § 60-226 remains based on the 1970 version of Federal Rule 26. It does not incorporate the 1980, 1993, or 2000 amendments to its federal counterpart. Kansas Statute Annotated §§ 60-230 and 60-233, while amended in 1997 to conform loosely to the structure of the 1993 versions of their federal counterparts, impose limits on neither the number of depositions nor the number of interrogatories. Kansas Statute Annotated §§ 60-245 and 60-250 were both amended in 1997 to mirror the 1991 versions of their federal counterparts.

NORTH CAROLINA⁸³

North Carolina has rules of civil procedure that generally follow the Federal Rules. They are codified under North Carolina General Statutes, § 1A-1, Rule x, with the "x" corresponding to the number of the federal rule. North Carolina Rule 4 does not have a provision for a waiver of service that coincides with the 1993 FRCP amendments to Federal Rule 4(d). North Carolina Rule 11

paragraphs of the original version of Federal Rule 16 into subsections (a) and (b). A minor amendment to § 9-11-16(b) has recently been enacted, expressly conferring on trial courts the authority to depart from a pretrial order to permit an unnoticed expert to testify, subject to the right of the opponent to first depose the new witness. *See* Section 1.1 of 2002 Georgia Laws Act 949 (S.B. 346) (May 16, 2002).

⁸² *See* KAN. STAT. ANN. (2001).

⁸³ *See* N.C. GEN. STAT. (2002).

does not conform to the 1983 or 1993 versions of its federal counterpart. Rule 16 similarly does not follow either the 1983 or the 1993 amendments to Federal Rule 16. North Carolina Rule 26 was last amended in 1987. It incorporates the 1980 amendment to Federal Rule 26(f), but not the 1993 or 2000 amendments to Federal Rule 26(a). North Carolina has not yet amended its Rule 30(a) to include a limit on the number of depositions that would mirror the 1993 amendment of Federal Rule 30(a). Although Rule 33 does not conform to the 1993 FRCP amendments, it does impose a presumptive inter-party limit of fifty interrogatories. Rules 45 and 50 do not conform to their respective federal counterparts as amended in the 1991 FRCP amendments.

OKLAHOMA

Oklahoma's codified system of civil procedure contains counterparts to Federal Rules 1-25, designated as Oklahoma Statute title 12, § 20xx, where the "x" corresponds to the number of the federal rule in two-digit format. Oklahoma's counterparts to Federal Rules 26-37 are similarly designated as Oklahoma Statute title 12, § 32xx. Federal Rules 45 and 50 have irregularly numbered counterparts. Oklahoma Statute title 12, § 2004, is loosely based on the 1963 version of Federal Rule 4, and has not been revised to conform to the 1993 FRCP or otherwise to provide for waiver of service of process. Oklahoma Statute title 12, § 2011, tracks verbatim the 1993 version of Federal Rule 11; before it was revised in 1994, it had tracked verbatim the 1983 version of its federal counterpart.⁸⁴ Oklahoma Statute title 12, § 2016, grants authority to the Oklahoma Supreme Court to provide by rule for pretrial conferences. Rule 5 of the Rules for District Courts of Oklahoma, which became effective in 1987, exercises this rulemaking power to require pretrial conferences in most civil actions. Oklahoma Rule 5 is loosely modeled on Federal Rule 16 as amended in 1983, and does not conform to the 1993 version of that rule. Oklahoma Statute title 12, § 3226, does not conform to the 1993 or 2000 amendments to Federal Rule 26(a), but it does include a provision for discovery conferences that is identical to Federal Rule 26(f) as amended in 1980. Although, in other respects, Oklahoma Statute title 12, § 3230 is closely modeled on the 1993 version of Federal Rule 30, it does not impose a presumptive limit on the number of depositions. Oklahoma Statute title 12, § 3233, is also closely modeled on the 1993 version of its federal counterpart, and follows Federal Rule 33 by presumptively limiting the number of interrogatories, but sets that limit at thirty rather than twenty-five. Oklahoma Statute title 12, § 2004.1, is the mirror image of the 1991 version of Federal Rule 45. Oklahoma's counterpart to Federal Rule 50 is Oklahoma Statute title 12, § 698. It does not conform to the 1991 version of its federal counterpart, and instead

