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11/22/04

04-CV-164



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11/21/2004 05:02 PM

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Subject Submission from <http://www.uscourts.gov/rules/submit.html>

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Miscellaneous: Yes  
Comments:

I am writing to comment on the recent proposals to change the Federal Rules of Civil Procedure as they relate to electronic discovery. I am a member of the Alabama Rules of Civil Procedure Committee. We follow generally the Federal Rules so I know these changes will affect our State rules as well.

I believe that these changes would invite additional discovery abuse, give corporate litigants additional procedural and substantive advantages, and further erode the right to discovery. Notice pleading has already taken a hit and I believe these proposed changes will add to the problem. Faced with the present stonewalling and difficulty acquiring discovery, allowing the party to assert difficulty will just cause more hearings, greater expense and greater difficulty at getting to the truth.

If adopted, this amendment would apply to all discovery, not just e-discovery. It would seem to create a new substantive right with regard to privileged material. If the claim of privilege is contested, it would seem to set a high standard for a requesting party to meet: proving that the information was not privileged, or that the party didn't waive privilege although previously disclosed? It would preempt some existing state law that declares privilege non-existent once disclosure is made, even inadvertently, or that requires lawyers to use all information that will advance their clients interests. I'm sure that whomever desires change could accomplish a fair result without further hampering an already difficult situation.

submit2: Submit Comment

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