



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

JOHN H. MARTIN*

LCJ President
Thompson & Knight LLP
Dallas, Texas

L. GINO MARCHETTI*

LCJ President-Elect
Taylor Pigue Marchetti, PLLC
Nashville, Tennessee

WAYNE B. MASON*

LCJ Vice President
Sedgwick, Detert Moran & Arnold, LLP
Dallas, Texas

JEFFREY W. JACKSON*

LCJ Secretary-Treasurer
State Farm Mutual Automobile
Insurance Company
Bloomington, Illinois

STEVEN L. BARNEY

Plunkett & Cooney
Petoskey, Michigan

JULIA L. BRICKELL

H5
New York, New York

R. MATTHEW CAIRNS

Gallagher, Callahan & Gartrell, PC
Concord, New Hampshire

JAMES M. CAMPBELL

Campbell Campbell Edwards & Conroy
Boston, Massachusetts

F. THOMAS CORDELL

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

MARKUS GREEN

Pfizer Inc.
New York, NY

MICHAEL J. HARRINGTON*

Eli Lilly and Company
Indianapolis, Indiana

THOMAS H. HILL

General Electric
Fairfield, Connecticut

CARY HILTGEN

Hiltgen & Brewer
Oklahoma City, Oklahoma

ROBERT D. HUNTER

Altec Inc.
Birmingham, Alabama

JOHN K. KIM

Johnson & Johnson
New Brunswick, New Jersey

CONNIE LEWIS LENSING

Federal Express Corporation
Memphis, Tennessee

ROBERT L. LEVY

Exxon Mobil Corporation
Houston, Texas

LEAH L. LORBER*

GlaxoSmithKline
Washington, DC

MICHAEL T. LUCEY

Gordon & Rees LLP
San Francisco, California

G. EDWARD PICKLE

Shell Oil
Humble, Texas

JOSEPH W. RYAN, JR.

Porter Wright Morris and Arthur LLP
Columbus, Ohio

MARC E. WILLIAMS

Nelson Mullins Riley & Scarborough, LLP
Huntington, West Virginia

LISA MARTINEZ WOLMART*

Merck & Company
Kenilworth, New Jersey

Board Chairman & Ex-Officio

LEWIS F. COLLINS, JR.*

Butler Pappas Weihmuller Katz Craig I.L.P.
Tampa, Florida

Executive Director

BARRY BAUMAN

*Member Executive Committee

March 30, 2011

Honorable David G. Campbell
Chairman, Rule 45 Subcommittee
Advisory Committee on Civil Rules
Sandra Day O'Connor U.S. Courthouse
401 Washington Street
Phoenix, Arizona 85003

Re: Federal Rule of Civil Procedure 45

Dear Judge Campbell:

Lawyers for Civil Justice submits the following on the Subcommittee's amendment package and its four proposed revisions of Rule 45 of the Federal Rules of Civil Procedure. We support the Comprehensive Amendment Proposal—Alternative A ("Comprehensive Alternative A").

Comprehensive Alternative A best reflects our previous conclusion that Rule 45 should *not* compel nationwide trial appearance pursuant to subpoena service for parties and party officers. 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 the truth seeking they desire while balancing the interests of a distant witness. Therefore, LCJ supports the revisions proposed by Comprehensive Alternative A, because it does *not* mandate nationwide trial appearance pursuant to subpoena service on parties or party officers.

One section, however, of Comprehensive Alternative A's proposed Rule 45 proves to be a source of continuing concern for LCJ. Specifically, we are concerned that the new section 45(f)—entitled "Transfer of Subpoena-related Motions"—gives the court where a subpoena-related motion is made too much discretion. 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. 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 will have been defeated. We favor the approach suggested by the Feb. 23, 2011 letter from the ABA Section of Litigation that proposes a more demanding "exceptional circumstances" standard.

Defense Trial Lawyers Dedicated to Excellence and Fairness in the Civil Justice System

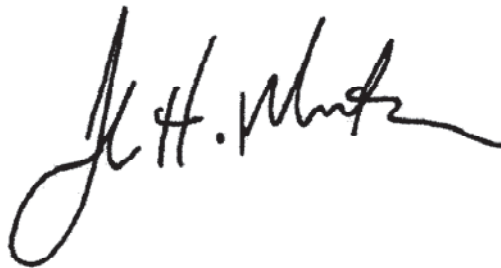
A coalition of DRI, Federation of Defense & Corporate Counsel, and International Association of Defense Counsel

See, Discovery Subcommittee Rule 45 Issues Memorandum at 21-22. Therefore, LCJ requests that the Advisory Committee keep these considerations in mind when revising Rule 45.

In conclusion, Lawyers for Civil Justice commend the subcommittee's Comprehensive Amendment Proposal—Alternative A for clarifying the language of Rule 45 to **not** provide for nationwide trial appearance pursuant to subpoena service on parties or party officers. We are also pleased that the proposal makes Rule 45 much more clear and eliminates the so-called “three ring circus” aspects of the Rule.

We thank you for the opportunity to submit these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "J. H. Martin". The signature is fluid and cursive, with a large loop at the beginning and a long, sweeping tail.

John H. Martin
President, Lawyers for Civil Justice

cc: Judge Mark R. Kravitz
Judge Lee H. Rosenthal
Professor Edward H. Cooper
Professor Richard L. Marcus
Andrea L. Kuperman
All Members on Advisory Committee on Civil Rules