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ATTORNEYS AT LAW

89-R-99001-50T

October 6, 2023

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

**FILED**

**OCT 11 2023**

**Re: Comments on Proposed Amendments to MRCP 26**

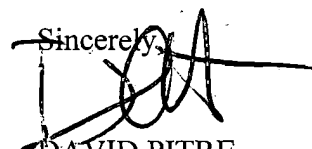
OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS

Dear Mr. Whitmire:

I am writing to express my support for the proposed change to MRCP 26 regarding rebuttal expert opinions. This change is long overdue, and levels the playing field for litigants (much like its counterpart in the FRCP). I believe anticipated arguments against this change are well-addressed in the proposed Advisory Committee notes.

Establishing a procedure for rebuttal experts/opinions in state court promotes judicial efficiency and reduces litigation waste of time/money, in keeping with MRCP 1. A litigant faced with the burden of proof cannot predict every possible expert the defense may designate. If not for the right to designate rebuttal experts, a plaintiff may be forced to expend significant expense and time guessing what the defense may do (which would lead to an unnecessarily heightened "battle of the experts"). In my personal injury practice, the most common example of this involves wondering whether the defense will hire an accident reconstructionist or perhaps a biomechanical expert. Oftentimes such experts are not truly necessary, and do little to assist the trier of fact. But if plaintiffs err on the side of caution and decide to designate such experts, the defense is forced to do the same and suddenly both parties are now engaged in a dispute where the stakes, expense and complexity have greatly increased.

This rule change can also be viewed as imposing more stringent burdens on the rebutting party (compared to the current scenario where some state court judges already grant this right but without much additional direction or safeguards). Also, if the rule will be fairly interpreted according to the proposed plain language as well as the Advisory Committee notes, any concerns about abuses and "back door" designations should be minimized. Of course, having this rule change patterned after the FRCP is also persuasive, and I am unaware of any rampant misuse of this right in the federal arena.

Sincerely,  
  
DAVID PITRE  
attachment to:  
**MOTION# 2018-2403**



American Board  
of Trial Advocates



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