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To <Rules_Comments@ao.uscourts.gov>

cc

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Subject Proposed amendment to Fed. R. Evid. 408

Thank you for forwarding the Preliminary Draft of Proposed Amendments to the Federal Rules of Practice and Procedure to me as a Fellow of the American College of Trial Lawyers. In review of your summary, as well as the proposal on your website, I am very concerned with the proposed amendment to Rule 408 of the Federal Rules of Evidence which would authorize the use of statements of fault made during settlement negotiations as evidence in a subsequent criminal case. During settlement conferences and mediations, the candor of the parties is routinely encouraged through assurances that *anything they say cannot be used outside of the settlement proceeding for any purpose*. To then use statements made under such circumstances to establish the guilt of the party in a criminal proceeding is fundamentally unfair, and deprives them of the protections that are built in to the criminal justice system to insure that such admissions are not unwittingly made.

While I appreciate the importance of gaining admissions for prosecution of criminal cases, these should not be obtained through a deceptive practice sanctioned by the Federal Rules of Evidence. I would much rather risk the loss of a legitimate prosecution or, in the alternative, discourage a civil settlement through a candid disclosure of the consequences of truthful participation, than obtain a criminal conviction based upon information gained after a promise of confidentiality.

I would therefore ask that the Committee reconsider the wisdom of this proposed amendment to Rule 408 of the Federal Rules of Evidence. Thank you.

Phil R. Richards

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Thank you.