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October 24, 2013

Honorable David G. Campbell
Chair, Advisory Committee on Civil Rules
Washington, DC 20544

Re: *Comment in Support of the Newly Proposed Amendments to the Federal Rules of Civil Procedure*

Dear Judge Campbell:

I write to express my support for the package of newly proposed amendments to the Federal Rules of Civil Procedure. As an experienced litigation attorney and a legal scholar on issues affecting federal discovery, I believe the proposed changes represent workable solutions to some of the longstanding problems with the discovery process.

In particular, I support the changes designed to emphasize proportionality standards. These “highly valued” yet “missing in action” standards have the potential to genuinely reduce the costs and delays that unnecessarily burden the discovery process. Nevertheless, proportionality standards have been invoked too infrequently since their inception in 1983 to address the pervasive problems of over-discovery and gamesmanship. By moving those standards directly into the scope of discovery under Rule 26(b)(1), counsel and the courts should gain a better understanding of the restraints that proportionality places on discovery. While a cross-reference to the proportionality certification requirement from Rule 26(g)(1)(B)(iii) would also further this purpose, I am satisfied that the current proposal adequately spotlights proportionality as the touchstone of federal discovery practice.

To substantiate my views on the proposed amendments, I have enclosed two of the many articles that I have written on these issues. The first is *New Utah Rule 26: A Blueprint for Proportionality under the Federal Rules of Civil Procedure*, 2012 MICH. ST. L. REV. 933 (2012). Published by the Michigan State Law Review, this article explores why the rules should be amended to emphasize proportionality standards. The second is *A Comprehensive Look at the Newly Proposed Amendments to the Federal Rules of Civil Procedure*, 26-Oct Utah B. J. 38. Published by the Utah Bar Journal, this piece summarizes the proposed rules changes and describes the benefits they offer to the discovery process.

Thank you for considering my views on the proposed amendments. I look forward to answering any questions that you or the other members of the Advisory Committee may have.

Very Truly Yours,

Philip J. Favro

Enclosures