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FILED

D. Jeremy Whitmire
Clerk of Appellate Courts
Post Office Box 249
Jackson, Mississippi 39205

OCT 30 2023

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

Re: Comments on Proposed Amendments to MRCP 26

Dear Mr. Whitmire:

I am writing to express my support for the proposed change to MRCP 26 regarding rebuttal expert opinions. I handle complex litigation in which experts are routinely required. This proposed amendment is much needed.

It should go without saying that a rule permitting both sides the opportunity to designate rebuttal experts levels the playing field. Additionally – and importantly – while it might be counterintuitive to think a rule that permits parties to designate rebuttal (by definition, *more*) experts will reduce the burden on the Courts, I believe it will.

My experience is that lawyers and litigants who thoroughly work up cases are more likely to resolve them. The issues and risks come more into focus, promoting sober evaluation and earlier resolution. I had a case recently involving catastrophic injuries in which I designated multiple liability and causation experts. Defendant was unwilling to discuss settlement, despite the trial court requiring mediation in its scheduling order. Defendant designated a causation expert who opined on an issue that was totally unanticipated based on the established facts. Following a great deal of motion practice and argument, the trial court agreed that it was appropriate to allow plaintiff to designate an expert to rebut this new, unanticipated opinion. Thereafter, the case resolved without the need for a trial that likely would have taken two weeks.

In the above example, the absence of a bright line rebuttal expert rule caused the court to expend resources dealing with additional motion practice. The parties spent time and money arguing over procedure that would have been better spent working on the merits of the case. The litigant who was going to play “gotcha” at trial was required to realistically evaluate his position.

If the court in this example had denied my request to designate a rebuttal expert opinion, and the trial result went against us, I would have appealed that issue. My need for a rebuttal expert to address a new, unanticipated issue came up well before the trial date with plenty of time for any additional discovery to be conducted, if necessary. The fair administration of justice clearly favored allowing the rebuttal designation. The appeal would have been hard fought and expensive. It would have

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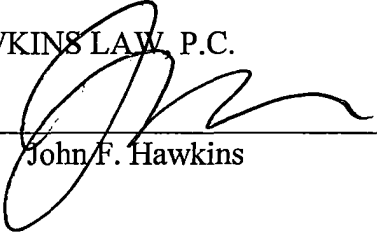
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A bright line rule permitting rebuttal experts will aid the bench and bar, promote judicial economy, and aid the administration of justice. At the end of the analysis, lawyers and judges alike are required to seek the truth in cases. This amendment will help achieve this worthy objective.

Sincerely,

HAWKINS LAW, P.C.

By: _____


John F. Hawkins

JFH:tab