⁸⁴ See *Unit Petroleum Co. v. Nuex Corp.*, 807 P.2d 251, 252 (Okla. 1991) (declaring that "Except for the requirement that an attorney's Oklahoma Bar Association identification number be on a paper, section 2011 [as it existed in 1991] is identical to Rule 11 of the Federal Rules of Civil Procedure," and citing a 1989 construction of Federal Rule 11 by the U.S. Supreme Court as authoritative precedent for the construction of former OKLA. STAT. tit. 12, § 2011).

provides, in traditional terms, for a motion for JNOV to be made as a renewal of an earlier, unsuccessful motion for a directed verdict.

4. *Fact Pleading/Federal-Rules-Model Procedural Systems*

ARKANSAS⁸⁵

Arkansas Rule 4 does not conform to the 1993 FRCP amendments, and there is no provision regarding a waiver of service. Arkansas Rule 11 closely mirrors the 1983 version of Federal Rule 11, with a few additions. It does not conform to the 1993 amendment of Federal Rule 11. Arkansas Rule 16 follows almost exactly the original, 1938 version of Federal Rule 16, and does not incorporate any of the changes made to its federal counterpart in 1983 and 1993. Arkansas Rule 26 remains based almost exclusively on the 1970 version of Federal Rule 26. It does not incorporate any part of the 1980, 1993, or 2000 amendments to Federal Rule 26(a) and 26(f).⁸⁶ Arkansas Rules 30 and 33 remain almost exact copies of the 1970 versions of their counterpart federal rules.⁸⁷ They do not impose presumptive limits on the numbers of depositions or interrogatories. Arkansas Rule 45 is loosely based on the original version of Federal Rule 45; Arkansas Rule 50 is virtually identical to the 1963 version of Federal Rule 50. Neither Arkansas Rule 45 nor Arkansas Rule 50 conform to their federal counterparts as amended in 1991.

DELAWARE⁸⁸

Delaware has separate but substantially identical rules of civil procedure for each of its three principal systems of courts: the Court of Chancery, the Superior Court, and the inferior civil court of non-equitable jurisdiction, the Court of Common Pleas.⁸⁹ Each Delaware version of Rule 4 bears little resemblance to its federal counterpart, and none provides a mechanism for waiver of service of process. Each Delaware variant of Rule 11 is a verbatim copy of the 1993 version of Federal Rule 11, which superseded Delaware's earlier adoption of the 1983 version of Federal Rule 11.⁹⁰ Delaware Court of Chancery Rule 16

⁸⁵ See ARK. CODE ANN., R. CIV. P. (Michie 2002).

⁸⁶ Arkansas Rule 26(e) was revised in 1999 to incorporate, in part, the changes in the duty of supplementation inserted into its federal counterpart in 1993. This is the only part of the 1993 amendment of Federal Rule 26 that Arkansas has adopted.

⁸⁷ Arkansas Rule 33(c) was revised in 1999 to add a new final sentence requiring a detailed specification of where within the responding party's business records the party seeking discovery can find the requested information. This new sentence follows exactly the 1980 amendment of Federal Rule 33(c).

⁸⁸ See DEL. CODE ANN., R. CIV. P. (2002).

⁸⁹ See Oakley & Coon, *supra* note 1, at 1386 n.91 (describing trifurcated system of courts and rules). These three sets of civil rules are currently collected in 1 DEL. RULES ANN. – 2002 Edition, at 193 et seq. (Chancery Rules); 377 et seq. (Super. Ct. Rules); and 731 et seq. (Ct. of Common Pleas Rules).

