

February 13, 2014

Advisory Committee on Civil Rules  
Committee on Rules of Practice and Procedure  
of the Judicial Conference of the United States  
Suite 7-240  
One Columbus Circle, NE  
Washington, D.C. 20544

**Re: Letter from Corporations in support of the Proposed Amendments to the FRCP**

Dear Judge Campbell and Members of the Federal Civil Rules Advisory Committee:

We write in support of the proposed amendments to the Federal Rules of Civil Procedure currently open for public comment. We collectively submit this letter requesting that the amendments be formally approved with important improvements.

Federal litigation today is inefficient, too expensive, and fraught with too many uncertainties that have little or nothing to do with the merits of particular cases. This stems, in large part, from costly and inconsistent obligations to preserve, process and produce vast amounts of data for discovery, even though much of that data has no real relevance to the issues in dispute and, even though in many cases, the data is never used at trial. Parties, particularly corporations, lack clear and consistent national guidelines for preservation of information that may be required for discovery. In many cases, corporate parties over-preserve in order to avoid tactical threats of spoliation sanctions. In other cases, parties must simply settle claims or defenses based on the high costs, rather than on the merits of the litigation.

Proposed Rule 37(e), while not perfect, holds great promise in addressing these problems. To be effective, however, it should be revised to clarify that an award of sanctions requires a showing of specific intent to deprive another party of discoverable information, and that the threshold for “curative measures” requires a showing of significant prejudice to a party to the litigation.

Finally, we welcome the proposed amendments to Rule 26(b), and in particular, deletion of the confusing phrase, “[r]elevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.” This phrase has been abused by parties and misconstrued by many courts. As a result, it has stretched the scope of discovery beyond the reasonable intention of its original drafters.

Taken together, these proposed amendments will address the burdens of both over-preservation and overbroad discovery. More importantly, they will begin to reverse the trend favoring resolution of cases based on costs, rather than on the merits.

Thank you again for the opportunity to comment.

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