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April 9, 2014

Via Electronic Mail to rules_comments@ao.uscourts.gov

Honorable David G. Campbell, Chair
Civil Rules Advisory Committee

Dear Judge Campbell:

On March 21, 2014, the Agenda Book for the spring meeting of the Advisory Committee on Civil Rules was released, including the reports of the Duke Subcommittee, the Discovery Subcommittee, and the Rule 84 Subcommittee discussing their recommendations on the proposed amendments to the Federal Rules of Civil Procedure. While the Duke Subcommittee recommends the withdrawal of several of the most controversial proposed amendments to the Civil Rules, it recommends adoption of several other controversial amendments with some revisions. The Rule 84 Subcommittee recommends the abrogation of Rule 84 and most of the Official Forms.

I understand and appreciate the tremendous time and energy that the Advisory Committee and its subcommittees have devoted to the proposed amendments. The reports of the subcommittees demonstrate that members have listened to and considered the comments and testimony on the proposals, and have tried to address them. The recommended withdrawal of the proposed presumptive limits is responsive to the overwhelming majority of the commentary on the proposed amendments to Rules 30, 31, 33 and 36. If the Advisory Committee approves the Duke Subcommittee's recommendation to withdraw these proposals, the bench and bar will be relieved. However, several of the remaining recommendations are problematic and do not adequately respond to the comments and testimony that largely opposed the draft amendments.

I. RULE 4(m)

More than 90% of the written comments on the proposal to reduce the time for service from 120 days to 60 days opposed it. Opposition to this proposal came from across the spectrum, including plaintiffs' attorneys and organizations, attorneys who represent plaintiffs and defendants, legal service providers who assist *pro se* and *in forma pauperis* litigants, the Department of Justice, the U.S. Commodity Futures Trading Commission, federal judges and the Federal Magistrate Judges Association, legal academics, members of Congress, the Cities of New York, Chicago, and Houston, and the Illinois Association of Defense Trial Counsel.

After reviewing the public comments, the Duke Subcommittee reached the "tentative conclusion" that the time for service should be moved up from 60 days to 90 days.[1] In addition, it recommended additional language in the Committee Note recognizing that the 90-day limit "will

[1] Advisory Committee on Civil Rules, Portland, OR, Apr. 10-11, 2014, Agenda Book ("Agenda Book"), at 92.

increase the frequency of occasions to extend the time for good cause."[2] In making these adjustments, it appears the Duke Subcommittee was persuaded in particular by the concern that a 60-day period would interfere with requests to waive service.[3]

While 90 days for service is better than 60 days, and the draft amendment to the rule recommended for publication will help clarify a particular ambiguity, the Duke Subcommittee has yet to explain why it believes that a 30-day reduction in time would make any real difference in the overall length of litigation, or how this shorter timeframe would save costs. Whether the time for service is 120, 90, or 60 days, neither the courts nor defendants are expending resources prior to service. If anything, the reduction from 120 days to 90 days will increase court costs and consume court resources because, as the Subcommittee recognizes, the new limit will increase requests for extensions of time. Plaintiffs will be forced to assume the cost of this motion practice.

There is no empirical evidence to support any alteration in the existing time for service. Even absent hard data, however, it is difficult to discern any benefits from the 90-day proposal; that costs will increase due to additional motions practice, on the other hand, is apparent. Given this, the Advisory Committee should consider retaining the existing 120-day rule.

At a minimum, the Committee should consider republication, if it is going to consider a 90-day time frame. The public was never asked to consider this specific allotment of time, and only three comments even mentioned the possibility. Since the Duke Subcommittee recommends publishing another amendment to Rule 4(m), the new draft can include the Subcommittee's 90-day recommendation.

II. RULE 26(b)(1)—SCOPE OF DISCOVERY

The overwhelming majority of the comments opposed the proposed changes to the scope of discovery, particularly the addition of proportionality to the definition of what information is discoverable. In response to the comments and testimony, the Duke Subcommittee recommends that the Advisory Committee propose that the Standing Committee forward Rule 26(b)(1) for adoption, with a few revisions in the rule text and with "considerably expanded Committee Notes."[4] The justifications for the recommended draft rule and the text of the draft rule and Committee Note do not adequately address the concerns raised in opposition to the proposed rule.