⁹⁰ There is specific authority establishing that Delaware Court of Chancery Rule 11 was based on the 1983 version of Federal Rule 11 prior to its amendment to conform to the 1993 version of Federal Rule 11. See *Hurst v. Gen. Dynamics Corp.*, 583 A.2d 1334, 1341-42 & n.12 (Del. Ch. 1990) (attributing to the then-current version of Delaware Court of Chancery Rule 11 language identical to the 1983 version of Federal Rule 11, and noting that Delaware

is based, in part, on the original, 1938 version Federal Rule 16, to which has been added an amalgam of standards for the scheduling of pretrial conferences and the content of pretrial orders. While there is considerable similarity in scope and content, there appears to be no genetic relationship between Delaware Court of Chancery Rule 16 and either the 1983 or the 1993 amendments of Federal Rule 16. Delaware Superior Court Rule 16, however, is a virtually exact copy of the 1983 version of Federal Rule 16, incorporating nothing from the subsequent 1993 amendment of that rule. Delaware Court of Common Pleas Rule 16 is identical to the 1938 version of Federal Rule 16, without incorporation of either the 1983 or 1993 FRCP amendments. Delaware Court of Chancery Rule 26 is a virtually exact copy of the 1970 version of Federal Rule 26, and does not incorporate any part of later amendments. Delaware Superior Court Rule 26 and Delaware Court of Common Pleas Rule 26 both include paragraph (f) concerning discovery conferences, taken from the 1980 amendment of Federal Rule 26, and paragraph (g), concerning the signing and certification of discovery documents, taken from the 1983 amendment of Federal Rule 26. In all other relevant respects, these latter two Delaware variants of Rule 26 are, like Delaware Court of Chancery Rule 26, based solely on the 1970 version of Federal Rule 26.⁹¹ None of Delaware's variants of Rule 26 incorporates modifications to Federal Rule 26 as amended in 1993 and 2000. All three Delaware variants of Rule 30 track virtually verbatim the 1970 version of Federal Rule 30, with some unique local provisions tacked on at the end as additional paragraphs. None of the Delaware variants presumptively limits the number of depositions. With respect to Rule 33(a), each Delaware variant remains modeled on the 1970 version of Federal Rule 33.⁹² None limits the number of interrogatories. However, each incorporates the changes made by the 1993 amendment of Federal Rule 33 with respect to the balance of Rule 33. All three Delaware variants of Rule 45 track the 1991 version of Federal Rule 45. They differ, however, as to Rule 50. That rule is omitted from the Dela-

Court of Chancery Rule 11 had been amended to incorporate the "reasonable inquiry requirement" introduced by the 1983 amendment of Federal Rule 11). The parallel evolution of the other Delaware versions of Rule 11 can only be inferred, as the current edition of the Delaware Rules Annotated does not provide reliable amendment histories. For example, Delaware Court of Chancery Rule 11, which repeats verbatim the text of Federal Rule 11 as amended in 1993, is annotated as having been last amended in 1987. See 1 DEL. RULES ANN., *supra* note 89, at 216. This contradicts not only common sense (the drafters of the 1993 version of Federal Rule 11 nowhere credited Delaware with having drafted and adopted years earlier the exact text of the 1993 FRCP amendment) but also the *Hurst* case, which as noted above declared in 1990 that Delaware Court of Chancery Rule 11 then mirrored the 1983 version of Federal Rule 11.

⁹¹ Unique to Delaware Court of Common Pleas Rule 26 is its paragraph (h), which provides for the exchange of discovery documents in the form of word processing files where the technology is available and the response to the discovery request would otherwise require the retyping of the request.

⁹² Rule 33(a) of the Delaware Superior Court and the Delaware Court of Common Pleas contain some additional miscellaneous material. Rule 33(a) of the Delaware Superior Court also contains a rather conspicuous technical error. As adopted and published, Delaware Superior Court Rule 33(a) retains the second paragraph of text from the 1970 version of Federal Rule 33(a), despite the fact that the identical language is repeated in the next paragraph, i.e., Delaware Superior Court Rule 33(b)(1), (2), (3), and (5), as amended to copy the 1993 version of Federal Rule 33(b).

ware Chancery Rules, since there are no jury trials in the Court of Chancery. Delaware Superior Court Rule 50 tracks the 1991 version of Federal Rule 50. But Delaware Court of Common Pleas Rule 50 remains modeled on the original, 1938 version of Federal Rule 50.

