



# **DRI Leaders Participate in Washington Hearing on Amendments to the Federal Rules on Civil Discovery**

Date: 11/12/2013

*Witnesses Include Two Former DRI Presidents*

**CHICAGO – (November 7, 2013)**—DRI – The Voice of the Defense Bar was very much in evidence at a November 7<sup>th</sup> hearing in Washington held by the Federal Advisory Committee on Civil Rules . The subject of the hearing was a series of proposed changes to the Federal Rules of Civil Procedure, including rules relating to discovery. Six of the witnesses were DRI members and two, Mary Massaron Ross and Marc E. Williams, were former DRI presidents.

While the amendments are directed at addressing the skyrocketing cost of discovery in civil cases, Massaron Ross said that DRI’s overall goal was working “to ensure a fair and balanced system.” She said that “Our members support a merits-based civil justice system. They are very concerned about the civil justice system today because clients are avoiding the courts and settling disputes, not for fear of losing on merits, but because of cost concerns. When that happens, justice becomes a bystander to the legal process. Litigation should not be about discovery as leverage for a settlement. It should be about finding a way to have an efficient information exchange to settle disputes.”

Generally, DRI finds the proposed rules to be an improvement over the current ones but nevertheless has suggested further changes. DRI favors clearly-defined preservation rules to relieve companies of the onerous financial burden of over-preservation and yet not be subjected to sanctions should litigation occur. The proposed rule would allow sanctions or an adverse inference instruction without a showing of willfulness and bad faith. DRI feels that, absent the showing of both, defendants should not be subjected to punishment based solely on claims of irreparable prejudice.

On another issue regarding the scope of discovery, DRI advocated replacing the current “reasonably calculated” language with a standard of scope that weighed the proportionality of the request with the needs of the case. Marc E. Williams, former president of DRI and former chair of its Center for Law and Public Policy said that “The rule change would allow us to focus on proportionality early in the case when we are preparing our discovery plans. And it will require us to focus discovery more on the facts of the case at hand and to demonstrate the benefit

that discovery could provide in resolving the issues of the specific dispute. This would save everyone time and unnecessary expense.”

Added DRI member Jack McCowan, “With no requirement that discovery be focused on its relevance to the specifics of the case at hand, I’ve experienced situations where there was discovery of information on products other than the product at issue!”

DRI plans to ask its members to testify in additional public hearings in Phoenix in January and Dallas in February. “These amendments are absolutely critical to justice and the viability of the civil justice system, said Massaron Ross. “There’s a lot of material to cover in the five minutes allocated to each witness. So, we are grateful for the additional opportunities for our members to testify on behalf of the defense bar.”

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DRI - The Voice of the Defense Bar 55 W. Monroe, Suite 2000, Chicago, IL 60603 Phone: 312.795.1101  
Fax: 312.795.0749