BROUSSARD DAVID

JUSTICE. OBTAINED.

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January 14, 2005

Mr. Peter McCabe
Administrative Office of the U.S. Courts
One Columbus Circle, N.E.
Washington, D.C. 20544

RE: Proposed Changes to Code of Civil Procedure Rule 26(b)(2) and Rule 37(f)

Dear Mr. McCabe:

I've been in the practice of civil litigation intensively for 30 years. Most of my legal work in that litigation necessarily involves discovery. In my opinion, the proposed changes to Rule 26(b)(2) and 37(f) would frustrate the orderly discovery of relevant information.

The proposed changes to these rules invite corporations to hide data and thus deny litigants the information that is so vital to the appropriate judicial resolution of disputes.

Specifically, the changes to Rule 26(b)(2) would place a burden on the court because each corporation would develop systems to ensure that its electronically stored data for one reason or another is "not reasonably accessible". The assumption that corporations would spend huge amounts of money to create electronic data storage systems so that this data would become less (not more) accessible than manually stored data is preposterous. The assumption behind the proposal is totally flawed and probably results from creative thinking on the part of those who would benefit by concealing their culpability.

Likewise, the proposed change to Rule 37(f) invites corporations to destroy otherwise useful information before a court can have an opportunity to determine the importance of the data. Our courts are simply too busy to read material to serve this purpose effectively.

Thank you for considering these comments.

With kind regards, I am

Yours truly,

Richard C. Broussard

RCB:mmc

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04-CV-100

January 11, 2005

Mr. Peter McCabe
Administrative Office of the U.S. Courts
One Columbus Circle, N.E.
Washington, D.C. 20544

RE: Proposed Changes to FRCP Rule 26 and Rule 37

Dear Mr. McCabe:

I've been in private practice for 30 years focused on civil litigation. Most of the work that I do relates to discovery and much of that work involves the federal court system. I believe that the proposed change will frustrate the purpose of the federal judiciary which, as I understand it, is to provide fair, prompt, efficient, economical and expeditious claims resolution.

It appears that the basic premise of the proposed rule is that electronically stored data is more difficult to retrieve than manually stored data when exactly the converse is true. The rule, in my opinion, would: 1) promote the development of e-systems designed to make data "not reasonably accessible"; and, 2) result in more costly, more protracted litigation.

Although I strongly recommend that the philosophy of any rule specifically related to discovery of e-data should be that such data is more easily retrievable than hard copy data, I feel it is imperative that the two step process be eliminated from the proposal. In other words, if a party withholds data on the basis that it is "not reasonably accessible", that party should be required to state **SPECIFICALLY** the basis on which that claim is made in the initial discovery response and state exactly how and where that data is stored. All that anyone who is not familiar with federal court discovery needs to do is review a few corporate discovery responses to see that the rules are being abused on a routine, continuing basis.

Thank you for considering these comments.

With kind regards, I am

Yours truly,

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