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04-CV-098

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January 10, 2005

Peter McCabe  
Administrative Office of the U.S. Courts  
One Columbus Circle, N.E.  
Washington, D.C. 20544

Re: Proposed Amendments to Federal Rules of Civil Procedure

Dear Mr. McCabe:

Please consider these comments regarding the proposed amendments to the Federal Rules of Civil Procedure.

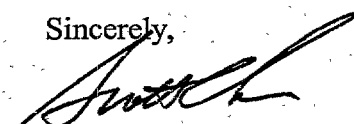
A. Rule 26(b)(2). The proposed amendment provides that a party need not provide electronically stored information that the *party* identifies as not "reasonably accessible." This amendment invites litigants to obstruct legitimate discovery whenever it suits them. Also, the proposed extra hearing contained in this amendment is inefficient.

2. Rule 26 (b)(5). The proposed amendment allows a party to retrieve documents already produced if the party believes the documents are privileged. This provision, allowing a party to make a late claim of privilege, perhaps even after learning how the opposing party intends to use the documents, is inherently inefficient. Moreover, this proposal encourages sloppy discovery practices and penalizes litigants who are proactively preparing their case (e.g., litigants who have already provided the subject documents to experts when the tardy retrieval request is received).

3. Rule 37(f). The proposed amendment would prohibit the court from sanctioning a party that destroys electronically stored information if the party took reasonable steps to preserve it or the loss resulted from routine operation of the party's electronic information system. This proposal invites wrongdoers to establish document retention policies that will hide their wrongdoing. Given the ease and low cost of storing electronic data, this proposal unnecessarily invites abuse.

Thank you for considering these comments.

Sincerely,



Scott C. Lucas