A. "Proportionality" was Opposed by the Majority of the Public Commentary.

While noting that this proposal provoked a stark division in the comments, the Duke Subcommittee describes the opposition to the proposal as coming from those "representing

[2] *Id*.

[3] *Id*. (calling this point "particularly persuasive").

[4] *Id.* at 80.

plaintiffs."[5] At its most recent meeting by teleconference, the Duke Subcommittee asserted that "Proportionality has not been opposed by the comments from the organized bar, nor by the Department of Justice or the EEOC."[6]

With respect, this view of the opposition to the proposed addition of proportionality to the scope of discovery is too narrow, and it overlooks the complexity of the opposition to this proposal. This proposal was opposed by more than two-thirds of the comments on it, and it was opposed by the majority of those who testified about it, including by the vast majority of scholars and judges who commented upon it. While attorneys, law firms, and non-profit organizations who represent plaintiffs, and organizations of attorneys who represent plaintiffs did register a large and strong opposition to the proposed addition of "proportionality" to the scope of discovery, those who represent plaintiffs are not a narrowly defined group. Attorneys and organizations who opposed this proposed amendment came from across the civil litigation spectrum, and included legal aid providers, environmental justice groups, the civil rights community, consumer rights attorneys, as well as attorneys who represent injured individuals and small businesses in civil litigation against larger entities, including employers, product and pharmaceutical manufacturers, insurance companies, and government entities.

Attorneys who represent the interests of individuals and small businesses, not just as plaintiffs, but as defendants and as third parties, in a wide array civil litigation against larger entities, responded to this proposed amendment with emphatic opposition, with only one notable exception—the U.S. Equal Employment Opportunity Commission.[7] Even though the EEOC wrote that it supported this proposal, it did not say why. The EEOC's testimony at the public hearing in January demonstrated that its support for the proposal was tentative. This is not a strong basis on which to support a draft rule that is opposed by the vast majority of those who commented on it.

Moreover, the proposed amendment was opposed by the overwhelming majority of legal academics and current and former federal judges who commented on it. Almost 20 written comments on this proposal were submitted by law professors, one of which was signed by 171 professors. Only three law professors wrote in support of this amendment. None of the professors who testified on this proposal supported it. Professor Arthur Miller, who was reporter for the Advisory Committee when the concept of "proportionality" was added to Rule 26 testified and

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[5] *Id.* at 81.

[6] *Id.* at 130.

[7] While the Department of Justice, which frequently represents the federal government as a plaintiff, supported this proposal, it also frequently represents the federal government as a defendant against the very attorneys and organizations that opposed this proposal. Moreover, the Department of Justice's support was tempered by its request for a Committee Note to "clarify that the transfer and placement of the 'proportionality' factors from Rule 26(b)(2)(C) to Rule 26(b)(1) does not modify the scope of relevant discovery under the rule." Department of Justice Comment (Jan. 28, 2014), at 3.

submitted comments opposing this proposal. The academics and federal judges who commented on this proposed amendment strongly opposed it.

Finally, the organized bar was largely absent from this debate. Very few bar groups submitted written comments, and even fewer addressed this specific proposal. At least three bar associations opposed this proposal, while many others remained silent. Notably, neither the American Bar Association nor its Section of Litigation took a position on this, or any other, proposal. One bar association said that it supported the proposal "with caution," and one bar association suggested lengthy Committee Notes to address the concerns raised by its own members who oppose the proposal. Even within the organized bar, there is no consensus on this proposal. The lack of uniform support for this proposal by bar groups speaks much louder than the very few bar groups that do support this proposal. It is hard to divine support for this proposal from the dearth of commentary by the organized bar.

B. Recommended Revised Draft of Rule 26(b)(1) Incorporating "Proportionality".

The Duke Subcommittee states that it considered the comments opposing this proposal "carefully, as well as those that favored the proportionality change, and remains convinced that transferring the Rule 26(b)(2)(C)(iii) factors to the scope of discovery [with some modifications] would constitute a significant improvement to the rules governing discovery."[8] The Duke Subcommittee reaches this conclusion for three reasons: (1) the findings from the Duke Conference; (2) the history of proportionality and Rule 26(b)(1); and (3) proposed adjustments to the draft amendment that would invert the first two factors of the proportionality test and that would add a factor to the proportionality test to examine "the parties' relative access to relevant information," as well as greatly expand the content of the Committee Note.

i. The History of Proportionality and Rule 26(b)(1).

