



Mississippi Association for Justice

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FILED

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OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

VIA HAND DELIVERY

D. Jeremy Whitmire
Clerk of Appellate Courts
450 High Street
Jackson, MS 39201

Dear Mr. Whitmire:

I am writing on behalf of the Mississippi Association for Justice ("MAJ") to express our agreement with the proposed amendments to Rule 26 of the *Mississippi Rules of Civil Procedure* and to suggest an additional revision to that Rule.

First, we have reviewed the published proposed amendments to Rule 26. We understand that these proposed amendments are the product of many months of work by various members of the Bar and the Court. MAJ supports these proposed amendments, as they serve to modernize the discovery rules while maintaining access to important evidence in civil actions.

Second, we propose that the Supreme Court also consider adding an explicit rule regarding disclosure of rebuttal expert opinions. The current rules and the proposed amendments to Rule 26 are silent on this important issue. This leads to piecemeal decisions from trial courts on this issue, resulting in inconsistencies throughout the State and uncertainty amongst attorneys and judges about how to approach rebuttal expert disclosures.

MAJ suggests that the Court adopt the mechanism used in the *Federal Rules of Civil Procedure*. *FRCP* 26(2)(D)(ii) provides the following regarding expert evidence disclosures:

if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Rule 26(a)(2)(B) or (C), within 30 days after the other party's disclosure.

The Federal Rule states that a court scheduling order can alter this general rule. But the above rebuttal expert disclosure rule applies in the absence of any such order in a specific case.

2018-2403



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MAJ believes that adopting a rule such as this will provide clarity to attorneys and the courts, while also giving trial courts leeway to impose a different requirement in a particular case.

We appreciate the Court's consideration, as well as the Court's periodic review of the Rules to ensure that they work to achieve the just, speedy, and inexpensive determination of every action.

Respectfully,

A handwritten signature in black ink, appearing to read 'Graham P. Carner', written in a cursive style.

GRAHAM P. CARNER
MAJ President