SOUTH CAROLINA⁹³

South Carolina Rule 4 remains based on the original, 1938 version of Federal Rule 4, and does not incorporate a provision for waiver of service of process. South Carolina Rule 11(a) incorporates almost exactly the language of the 1983 version of Federal Rule 11, with additional local provisions added as Rule 11(b)-(d). South Carolina Rule 11 does not conform in any way to the 1993 version of Federal Rule 11. South Carolina Rule 16(a)-(b) is loosely modeled on the 1938 version of Federal Rule 16; the remainder of South Carolina Rule 16 is unique to local practice. South Carolina Rule 16 does not follow either the 1983 or 1993 amendments of Federal Rule 16. South Carolina Rule 26 is modeled on the 1970 version of Federal Rule 26, as amended in 1980 and 1983, to add paragraphs (f) and (g), but does not incorporate the 1993 or 2000 amendments of Federal Rule 26(a). Although it contains much local material,⁹⁴ South Carolina Rule 30 is modeled primarily on the 1970 version of Federal Rule 30. It does not conform to the 1993 amendment of Federal Rule 30, and imposes no limits on the number of depositions that may be taken by a party.⁹⁵ South Carolina Rule 33 is loosely based on the 1970 version of Federal Rule 33. It does not incorporate the form or substance of the 1993 version of Federal Rule 33, but it does include a *sui generis* limitation of “general interrogatories” to no more than fifty without leave of court.⁹⁶ South Carolina Rule 45 conforms to the 1991 version of Federal Rule 45. South Carolina Rule 50, however, remains modeled on the 1963 version of Federal Rule 50, with some local additions, and does not conform to the 1991 amendment of that federal rule.

⁹³ See S.C. CODE ANN. (Law. Co-op. 1988).

⁹⁴ See, e.g., South Carolina Rule 26(h) (“Videotaped Depositions”); 26(i) (“Use of Depositions of Treating Physicians and Other Specified Treating Health Care Providers”); and 26(j) (“Conduct During Depositions”).

⁹⁵ South Carolina Rule 30(a)(2) does presumptively bar the taking of any one party’s or witness’s deposition more than once, or in an inconvenient location.

⁹⁶ South Carolina Rule 33(b)(1)-(7) describes seven categories of “standard interrogatories” that may be served as of right in any action. South Carolina Rule 33(b)(8) provides that, in suits for declaratory or injunctive relief, or for not less than \$25,000 in monetary relief, a party may, as of right, serve on any other party up to fifty “general interrogatories” seeking information beyond the scope of the standard interrogatories. South Carolina’s procedural goals appear to be similar to those of the 1993 and 2000 discovery amendments of the FRCP, which introduced into federal civil practice a mandatory duty of disclosure of standard information and offsetting limits on free-form party discovery by deposition and interrogatory, but South Carolina has pursued these goals by distinctly different procedural reforms than those effectuated by the recent amendments of the FRCP.

C. *Tabular Summaries*

Tables I-III (see Appendix below) present aggregate views of the present degree of state conformity to the FRCP, as determined by the response to each of the thirteen sample amendments by each of the thirty-three jurisdictions identified in 1986 as substantially conforming to the federal model of civil procedure.

