

89-R-99001



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October 26, 2023

**FILED**

**OCT 26 2023**

OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS

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

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

Dear Mr. