

Right-Sizing the Civil Rules

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The current Civil Rules are built upon the expectation that judges will manage their cases. But the rules themselves provide little guidance on the critical questions of calibration and scale necessary to guide judges on how to manage. Are the rules designed for big cases, ordinary cases, or small cases? When should judges impose new limits or depart from existing ones, and in which direction? Judges are told to strive for proportionality, but benchmarks are not always apparent. This essay explores various ways that courts and rulemakers have tried to address the problems that arise from having a single set of rules in a system with a wide range of case types and sizes. We conclude that the best model is to calibrate the general civil rules to ordinary cases and use case management and special protocols for the smallest and largest of cases. And, ultimately, the key to such a system remains finding ways to help judges know not just how to tailor their cases but when tailoring is needed.