Table I focuses on the first five sample amendments, dating from 1980 to 1991. It shows that nearly two-thirds of these amendments have been incorporated into state civil procedure by states that previously showed a close affinity for the federal model. The five sample amendments were in effect “voted” on by thirty-three jurisdictions, and out of the 165 “votes” thus cast (5 x 33), there were 102 “Yes” votes (counting as “Yes” votes those states which conformed in a qualified way to the amendment in question). Thus, the average percentage of acceptance of the federal amendments was sixty-two percent (102/165). Four replica jurisdictions adopted all five amendments: Montana, New Mexico, North Dakota, and West Virginia, as did one other state: fact-pleading Delaware. Two replica states abstained from conforming to any of the amendments: Massachusetts⁹⁷ and South Dakota, as did Georgia (a replica state but for its use of codified rules). The percentage of states adopting each of the five amendments ranged from eighty-five percent for the 1983 amendment of Rule 11 (twenty-eight out of thirty-three states) to forty-five percent for the 1991 amendment of Rule 50 (fifteen out of thirty-three states).

Table II looks exclusively at the record of state adoption of the seven sample amendments of 1993. It records a much lower rate of state conformity: overall, out of 231 opportunities for adoption (seven amendments multiplied by thirty-three states), there were only sixty-five instances of adoption, producing an average degree of conformity of twenty-eight percent. Only one state adopted all seven amendments: the 1986 replica state of Utah. Four former replica states adopted none of the seven amendments: Indiana, New Mexico, South Dakota, and Washington. Also adopting none of the seven amendments was fact-pleading Arkansas. The most commonly adopted amendment, at least in principle, was Rule 33’s limitation on the number of interrogatories. Disregarding substantial variation in the form and content of the various state analogues, Rule 33’s limitation on the number of interrogatories that may be propounded as of right has a counterpart in the rules of twenty out of thirty-three jurisdictions, although, in every instance but one (Utah), the limit applicable in state courts is higher (between thirty and fifty) than in federal court (twenty-five). Even Massachusetts conforms to this aspect of Rule 33 in principle, which may reflect the fact that such limits were a frequent feature of state practice (and also of federal practice under the local rules of many districts) before being incorporated into Federal Rule 33. The percentage of states

⁹⁷ This may reflect the fact that Professor Stephen N. Subrin, who expressed skepticism in his 1989 article about the value of state-federal procedural uniformity, began serving as Reporter to the Massachusetts Supreme Judicial Court’s Standing Committee on the Rules of Civil Procedure in 1982. See Subrin, *supra* note 5, at 2031 n.170. He held that post until 1994, and since then has served as a member of the same committee. See ASS’N OF AM. LAW SCHOOLS, THE AALS DIRECTORY OF LAW TEACHERS 2001-2002, 1021 (2021) (biographical entry for Prof. Subrin).

adopting each of the other six sample 1993 amendments ranged from thirty-three percent (reconfigured Rule 11, adopted by eleven out of thirty-three states) to nine percent (reconfigured Rule 26 with its semi-mandatory disclosure rule, adopted by just three out of thirty-three states).

Table III combines the data from Tables I and II to provide a measure of overall state conformity to the twelve sample amendments of the Federal Rules from 1980 through 1993, and then extends that comparison to include the recent 2000 amendment to Rule 26.

With respect to the first twelve amendments, which have been part of federal procedure for at least eight years, the percentage of overall adoption is forty-two percent. There were 167 "Yes" votes cast out of the 396 opportunities for states to vote to conform their procedures with that of the federal courts (thirty-three states times twelve sample amendments). Two states remained virtual replicas: Utah and Wyoming. Utah adopted all but one of the twelve sample 1980-1993 amendments, abstaining only with respect to 1991's amendment of Federal Rule 50. Wyoming adopted ten out of the twelve sample amendments from this period. It failed with respect to the 1983 amendment of Federal Rule 16, but this lapse became moot when it adopted the superseding 1993 amendment of Federal Rule 16. Wyoming also abstained from conforming to 1993's amendment of Federal Rule 26. One state, the former replica state of South Dakota, adopted none of the twelve sample amendments. The overall rate of adoption, forty-two percent, indicates that, on average, the states that in 1986 were identified as substantially conforming to the federal model of procedure adopted only five out of the twelve sample 1980-1993 amendments.

