

FRIDAY ELDREDGE & CLARK

HERSCHEL H. FRIDAY (1922-1994)
BYRON M. EISEMAN, JR., P.A.
JAMES A. BUTTRY, P.A.
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JAMES C. CLARK, JR., P.A.
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JOHN DEWEY WATSON, P.A.
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JAMES M. SAXTON, P.A.
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MICHAEL S. MOORE, P.A.
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JAMES C. BAKER, JR., P.A.
HARRY A. LIGHT, P.A.
SCOTT H. TUCKER, P.A.
GUY ALTON WADE, P.A.
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DAVID D. WILSON, P.A.
JEFFREY H. MOORE, P.A.
DAVID M. GRAF, P.A.
CARLA GUNNELS SPAINHOUR, P.A.
R. CHRISTOPHER LAWSON, P.A.
BETTY J. HARDY, P.A.
LYNDA M. JOHNSON, P.A.
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CLIFFORD W. PLUNKETT, P.A.
DANIEL L. HERRINGTON, P.A.
J. MICHAEL PICKENS, P.A.
K. COLEMAN WESTBROOK, JR., P.A.
ALLISON J. CORNWELL, P.A.
ELLEN OWENS SMITH, P.A.

ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP
www.fridayfirm.com

400 WEST CAPITOL AVENUE, SUITE 2000
LITTLE ROCK, ARKANSAS 72201-3522
TELEPHONE 501-376-2011
FAX 501-376-2147

3425 NORTH FUTRALL DRIVE, SUITE 103
FAYETTEVILLE, ARKANSAS 72703-4811
TELEPHONE 479-695-2011
FAX 479-695-2147

599 HORSEBARN ROAD, SUITE 101
ROGERS, ARKANSAS 72758
TELEPHONE 479-695-2011
FAX 479-645-4363

JASON B. HENDREN, P.A.
BRUCE B. TIDWELL, P.A.
JOSEPH P. MCKAY, P.A.
ALEXANDRA A. IFAH, P.A.
JAY T. TAYLOR, P.A.
MARTIN A. KASTEN, P.A.
BRYAN W. DUKE, P.A.
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ROBERT T. SMITH, P.A.
RYAN A. BOWMAN, P.A.
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T. MICHELLE ATOR, P.A.
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ALAN G. BRYAN
LINDSEY MITCHAM LORENCE, P.A.
KHAYYAM M. EDDINGS
STEVEN L. BROOKS
H. WAYNE YOUNG, JR.
JAMIE HUFFMAN JONES
KIMBERLY D. YOUNG
JASON N. BRAMLETT
BRIAN C. SMITH
D. MICHAEL MOYERS
SETH M. HAINES

ERIN E. CULLUM
KRISTOPHER B. KNOX
KATHRYN A. KIRKPATRICK
J. ADAM WELLS
RAGENE A. K. THOMPSON
REBECCA B. HAWBLITZEL
WILLIAM E. FOSTER
MICHAEL B. CHILDERS
C. AARON HOLT
BETH C. KEARNEY
BRADLEY S. RUNYON
JOSHUA M. OSBORNE
REJENA SAULSBERRY
DAVID E. CHOATE
JEREMIAH D. WOOD
JAMES L. PHILLIPS

OF COUNSEL
WILLIAM H. SUTTON, P.A.
WILLIAM L. TERRY
WILLIAM L. PATTON, JR.
H.T. LARZELERE, P.A.
OSCAR E. DAVIS, JR., P.A.
MARVIN L. CHILDERS

WILLIAM M. GRIFFIN III
LITTLE ROCK
TEL 501-370-1515
FAX 501-244-5327
griffin@fec.net

September 29, 2008

Mr. Peter G. McCabe, Secretary
Committee on Rules of Practice
And Procedure
Judicial Conference of the United States
Thurgood Marshall Federal Judiciary Building
Washington, D.C. 20544

08-CV-007

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

Dear Mr. McCabe:

Pursuant to your request for comment in letter dated August 31, 2008, to members of the American College of Trial Lawyers. I wanted to express my belief that the changes to Rule 26 regarding work product protection to limit discovery of drafts of expert disclosure and communications between a lawyer and his expert are wrong headed. Specifically, an expert holds the distinction of being one of the few people in a court room who can express his or her opinion. However, if that opinion has been created by a lawyer or with the help of a lawyer, a jury needs to be aware of that fact. I have had instances where experts have written letters or emails to counsel that hired them explaining that they did not feel the case was worthwhile and later taking the case. In other cases, drafts were changed and marked up by Plaintiff's counsel. Obviously, a jury needs to know that the individual who is actually drafting and creating the experts "opinion" is, in fact, the attorney who hired that expert.

Today, so many experts are "for hire." Many will say almost anything depending on how much they are paid. To further protect these individuals

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from the light of cross-examination is a travesty. The entire background on the expert and his communications with the attorney who hired him should be brought into the open before a jury. This way the jury can evaluate the expert's credibility, honesty and integrity. Further, the jury will have the opportunity to determine whether the expert is, in fact, "for hire" or actually giving expert opinions.

I strongly oppose these changes.

Sincerely,

A handwritten signature in black ink, appearing to read "W. M. Griffin III", with a stylized flourish at the end.

William M. Griffin III

WMG/rc