



**BURSON ENTREKIN ORR  
MITCHELL & LACEY, PA**

89-A-99001

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COURT OF APPEALS

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October 30, 2023

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Mississippi Supreme Court  
Rules Committee on Civil Practice and Procedure  
c/o Clerk of Appellate Courts  
Post Office Box 249  
Jackson, Mississippi 39205

Re: Public Comments: Proposed Amendments to Miss. R. Civ. P. 26

Dear Supreme Court Rules Committee:

Please accept this correspondence as my comments regarding the proposed amendments to Rule 26 of the Mississippi Rules of Civil Procedure. As an attorney who regularly defends physicians, hospitals and other defendants in civil litigation, I join in the comments submitted by my colleagues, Matthew D. Miller and Penny B. Lawson. In addition, I feel compelled to submit the following additional comments against the proposed amendments to Rule 26.

As Chief Justice Randolph once said, “the success of a plaintiff in establishing a case of medical malpractice rests heavily on the shoulders of the plaintiff’s selected medical expert.” *Estate of Northrop v. Hutto*, 9 So. 3d 381, 384 (Miss. 2009). With that in mind, I share my colleagues’ concerns that amending Rule 26 to allow for rebuttal expert designations will create an environment ripe for abuse, particularly in cases that require expert testimony like medical malpractice litigation. See, e.g., *Univ. of Miss. Med. Ctr. V. Kelly*, 358 So.3d 1054, 1058-59 (Miss. 2023)(expert testimony is required to prove each element of a medical malpractice claim). Indeed, it is hard to imagine an area of the law impacted more by the Rule 26 expert disclosure requirements than medical malpractice litigation.

If Rule 26 is amended to allow for rebuttal expert opinions, there will no longer be any incentive for plaintiffs to file a complete initial designation. Instead, the proposed amendment will incentivize plaintiffs to file a bare minimum designation to force defendants to show their cards first. The result is that the plaintiffs will have the benefit of the defendants’ full designation when preparing a more robust “rebuttal” designation. This is not only inequitable to the defendant, but it amounts to an improper and unintended shift in the burden of proof.

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**MOTION#** 2018-2403  
attachment

For these reasons, as well as those expressed by my colleagues, I cannot support the proposed amendments to Rule 26 regarding rebuttal expert disclosures. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Romney H. Entekin". The signature is written in a cursive style with a prominent horizontal stroke at the end.

Romney H. Entekin