The Duke Subcommittee states that the "proportionality" factors are not new, but were added to Rule 26(b)(1) in 1983.[9] The Subcommittee cites to the Committee Note to the 1983 rule, which stated that the additional language, which included much of what is now in Rule 26(b)(2)(C), was meant "to guard against redundant or disproportionate discovery by giving the court authority to reduce the amount of discovery," and "to encourage judges to be more aggressive in identifying and discouraging discovery overuse."[10] The new draft of the Committee Note states that the amendment "restores the proportionality factors to their original place in defining the scope of discovery."[11]

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[8] *Id.* at 82.

[9] *Id.* at 84.

[10] *Id.*

[11] *Id.* at 101.

While the Duke Subcommittee relies on the Committee Note to the 1983 version of the rule, it neglects to include the relevant text of the rule. In 1983, the following text was added to Rule 26(b)(1), *after* the statement defining the scope of discovery:

> The frequency or extent of use of the discovery methods set forth in subdivision (a) shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision (c).

See Edward D. Cavanaugh, *The August 1, 1983 Amendments to the Federal Rules of Civil Procedure: A Critical Evaluation and a Proposal for More Effective Discovery through Local Rules*, 30 Vill. L. Rev. 767, 787-88 (1985).

The text of the 1983 version of Rule 26(b)(1) bears little resemblance to the proposed draft rule that the Duke Subcommittee recommends be adopted. There are many differences, but there are two very important distinctions between the 1983 rule and the Duke Subcommittee's recommended draft.

First, even though the concept originally resided in Rule 26(b)(1), "proportionality" was not then and never has been a part of the definition of the scope of discoverable information. Rather, it has always operated as a limit on the breadth of relevant discovery otherwise allowable under the definition of the scope. Many critics of the proposed amendment, including Professor Arthur Miller, have opposed the redefinition of discovery from "relevant" information to "relevant and proportional" information, as that has never actually been the definition of the scope of discovery.

Second, "proportionality" has always been a limit enforced by the court. While the concept must be observed by the parties under Rule 26(g), that rule requires a party to certify "that to the best of the person's knowledge, information, and belief formed after a reasonable inquiry . . . [a discovery request] is . . . neither unreasonable nor unduly burdensome or expensive," *inter alia*. Under Rule 26(g), a court may make a finding that a party knowingly propounded unduly burdensome discovery and sanction that party, but the rule does not permit a party to unilaterally decide that the discovery requested is not permitted because it is unduly burdensome or expensive. Many of the comments and testimony opposing this proposed amendment argued that the redefinition of the scope in the way proposed by the Duke Subcommittee will enable parties to make a unilateral decision that requested discovery is not "proportional," and withhold it on that basis. Even attorneys who represent defendants asserted that they would use the rule that way because the text allows them to. Although the Duke Subcommittee proposes adding a Committee Note stating that parties cannot unilaterally withhold discovery on this ground, there

is nothing in the text or structure of the rule to prevent them from doing so. The Committee can better address this concern in the text and structure of the rule itself.

If the Advisory Committee wishes to serve the purpose stated by the Duke Subcommittee of making the "proportionality" factors "more prominent, encouraging parties and courts alike to remember them and take them into account in pursuing discovery and deciding discovery disputes,"[12] and "restore[them] to their original place" in Rule 26(b)(1), the Committee can do so by simply using a formulation similar to the actual text of the 1983 version of the rule rather than attempting to incorporate the factors into the definition of the scope. This suggestion is in line with one made by Professor Alan Morrison in his written comments. Making the "proportionality" test a separate clause in the rule would go further than a lengthy Committee Note to resolve the substantial concerns about the proposed draft. Adding proportionality to Rule 16 and/or Rule 26(f) would similarly raise the "prominence" of the concept, and would "encourag[e] parties and courts alike to remember them and take them into account" without creating the problems that are likely under the text and structure of the proposed draft.

ii. Adjustments to the 26(b)(1) proposal.

