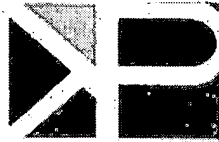


89-R-99001



KILPATRICK PHILLEY
ATTORNEYS AT LAW

FILED

October 26, 2023

OCT 26 2023

D. Jeremy Whitmire
Clerk of Appellate Courts
P.O. Box 249
Jackson, MS 39205

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

Re: Comments on Proposed Amendments to MRCP 26

Dr. Mr. Whitmire:

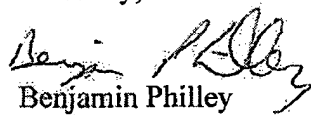
I write to express my support for the proposed change to MRCP 26 regarding rebuttal experts. I believe this amendment is necessary to promote justice amongst the parties and for judicial economy in the court system.

Specifically, Plaintiffs will not have to guess as to which experts the Defendants will designate. This will reduce the number of unnecessary experts retained since Defendants designate experts in response to the Plaintiffs' designation in most cases. If Plaintiffs do not designate unnecessary experts in anticipation to a Defendants' designation, it will streamline litigation, reduce the costs and time spent on litigating issues where experts simply aren't needed.

Further, it is impossible for the Plaintiffs to anticipate every expert that a Defendant may designate. For instance, I previously litigated a medical malpractice case that involved a missed diagnosis. Plaintiff's designated an emergency room physician and surgeon, but Defendant obtained tissue samples after Plaintiff's designation. As a result, Defendant designated a pathologist expert whose opinions would have been detrimental to Plaintiff's case if the trial judge would not have allowed Plaintiff a rebuttal expert after the parties were forced to brief and argue the issue. Having a local rule, such as the proposed rule, would have alleviated the need to litigate the issue. Fortunately, the trial judge allowed the rebuttal expert and prevented severe prejudice to the minor child that I represented, which is the very purpose of the proposed amendment. It will most certainly prevent severe prejudice to a number of injured victims in the future.

This amendment is necessary to promote fairness amongst litigants and must be passed. The rule will be fairly interpreted according to the proposed language as well as the Advisory Committee notes, and will provide structure amongst the parties.

Sincerely,


Benjamin Philley

MOTION#

2018 2403

attachment