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January 10, 2014

Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle NE
Suite 7-240
Washington, D.C. 20544

Re: Proposed Changes to the Federal Rules of Civil Procedure

Dear Sir or Madam:

I appreciate the opportunity to comment on the proposed changes to the Federal Rules of Civil Procedure regarding pre-trial discovery. I routinely represent clients on civil matters in the United States District Court for the District of New Jersey. I favor the proposed rule changes and urge you to adopt them. I routinely represent and counsel clients who are concerned about the expense of pre-trial discovery, and specifically, the burden of having to respond to overreaching discovery demands that are, more often than not, unrelated to any truly relevant issues. Clients often complain about the injustice of having to resolve cases simply because it is more economical.

Unfortunately, too often one party to a matter will turn to gamesmanship in an effort to obtain a result which is at odds with our system of justice. Frequently, this takes the form of overly broad electronic discovery demand, document requests and deposition. The purpose of the Federal Rules of Civil Procedure should be to an efficient method of bringing about a fair result, not parties capitulating to avoid unnecessary litigation expenses. Experienced federal court litigators should understand how to use discovery effectively and efficiently without restricting their ability to advocate for their clients and prepare for trial. And,

where something extraordinary is required, there is always recourse to the Court to expand the scope of discovery. But, that should be the exception, where warranted, not the norm.

We view the proposed the proposed amendments as an improvement over the existing system. The proposed Rule 37(e) appropriately limits sanctions to situations where a parties conduct is "willful" or "in bad faith" and causes "substantial prejudice." These changes will help to mitigate a litigant's ESI burden which often results in excessive costs of document retention and management for fear of sanctions for failing to produce documents for where there is no other reason to save them except a fear of sanctions.

We also support the proposed reductions on the number of requests to admit (no more than 25) and both deposition numbers (5) and length (6 hours). These restrictions will force counsel to focus their discovery efforts and avoid allowing counsel to use discovery as an abuse of process to achieve some tactical advantage toward settlement solely as a result of cost. In view of the mandatory disclosures included in the federal rules, the reduction in the number of interrogatories (from 25 to 15) is appropriate, reasonable, and does not impose any undue limitation on a litigant. And, in an appropriate case, the parties will either be able to agree to an appropriate number or the court can decide when additional discovery is warranted.

In addition, we believe that the proposed limitations on the scope of discovery as suggested in revised FRCP 26(b)(1) would further the goal of efficient and just resolution of matters by making discovery obligations more proportional. This will also reduce the burden placed on the courts who must decide disputes. The proposal to limited discovery to well pleaded claims and defenses "proportional to the needs of the case" (as opposed to the current "any matter relevant to the subject matter") should help to reduce costs for all parties and the Courts, and should ease discovery burdens. We also support abandoning the "reasonably calculated to lead to the discovery of admissible evidence" standard. Finally, the provisions related to cost allocation in the proposed FRCP 26(c) will offer substantial relief from excessive costs of discovery. The mere existence of this rule will likely cause litigants to be more thoughtful in making their discovery demands.

Again, we appreciate the opportunity to submit our comments on the proposed changes to the Federal Rules of Civil Procedure, which we strongly support.

Very truly yours,

John R. Scott

JRS