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Certified Mail Return Receipt Requested
and Regular U.S. Mail

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

Dear Mr. McCabe:

I would like to express my strong opposition to the proposed changes with respect to Rule 26(b)(2) and Rule 37(f) of the Federal Rules of Civil Procedure.

By way of background, I have practiced law since 1967 when I was admitted to the State Bar of California and, shortly thereafter, to the Ohio State Bar where I have practiced thereafter. When I first began practicing law in Ohio, it was before the advent of the Ohio Rules of Civil Procedure, which were not yet adopted (and modeled after the Federal Rules of Civil Procedure) until 1970.

I am a trial attorney. For over a decade, my practice has been largely devoted to the representation of plaintiff/employees in employment discrimination, retaliation, and wrongful termination actions. As you might imagine, in this kind of litigation, discovery is a critical and all-encompassing undertaking.

From the standpoint of a plaintiff/employee, Ohio still has a more favorable statutory scheme than Title VII. More importantly, I have found the federal courts to be unjustifiably hostile to employment claims by employees. Therefore, if I cannot avoid federal jurisdiction, I usually turn down the case. The federal courts are inundated with ultra-conservative/pro-corporate judges who reflect the rightwing views of the various Presidents who nominated them.

With notable exceptions, I have found the conduct of defense counsel representing employers in discovery to be shifty, dishonest and, in some instances, outrageously reprehensible. Generally, for defense counsel, discovery is a game of hide and seek with the corporate defendants holding all of the clues and cards. Sometimes the game, for defense counsel, includes the unnecessary building of billable hours. These cases are difficult enough to prove on behalf of employees without having to contend with the pervasive obstacle course which too many defense counsel consider standard operating procedure.

As is typical of the corporate dominated mindset of the federal judiciary and those who influence the manner in which employment law is practiced in the federal system, the "drafters" of these new proposed rules are manifestly dripping with empathy for the professed "grievances" of the corporate world in accessing electronically retained data. Apparently, the hearts of the drafters go out

to these supposedly overburdened corporations, which not only have to expend time and money to access discoverable data, but which also bitterly complain with outrage that they might be sanctioned in some way for failure to comply.

In my view, the obligation of corporations to provide discoverable information, in whatever form it is kept, should be strengthened, not weakened with new, creative excuses for not making proper discovery. And the availability of sanctions for failure to make discovery should be stiffened, not softened.

Nobody seems to have much concern, in drafting these rules, for the employees who are victimized by discriminatory and retaliatory corporate malfeasance. However, attorneys who practice in this area on behalf of employees have a first hand look at the devastating consequences of unlawful corporate abuse. Please understand that I am not against corporations, capitalism or the profit motive. I am against wanton abuse of those endeavors which cross over into illegality at the expense of my clients. The suffering that I see is entitled to serious consideration, at least as much as the fawning regard extended to corporate world complaints about how wronged they are by employees seeking discovery.

I do not feel it either helpful or appropriate to extend my comments with politely reasoned examples and contentions. I do not believe they will make the slightest difference to the true believers attempting through these proposed rules to further diminish the discovery rights employees ought to have within the legal system.

I think it is more appropriate to express my general outrage and disgust at the fact that we are debating rule changes hostile to employee discovery rights. Instead, we ought to be debating how to strengthen the rights of plaintiffs/employees (and plaintiffs in general) in their discovery efforts. Eventually, the American people are going to figure out what is going on and put an end to it.

Thank you in advance for what I hope will be your consideration of my viewpoint.

Sincerely,

Steven A. Sindell

SAS/fg