To the extent that there will be a "proportionality" test in Rule 26(b)(1), the Duke Subcommittee's recommended addition of a factor considering "the parties' relative access to relevant information" will help counterbalance the problem identified by many in cases where this access is asymmetrical. However, because this is a new factor that is not present in the current rule, there is no federal case law interpreting how courts should apply this factor. The Committee Note on this should help.

Similarly, inverting the first two factors of the "proportionality" test so that the "importance of the issues at stake" comes first and the "amount in controversy" comes second will take the emphasis off of "the amount in controversy," to the relief of many critics. This revision does not, however, respond to the widespread criticism of "the importance of the issues at stake" factor. Opponents of the proposed draft criticized this factor and the "proportionality" test as a whole for being subjective and incapable of principled application. They argued that it is likely to lead to unpredictable and inconsistent results. Inverting the first two factors of the test does not answer these criticisms.

More significant, though, is how the Duke Subcommittee proposes to resolve the concerns raised by many of the comments that the text and structure of the rule shifts the burden to the party seeking discovery of proving that the discovery sought is *both* relevant *and* proportional. The Duke Subcommittee states that it does not intend for the proposed draft to shift the burden of proving proportionality to the requesting party.[13] The Subcommittee recommends an extended Committee Note to address this concern raised by the text and structure of the rule.

The proposed Committee Note will not assuage the concerns of the many comments and witnesses that they will bear the burden of showing that the discovery they request is both

[12] *Id.* at 84.

[13] *Id.* at 84.

relevant *and* proportional. It simply states that "the change does not place on the party seeking discovery the burden of *addressing all proportionality considerations.*"[14] It states very generally that the parties may not appreciate whether the discovery needed is "proportional" at the outset of the litigation, and that some parties may have more information about particular factors than others. The Committee Note states, "[a] party requested to provide information may have little information about the importance of the discovery in resolving the issues,"[15] but it ignores the fact that *the requesting party* frequently does not know the importance of the discovery to resolving the issues without first seeing the discovery, as many comments and witnesses insisted. Although the Committee Note directs the court to consider the information provided by both parties on this issue, it does not require the party who possesses the relevant information to demonstrate why it should not be disclosed. The Committee Note is insufficient to address the issue of burden raised by a significant number of comments on the proposal.

In fact, a simple statement in the text of the rule would be more effective in addressing this problem. The Committee could add text to the draft rule similar to the text in current Rule 26(b)(2)(B) stating "On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not proportional to the needs of the case." Alternatively, the Committee could add similar text to Rule 37(a). One short sentence would accomplish more than an extended and equivocal Committee Note.

iii. The findings from Duke.

Several thorough written comments addressed the lack of empirical support for this proposal. I will not attempt to restate them here. However, it is worth noting that general support for the concept of proportionality in discovery and the desire to have hands-on case management to ensure proportionality is not unconditional support for redefining the scope of discovery to incorporate "proportionality." After the Duke Conference, the Advisory Committee's Report to the Chief Justice of the United States on the 2010 Conference on Civil Litigation (the "Duke Conference"), stated:

> In 2000, the basic scope of discovery defined in Rule 26(b)(1) was amended to require a court order finding good cause for discovery going beyond the parties' claims or defenses to include the subject matter involved in the action. The extent of the actual change effected by this amendment continues to be debated. **But there was no demand at the Conference for a change to the rule language; there is no clear case for present reform.**
>
> There is continuing concern that the proportionality provisions of Rule 26(b)(2), added in 1983, have not accomplished what was intended. **Again, however, there was no suggestion that this rule language should be changed.**

[14] *Id.* at 101 (emphasis added).

[15] *Id.*

Report to the Chief Justice of the United States on the 2010 Conference on Civil Litigation, *available at* http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/2010%20report.pdf (emphases added). It is troubling that the Duke Subcommittee now asserts that the findings from the Duke Conference support the change to Rule 26(b)(1) that it recommends. Whatever general support there is for the general proposition that discovery should be "proportional to the needs of the case," that support does not necessarily translate into support for revising the *scope of discovery* to incorporate a "proportionality" requirement or for the specific draft rule proposed by the Duke Subcommittee.

