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January 9, 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:

We appreciate the opportunity to comment on the proposed changes to the Federal Rules of Civil Procedure regarding pre-trial discovery. As attorneys who routinely litigate civil matters in the federal courts, we are strongly in favor of the proposed rules. We routinely represent and counsel clients who are concerned about the expense of pre-trial discovery and the burden of discovery demands that are, at best, tangentially related to relevant issues.

Experienced litigators understand how to use discovery effectively and reasonably in order to prepare for trial and are usually able to resolve minor disputes with minimal if any judicial involvement. 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.

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 be more focused in their discovery efforts and avoid abuses of the process. Likewise, in view of the mandatory disclosures included in the federal rules, the reduction in the number of interrogatories (from 25 to 15) is appropriate and reasonable. We are confident that in an appropriate case, the parties will be able to agree to an appropriate number and that the court will properly decide applications for relief from these limitations.

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. In addition, this will foster greater communication among counsel and allow for more effective case management. 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 and 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,

Mark S. Kundla

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