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Peter G. McCabe, Esq.
Secretary
Committee of Rules of Practice
and Procedure of the Judicial
Conference of the United States
Washington, DC 20544

RE: Comments to Preliminary Draft of
Proposed Amendments to the
Federal Rules of Practice and
Procedure

Dear Mr. McCabe:

This letter is in response to your memorandum dated August 26, 2003, to the Members of the American College of Trial Lawyers regarding the Preliminary Draft of Proposed Amendments to the Federal Rules of Practice and Procedure.

I have been a fellow of the American College of Trial Lawyers since 1997 and have been active in civil federal practice in the Commonwealth of Puerto Rico since 1976. I have also been a lecturer at the University of Puerto Rico School of Law as well as the Interamerican University School of Law, teaching a seminar on discovery matters. Following are my comments to the Proposed Amendment to Rule 45 (Subpoena) requiring that a deposition subpoena state the manner for recording the deposition testimony.

Pursuant to FRCP 29, unless otherwise directed by the court, the parties may enter into any stipulation regarding discovery procedures, including the manner in which depositions may be taken. Rule 30(d)(2) provides that the party taking the deposition shall state in the Notice the method by which the testimony shall be recorded. Under Subdivision (3) any party may designate another method to record the deponent's testimony in addition to the method specified by the person taking the deposition, with prior notice to the deponent and other parties.

Accordingly, since the method in which the testimony shall be recorded must be stated in the Notice of Taking Deposition, which is served upon all parties, there should be no need to include such a statement in the deposition subpoena properly, as long as the Notice of Taken Deposition is served upon the non-party deponent. This is generally done as a matter of practice as well as when the deposition requires the production of documents or other matters. Requiring that the Notice of the deposition be also served upon the non-party deponent would eliminate the need to amend Rule 45.

On the other hand, there may be situations where, for whatever unanticipated reason, it may be necessary to change the method of recording the testimony without the time to give adequate notice in advance to the non-party deponent. Requiring that the deposition subpoena include the method of recording may create more problems than necessary and may in certain cases prevent the taking of the deposition if the non-party deponent objects to the change in the method of recording. A non-party deponent may always object to the method at the deposition properly and if an agreement is not reached, the matter can be taken up with the court for resolution.

Respectfully submitted.



Eugene P. Hestres

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c: American College of Trial Lawyers

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