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September 27, 2023

The Honorable Robin L. Rosenberg
Chair
Advisory Committee on Civil Rules
c/o United States District Court
Paul G. Rogers Federal Building and Courthouse
701 Clematis Street, Courtroom No. 2
West Palm Beach, Florida 33401

RE: Proposed Amendments to Rules 41 and 45 of the Federal Rules of Civil Procedure

Dear Judge Rosenberg:

The American College of Trial Lawyers (the “College”) is dedicated to maintaining and improving the standard of trial practice, the administration of justice and the ethics of the legal profession. The Federal Civil Procedure Committee of the College is charged with monitoring the work of the Advisory Committee on Civil Rules and evaluating proposed changes. I am writing on behalf of the College concerning possible issues regarding Rule 41 and Rule 45.

In brief, Rule 41(a)(1)(A) states:

- (a) **Voluntary Dismissal.**
- (1) *By the Plaintiff.*
 - (A) *Without a Court Order.* Subject to Rules 23(E), 23.1(c), 23.2, and 66 and any applicable federal statute, the plaintiff may dismiss an action (emphasis added) without a court order by filing:
 - (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or
 - (ii) a stipulation of dismissal signed by all parties who have appeared.

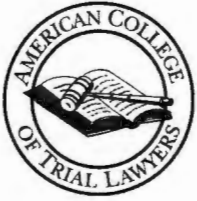
The Advisory Committee has discussed that Rule 41 and in particular the term “action” is interpreted differently among the Circuit Courts of Appeal as well as some trial courts. In some jurisdictions, notably in the First, Third, Fifth, Eighth, Ninth and Eleventh Circuits, a plaintiff may dismiss all claims against some but not all defendants. The Second, Sixth and Seventh Circuits interpret “action” to mean all claims against all parties. Within the Fourth and Tenth Circuits there are intra-circuit splits as to interpretation of this Rule. The College is of the opinion that the Rule should be amended to clarify that a party may dismiss all or fewer of its claims against any or all parties.

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The Advisory Committee has also been discussing Rule 45(b)(1) and the delivery of subpoenas. The College is of the opinion that service of a subpoena under Rule 45 should parallel the process for serving a summons and complaint under Rule 4. Using the identical procedure for service of process minimizes confusion and argument about whether service of a subpoena is valid. That means that service may be made via state law as applicable in the state where the District Court is located or where service is made, or by delivering a copy of the subpoena to the individual personally, or by leaving a copy of the subpoena at the individual's dwelling or usual place of abode with someone of suitable age and discretion. As practitioners we do not believe a different procedure should be adopted for service and delivery of subpoenas as opposed to service and delivery of summons.

The College greatly appreciates the consideration of its view by the Advisory Committee.

Respectfully

A handwritten signature in black ink, appearing to read "Tom Green", is written over the typed name and title.

THOMAS M. GREEN
Federal Civil Procedure Chair

TMG/cb