

# Missouri Supreme Court Changes Rules to Reduce Discovery Burden

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In 2019, the Missouri legislature passed, and Governor Parson signed, legislation to update several provisions of the Missouri Rules of Civil Procedure governing discovery. Known as Senate Bill 224 (SB 224), the law was intended to reduce discovery burden and expense by aligning Missouri rules with the federal rules governing discovery.

These changes to Missouri Rules 56-59 and 61 adopted the concept of proportionality in discovery—that the time and expense devoted to discovery should be proportional to the needs of the case under the totality of the circumstances, which may include the substance or size of the case. The new rules also addressed undue burden or cost involving electronic discovery, and imposed limits on the number of interrogatories, document requests and requests for admission, as well as the number and length of depositions.

The Missouri Constitution in Article V, Section 5 empowers the Missouri Supreme Court to "establish rules relating to practice, procedure and pleading for all courts and administrative tribunals, which shall have the force and effect of law." But the same constitutional provision also contemplates potential action by the legislature when it states that "Any rule may be annulled or amended in whole or in part by a law limited to the purpose."

Within a few months after SB 224 was enacted and took effect on August 28, 2019, it became evident that the Missouri Supreme Court apparently questioned whether SB 224 was a proper exercise of the legislature's constitutional power to annul or amend a court procedural rule. Most notably, the Court's official online version of the Missouri Rules of Civil Procedure has never been updated to reflect the new wording as enacted in SB 224. Instead, the Court has retained its own text of the discovery rules and added comments that "SB 224 (2019) purports to amend" various rules.

This impasse between the branches of government and the uncertainty among litigants has continued for well over a year. Some observers suggested that the problem might be that SB 224 amended several rules in a single enactment by the legislature, whereas the constitutional language granting legislative power to amend or annul is phrased in the singular—"[a]ny rule."



Regardless of the reason, the uncertainty is being ended by an order entered by the Missouri Supreme Court on March 2, 2021. It gives notice that effective September 2, 2021, the Missouri Supreme Court is amending Rules 56-59 and 61 to adopt language that reflects the changes set forth in SB 224.

Thus, whatever doubt or uncertainty may have existed about Missouri's discovery rules over the last two years has been or will soon be resolved. As a practical matter, both the legislative and judicial branches of Missouri government have now embraced a new philosophy of proportional discovery intended to limit the burden and expense of all aspects of discovery, including electronic discovery.

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