



February 12, 2014

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

Re: Public Comment of NJCJI Concerning the Proposed Amendments to the Federal Rules of Civil Procedure

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

Thank you for this opportunity to comment on the proposed amendments to the Federal Rules of Civil Procedure. We submit this letter in support of the proposed amendments generally, but also to alert you to an area where there is room for further improvement.

The New Jersey Civil Justice Institute (NJCJI) is a coalition of businesses, associations, and individuals<sup>1</sup> that advocates for reforms that ensure the civil justice system treats all parties fairly and discourages lawsuit abuse. The Institute and its members believe that a fair civil justice system resolves disputes expeditiously, without bias and based solely upon application of the law to the facts of each case. Such a system fosters public trust, and motivates professionals, sole proprietors, and businesses to provide safe and reliable products and services while ensuring that truly injured people are compensated fairly for their losses.

Federal litigation has become inefficient and expensive because the e-discovery rules have not kept pace with changing technologies and the impact those technologies have on practice. The obligation to preserve, process, and produce vast amounts of data for discovery is overpowering the pursuit of justice. In many cases, parties over-preserve in order to avoid the threat of spoliation sanctions. In other cases, parties settle claims based on the costs, rather than on the merits of the litigation.

We believe the proposed amendments are vital to achieve the proportionality in discovery intended by the Rules which the Committee has recognized is currently lacking. We urge the Committee to adopt the proposed rules with the small change outlined below.

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<sup>1</sup> NJCJI Members, <http://www.civiljusticenj.org/about-us/members/>.

Proposed Rule 37(e), would be a boon to all potential litigations who today spend an inordinate amount of money and time preserving data for fear of sanctions. A uniform standard for preservation and related sanctions, like the one set out in Proposed Rule 37(e) is desperately needed.

To be even more effective, the proposed rule 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. These slight amendments would protect innocent and merely negligent parties by ensuring that punishments are only imposed when an action was in bad faith and the harm suffered is real.

NJCJI also supports the proposed amendments to Rule 26(b), which would go a long way toward limiting discovery to information that is relevant and proportional to the needs of the case. The proposed changes strike a good balance between defining the scope of discovery and protecting the important purpose that discovery of information that is not admissible at trial plays.

These proposed amendments are a first step toward reversing the trend favoring resolution of cases based on costs, rather than on the merits. We urge the Committee to adopt the proposed Rules with the change we have suggested.

Thank you again for the opportunity to comment.

New Jersey Civil Justice Institute  
Marcus Rayner, President  
Alida Kass, Chief Counsel