



LAWYERS FOR CIVIL JUSTICE

1140 Connecticut Ave, N.W. • Suite 503 • Washington, D.C. 20036

Phone: (202) 429-0045 • Fax: (202) 429-6982

Board of Directors

L. Gino Marchetti, Jr.*

President
Taylor Pigue Marchetti & Mink PLLC
Nashville, Tennessee

Wayne B. Mason*

President-Elect
Sedgwick LLP
Dallas, Texas

Marc Williams*

Vice-President
Nelson Mullins
Huntington, West Virginia

John H. Martin*

Immediate Past President & Ex-Officio
Thompson & Knight LLP
Dallas, Texas

Leah L. Lorber*/Rick Richardson

Secretary-Treasurer
GlaxoSmithKline
Washington, DC

Michael Beckwith

Shell Oil
Houston, Texas

Julia L. Brickell

H5
New York, New York

R. Matthew Cairns

Gallagher Callahan & Gartrell, PC
Concord, New Hampshire

F. Thomas Cordell

Frailey, Chaffin, Cordell
Perryman, Sterkel, McCalla & Brown LLP
Chickasha, Oklahoma

Markus Green

Pfizer Inc
New York, New York

Michael J. Harrington*/Teri Cotton Santos

Eli Lilly and Company
Indianapolis, Indiana

Thomas H. Hill

General Electric
Fairfield, Connecticut

Jeffrey W. Jackson*

State Farm Mutual Automobile
Insurance Company
Bloomington, Illinois

Edward M. Kaplan

Sulloway & Hollis PLLC
Concord, New Hampshire

John K. Kim

Johnson & Johnson
New Brunswick, New Jersey

Connie Lewis Lensing

FedEx Express
Memphis, Tennessee

Robert L. Levy

ExxonMobil Corporation
Houston, Texas

Michael I. Neil

Neil Dymott Frank McFall & Trexler
San Diego, California

Jonathan Palmer

Microsoft Corporation
Redmond, Washington

William J. Perry

Carter Perry Bailey LLP
London, England

Quentin Urquhart

Irwin Fritchie Urquhart & Moore LLC
New Orleans, LA

Joseph W. Ryan, Jr.

Porter Wright Morris and Arthur LLP
Columbus, Ohio

Henry Sneath

Picadio Sneath Miller & Norton, P.C.
Pittsburgh, Pennsylvania

Lisa Martinez Wolmart*

Merck & Company
Kenilworth, New Jersey

Executive Director

Barry Bauman

*Member Executive Committee

January 5, 2012

Peter G. McCabe, Secretary
Committee on Rules of Practice and Procedure
of the Judicial Conference of the United States
Thurgood Marshall Federal Judiciary Building
Washington, D.C. 20544

Re: LCJ Supports Proposed Amendments to Federal Rule of Civil
Procedure 45

Dear Secretary McCabe:

Lawyers for Civil Justice has reviewed the May 2011 Report of the Civil Rules Advisory Committee and its revisions to Rule 45 of the Federal Rules of Civil Procedure. This letter is submitted in support of the proposed amendments to Rule 45.

The proposed revisions best reflect our previous conclusion that Rule 45 should *not* compel nationwide trial appearance pursuant to subpoena service for parties and party officers. Attached are two previous Comments submitted by LCJ that set forth the reasons for the positions summarized in this letter.

The traditional justifications for the 100 mile rule have been protecting witnesses from harassment and minimizing litigation costs. These justifications remain viable today, especially in the world of multistate litigation. Moreover, modern technology, such as videotaped depositions, can provide parties with the necessary tools for truth seeking they desire while balancing the interests of a distant witness. Therefore, LCJ endorses the proposed amendments, because they do *not* mandate nationwide trial appearance pursuant to subpoena service on parties or party officers. Accordingly we are opposed to the alternatives set forth in appendix to the committee's report at 29.

http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/Publication%20Aug%202011/C_V_Report.pdf

Furthermore, LCJ agrees with the addition of revised Rule 45(a)(4), which highlights the notice requirement of subpoenas commanding the production of documents or the inspection of premises. Such notice will achieve the Committee's goal of providing other parties with the opportunity to object to a subpoena or to request additional materials. No further notices should be required beyond the one specified in Rule 45(a)(4).

Finally, LCJ supports the "exceptional circumstances" standard required under revised Rule 45(f) to transfer a subpoena-related motion to the issuing court,

Defense Trial Lawyers Dedicated to Excellence and Fairness in the Civil Justice System
A coalition of DRI, Federation of Defense & Corporate Counsel, and International Association of Defense Counsel

absent the consent of the parties and the person responding to the subpoena. LCJ agrees that in certain extraordinary situations, Rule 45 should allow a subpoena dispute to be transferred to the issuing court—*e.g.*, when the decision to enforce the subpoena would go to the merits of the case or would be case dispositive—but such transfers should be rare. Accordingly, LCJ believes that the “exceptional circumstances” standard to transfer motions to the issuing court should *not* be broadened. If a party can use a Rule 45 subpoena to harass a witness who resides outside of the state and beyond the issuing court’s 100-mile radius by requiring him or her to hire counsel to contest a subpoena in a distant issuing court, some of the fundamental purposes of the 100-mile rule’s protections have been defeated. Therefore, LCJ recommends that revised Rule 45(f) be adopted with the “exceptional circumstances” standard.

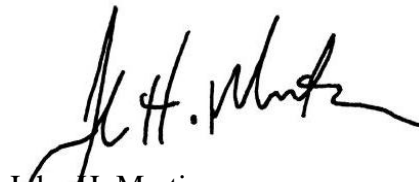
In conclusion, Lawyers for Civil Justice commend the Committee’s proposed amendments to Rule 45 for clarifying the language of Rule 45 and for **not** providing for nationwide trial appearance pursuant to subpoena service on parties or party officers.

We thank you for the opportunity to submit these comments.

Sincerely,



L. Gino Marchetti, Jr.
President, Lawyers for Civil Justice



John H. Martin
Board Chair and Immediate Past President

cc: Barry Bauman, Executive Director, Lawyers for Civil Justice