Table III also records that in the year following its adoption, only Colorado and Utah have conformed to the 2000 amendment of Federal Rule 26. When this thirteenth sample amendment is added to the survey, the average degree of conformity to the entire set of sample amendments drops to thirty-nine percent.

IV. CONCLUSION

Even among states that fifteen years ago could be counted as substantially conforming to the federal model of procedure, recent significant amendments have been more frequently rejected or ignored than adopted. While the methodology of this survey is far from perfect – the identification of a relatively small set of sample amendments, while necessary for such a survey to be manageable, is also necessarily arbitrary – that imperfection attaches only to the estimation of the degree of divergence of state procedural systems from the federal model. Replica status is far easier to measure than more intermediate degrees of state conformity, for a true replica state ought to provide a nearly perfect match for *any* set of sample amendments. Thus, while I am reluctant to make bold claims to have measured some average degree of partial conformity of state and federal procedural systems, I am confident that the era of federal procedural hegemony has ended.

Federal influence on state procedure, of course, remains substantial, and important. It may even be too soon to conclude that there are no federal repli-

cas left among the states. While Wyoming's nonconforming discovery procedures rule out replica status, one has to put a great deal of weight on new Rule 50's nomenclature of judgments as a matter of law in order to deny Utah continued status as a replica state. But, it surely is the last one standing. Where once the ideal "one procedure for state and federal courts" was a beacon for procedural reform, its light has dimmed to barely a flicker.

It may be that the role of formal rules has been exaggerated, and that "local legal culture" is more important in determining how procedure works at the grass roots level, whether in a federal courtroom or a state one.⁹⁸ The interesting questions that now invite study are whether conformity in legal culture is parasitic on widespread conformity in procedural rules⁹⁹ (or at least the perception that such conformity is ideal), and thus, whether practical procedural conformity will continue to be widespread once it is commonly understood that state and federal systems of procedure have formally diverged not just in some states, but almost everywhere.

⁹⁸ See Main, *supra* note 5, at 382. See also Carl Tobias, *Local Federal Civil Procedure for the Twenty-First Century*, 77 NOTRE DAME L. REV. 533 (2002) (documenting and criticizing the proliferation of disparate local rules of procedure in the federal district courts).

⁹⁹ Cf. *id.* ("Whether a dominant regime, such as the Federal Rules of Civil Procedure, is a prerequisite to assimilation by a local legal culture would be an interesting subject of further study.").