C. Deletion of Discovery Relevant to the Subject Matter of the Action.

The Duke Subcommittee stated that this proposal "has not generated much excitement."[16] The Duke Subcommittee recommends that the proposed elimination of discovery related to the "subject matter" of the action go forward with an expanded Committee Note describing information that would be discoverable as relevant to the claims or defenses.

Although there were far fewer comments on this proposed amendment than on the "proportionality" amendment, the comments that did address it were about evenly divided in support of and opposed to it. Corporations, their legal counsel, and organizations that represent their interests, as well as government entities supported this proposal. The proposal was opposed by all the federal judges who commented on it, and a majority of the legal academics who commented on it. It was also opposed by attorneys and organizations who represent individuals in litigation against larger entities.

As noted above, the Advisory Committee's Report to the Chief Justice on the Duke Conference stated that there "was no demand at the Conference for a change to the rule language; there is no clear case for present reform." Many comments criticized the Committee's justification for the abrogation of language that has been a part of the scope of discovery for more than seventy-five years and argued that there is no empirical evidence to support this proposal. Some professors pointed out that removal of this language will likely result in a lot more disputes about whether discovery sought is "relevant," increasing litigation costs and burdens on the parties and the courts. There was no consensus on whether this proposal would be beneficial, and adopting this change could do more harm than good.

D. Deletion of "Reasonably Calculated" Language.

The Duke Subcommittee in its Report to the Advisory Committee and in its meeting minutes stated that "the notion that the 'reasonably calculated' language has taken on an independent role in defining the scope of discovery is implicitly bolstered by many comments on the published proposal."[17] The comments opposing this amendment were considered to be "empirical evidence" of the need for reform.[18] The Duke Subcommittee stated that the proposal

[16] *Id.* at 120.

[17] *Id.* at 87, 121.

[18] *Id.* at 121.

to substitute this language, which dates back to 1946, with a new sentence was supported by "many thoughtful bar groups and others," without specifying which comments or testimony they rely on, or how many bar groups support this proposal.[19]

In reality, very few bar groups commented on this proposal, and they were about evenly divided on it. One group even submitted one comment opposing the proposal, and a later comment supporting it without explaining why it had changed positions. Even the Department of Justice, commenting on the draft rule prior to publication questioned why the Committee would propose to change this "long-standing and well-known aspect of the rule, which expresses an important principle defining the appropriate scope of discovery." The Department of Justice later changed its position. The Equal Employment Opportunity Commission also opposes this proposed amendment because it contains limiting language that does not appear in the sentence the Committee proposes to substitute for it. Without the "reasonably calculated" language, the EEOC argued, all inadmissible information would be discoverable as long as it is relevant, regardless of whether the discovery is reasonably calculated to lead to the discovery of admissible evidence. Finally, the majority of federal judges and legal academics who commented on this proposal also opposed it.

A couple of defense attorneys offered a suggestion: retain the "reasonably calculated" language, but highlight the fact that all discovery sought must be relevant. Thus the rule could be amended to provide: "This scope of discovery includes relevant information that may not be admissible in evidence, provided it is reasonably calculated to lead to the discovery of admissible evidence." Such a revision would preserve the decades of case law interpreting the "reasonably calculated" language, and at the same time limit discovery of inadmissible evidence that is not reasonably calculated to lead to the discovery of admissible evidence.

E. Deletion of Description of Discoverable Matters

In response to comments and testimony on this proposals, the Duke Subcommittee recommends that the Committee Note to the rule be revised to include a statement about the purpose of the deletion, and to make clear that the deletion does not mean that these matters are no longer within the scope of discovery, as some supporters of the amendment have suggested:

> Discovery of such matters is so deeply entrenched in practice that it is no longer necessary to clutter the long text of Rule 26 with these examples. The discovery identified in these examples should still be permitted under the revised rule when relevant and proportional to the needs of the case.[20]

Although very few comments and witnesses addressed this specific proposal, the vast majority of them opposed it, including comments from federal judges, legal academics, and practitioners, as well as the Department of Justice. Although some argued that the language should at least be included in the Committee Note, they argued that there was no reason to delete

[19] *Id.*
[20] *Id.* at 85, 103.

the text from the rule, and that the deletion could have unintended consequences. Putting the language in the Committee Note does not resolve this problem. There is no need to delete this language from the text of the rule.