APPENDIX

TABLE 1
STATE ADOPTION OF FIVE SELECTED 1980-1991
FRCP AMENDMENTS

	Rule 26(f) 1980	Rule 11 1983	Rule 16 1983	Rule 45 1991	Rule 50 1991	Yes out of 5	% Yes by state
FEDERAL RULES REPLICAS (AS OF 1986)							
Alabama	Yes	No	Yes	Yes	Yes	4	80%
Alaska	Yes	Yes	Yes	No	No	3	60%
Arizona	No	Yes	Yes (qualified)	Yes	Yes	4	80%
Colorado	Yes (qualified)	Yes	Yes (qualified)	No	No	3	60%
District of Columbia	Yes	Yes	No	Yes	Yes	4	80%
Hawaii	Yes	Yes	No	Yes (qualified)	Yes	4	80%
Indiana	No	Yes (qualified)	Yes	Yes (qualified)	No	3	60%
Kentucky	No	Yes	No	No	No	1	20%
Maine	Yes	Yes	No	Yes	Yes	4	80%
Massachusetts	No	No	No	No	No	0	0%
Minnesota	Yes	Yes	Yes	No	No	3	60%
Montana	Yes	Yes	Yes	Yes	Yes	5	100%
New Mexico	Yes	Yes	Yes	Yes	Yes	5	100%
North Dakota	Yes	Yes	Yes	Yes	Yes	5	100%
Ohio	No	Yes	No	Yes	No	2	40%
Rhode Island	No	Yes	No	Yes	Yes	3	60%
South Dakota	No	No	No	No	No	0	0%
Tennessee	Yes	Yes	Yes	No	No	3	60%
Utah	Yes (qualified)	Yes	Yes	Yes	No	4	80%
Vermont	Yes	Yes	No	Yes	Yes	4	80%
Washington	Yes	Yes	No	No	Yes	3	60%
West Virginia	Yes	Yes	Yes	Yes	Yes	5	100%
Wyoming	Yes	Yes	No	Yes	Yes	4	80%
NOTICE PLEADING/FEDERAL-RULES-MODEL PROCEDURAL SYSTEMS (AS OF 1986)							
Idaho	No	Yes	Yes	No	No	2	40%
Mississippi	Yes (qualified)	Yes	No	Yes	No	3	60%
Nevada	Yes	Yes	Yes	No	No	3	60%
NOTICE PLEADING/FEDERAL CODE PROCEDURAL SYSTEMS (AS OF 1986)							
Georgia	No	No	No	No	No	0	0%
Kansas	No	Yes	Yes (qualified)	Yes	Yes	4	80%
North Carolina	Yes	No	No	No	No	1	20%
Oklahoma	Yes	Yes	Yes (qualified)	Yes	No	4	80%
FACT PLEADING/FEDERAL-RULES-MODEL PROCEDURAL SYSTEMS (AS OF 1986)							
Arkansas	No	Yes	No	No	No	1	20%
Delaware	Yes (qualified)	Yes (qualified)	Yes (qualified)	Yes	Yes (qualified)	5	100%
South Carolina	Yes	Yes (qualified)	No	Yes	No	3	60%
Yes (out of 33)	22	28	17	20	15	102/165	
Percent Yes (by amendment)	67%	85%	52%	61%	45%	Avg. 62%	

TABLE 2
STATE ADOPTION OF SEVEN SELECTED 1993 FRCP AMENDMENTS

	Rule 4(d) 1993	Rule 11 1993	Rule 16 1993	Rule 26(a) 1993	Rule 30 1993 10-depo. limit	Rule 33 1993 25-interrog. limit	Rule 33 1993 general content	Yes out of 7	% Yes by state
FEDERAL RULES REPLICAS (AS OF 1986)									
Alabama	No	No	No	No	No	Yes (40)	No	1	14%
Alaska	No	No	Yes	Yes	Yes (3)	Yes (30)	Yes	5	71%
Arizona	Yes (qualified)	No	Yes (qualified)	No	No	No	No	2	29%
Colorado	Yes (qualified)	No	Yes (qualified)	Yes (qualified)	No	No	No	3	43%
District of Columbia	No (qualified)	Yes	No	No	Yes	Yes (40)	Yes	4	57%
Hawaii	No	Yes	Yes	No	No	No	No	2	29%
Indiana	No	No	No	No	No	No	No	0	0%
Kentucky	No	No	No	No	No	Yes (30)	No	1	14%
Maine	No	No	No	No	Yes (5)	Yes (30)	No	2	29%
Massachusetts	No	No	No	No	No	Yes (30)	No	1	14%
Minnesota	No (qualified)	Yes	Yes (qualified)	No	No	Yes (50)	No	3	43%
Montana	No	No	No	No	No	Yes (50)	No	1	14%
New Mexico	No	No	No	No	No	No	No	0	0%
North Dakota	No	Yes	Yes (qualified)	No	No	No	Yes (qualified)	3	43%
Ohio	No	No	No	No	No	Yes (40)	No	1	14%
Rhode Island	Yes	No	No	No	No	Yes (30)	No	2	29%
South Dakota	No	No	No	No	No	No	No	0	0%
Tennessee	Yes	Yes	No	No	No	No	No	2	29%
Utah	Yes (qualified)	Yes (qualified)	Yes (qualified)	Yes (qualified)	Yes	Yes	Yes	7	100%
Vermont	Yes (qualified)	Yes (qualified)	No	No	No	No	No	2	29%
Washington	No	No	No	No	No	No	No	0	0%
West Virginia	No	Yes	Yes	No	No	Yes (40)	Yes	4	57%
Wyoming	Yes	Yes	Yes	No	Yes	Yes (30)	Yes	6	86%
NOTICE PLEADING/FEDERAL-RULES-MODEL PROCEDURAL SYSTEMS (AS OF 1986)									
Idaho	No	No	No	No	No	Yes (45)	No	1	14%
Mississippi	No	No	No	No	No	Yes (30)	No	1	14%
Nevada	No	No	No	No	No	Yes (40)	No	1	14%
NOTICE PLEADING/FEDERAL CODE PROCEDURAL SYSTEMS (AS OF 1986)									
Georgia	Yes	No	No	No	No	Yes (50)	No	2	29%
Kansas	No	No	No	No	No	No	Yes (qualified)	1	14%
North Carolina	No	No	No	No	No	Yes (50)	No	1	14%
Oklahoma	No	Yes	No	No	No	Yes (30)	Yes	3	43%
FACT PLEADING/FEDERAL-RULES-MODEL PROCEDURAL SYSTEMS (AS OF 1986)									
Arkansas	No	No	No	No	No	No	No	0	0%
Delaware	No	Yes	No	No	No	No	Yes	2	29%
South Carolina	No	No	No	No	No	Yes (50)	No	1	14%
Yes (out of 33)	8	11	9	3	5	20	9	65/231	
Percent Yes (by amendment)	24%	33%	27%	9%	15%	61%	27%		Avg. 28%