III. RULE 26(c)—COST ALLOCATION

More than half of the public commentary on this proposed amendment opposed it. It was opposed by attorneys who represent individuals and small businesses against larger entities, as well as two federal judges and a slight majority of the legal academics who addressed it. Support for this proposal came largely from corporations, their legal counsel, and the organizations that represent their interests, as well as government entities and a majority of the few bar associations to comment on this specific proposal.

In response to the comments and testimony on this proposed amendment, the Duke Subcommittee recommends that the Committee Note be revised to clarify that recognition of the authority to allocate costs "does not imply that cost-shifting should become a common practice. Courts and parties should continue to assume that a responding party ordinarily bears the costs of responding."[21] While the Duke Subcommittee's recommendation answers many of the comments filed in opposition to the proposal, the Duke Subcommittee provides little justification for the amendment to the rule. The recommended text of the rule has been interpreted by many as encouraging courts to use this authority, not simply making that authority explicit. Similar past proposed amendments that simply made the court's authority to allocate costs "explicit" have been rejected by the Judicial Conference. There is simply no need to make explicit the authority that is already well understood and exercised by the courts.

IV. RULE 84

Although few comments focused on this proposal, the comments filed were largely disapproving. Of the few comments in support of this proposal, only a couple of individual practitioners supported it.

Several comments asserted that the forms still serve their original useful function and argued that there was no benefit to discontinuing their inclusion now. Attorneys who work with *pro se* litigants, and those litigants who are incarcerated argued that these litigants use and need the forms, and many of them do not have access to the internet to access other sources of example pleadings. Several comments argued that forms available to litigants from alternative sources are not an adequate substitute because they are not necessarily legally sufficient. Some argued that there is no pressing need to abrogate the forms now, and that the Committee should table the abrogation of Rule 84 and most of the Forms until a later date. They expressed concern that the abrogation of Rule 84 was largely ignored by the bench and bar because of the focus on the other published proposed amendments. Only a few bar associations weighed in, with some noting their support, and one noting that its membership was divided for and against the proposal. In addition, more than 275 legal academics signed onto letters opposing this proposal.

[21] *Id.* at 87, 104.

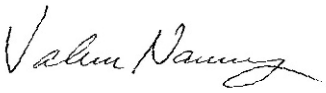
Following a review of this commentary, the Rule 84 Subcommittee reaffirmed its recommendation that the rule and most of the Official Forms be abrogated. The Subcommittee stated that abrogation was still warranted, in large measure, because it does not have the time for regular review or revision of the Official Forms. Responding to the academics, the Subcommittee stated that it was "troubling that so many of those who devote their professional work to thinking about the deep principles of procedure challenge the proposal,"[22] but the Subcommittee was not moved by the academic community's arguments regarding the interrelationship of the forms and pleading standards discussed in *Iqbal* and *Twombly*. Finally, the Rule 84 Subcommittee decided that full publication of the proposed abrogation of Rule 84 with the opportunity to comment was sufficient to satisfy the demands of the Rules Enabling Act.

A better course would be to recommend that the abrogation of Rule 84 and most Official Forms be withdrawn at this time. There is no pressing need to abrogate the rule or the Forms right now, and tabling the proposal now would enable the Rule 84 Subcommittee to gather more information about who uses the Forms and how often. It is not surprising that seasoned practitioners do not use or rely on the Forms, but new practitioners and other litigants do. The Subcommittee offers no empirical information about the use of the Forms or whether certain types of claims or litigants will be harmed by the abrogation most of the Forms. Abrogation of the rule and the Forms may be more significant in practice than the Subcommittee understands, but it has little information to go on. Given the amount of opposition to this proposal, on both practical and legal grounds, and the fact that the proposal was eclipsed by the other, more controversial proposed amendments to the Civil Rules that were published at the same time, the proposal should be withdrawn and reconsidered at a later date.

V. CONCLUSION

The reports of the subcommittees demonstrate that consideration has been given to many of the concerns and suggestions raised by the extraordinary number of comments on the proposed amendments. I offer these comments simply to highlight a few areas of concern that may not be adequately addressed by the recommendations of the subcommittees. I appreciate your consideration of these comments as you prepare to move forward on the proposed rule amendments.

Sincerely,



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[22] *Id.* at 557-58.