TABLE 3
STATE ADOPTION OF FRCP AMENDMENTS: 1980-1993 vs. 1980-2000

	Total Yes out of 12	% Yes by state through 1993	Rule 26(a) 2000	Yes 2000 only	Total yes out of 13	% Yes by state through 2000
FEDERAL RULES REPLICAS (AS OF 1986)						
Alabama	5	42%	No	0	5	38%
Alaska	8	67%	No	0	8	62%
Arizona	6	50%	No	0	6	46%
Colorado	6	50%	Yes (qualified)	1	7	54%
District of Columbia	8	67%	No	0	8	62%
Hawaii	6	50%	No	0	6	46%
Indiana	3	25%	No	0	3	23%
Kentucky	2	17%	No	0	2	15%
Maine	6	50%	No	0	6	46%
Massachusetts	1	8%	No	0	1	8%
Minnesota	6	50%	No	0	6	46%
Montana	6	50%	No	0	6	46%
New Mexico	5	42%	No	0	5	38%
North Dakota	8	67%	No	0	8	62%
Ohio	3	25%	No	0	3	23%
Rhode Island	5	42%	No	0	5	38%
South Dakota	0	0%	No	0	0	0%
Tennessee	5	42%	No	0	5	38%
Utah	11	92%	Yes (qualified)	1	12	92%
Vermont	6	50%	No	0	6	46%
Washington	3	25%	No	0	3	23%
West Virginia	9	75%	No	0	9	69%
Wyoming	10	83%	No	0	10	77%
NOTICE PLEADING/FEDERAL-RULES-MODEL PROCEDURAL SYSTEMS (AS OF 1986)						
Idaho	3	25%	No	0	3	23%
Mississippi	4	33%	No	0	4	31%
Nevada	4	33%	No	0	4	31%
NOTICE PLEADING/FEDERAL CODE PROCEDURAL SYSTEMS (AS OF 1986)						
Georgia	2	17%	No	0	2	15%
Kansas	5	42%	No	0	5	38%
North Carolina	2	17%	No	0	2	15%
Oklahoma	7	58%	No	0	7	54%
FACT PLEADING/FEDERAL-RULES-MODEL PROCEDURAL SYSTEMS (AS OF 1986)						
Arkansas	1	8%	No	0	1	8%
Delaware	7	58%	No	0	7	54%
South Carolina	4	33%	No	0	4	31%
Overall through 1993 (12 amend- ments)	167/396	42%			Overall through 2000 (13 amendments)	169/429 39%
States adopting 2000 Amend- ment:	2					
Percent yes (out of 33)	6%					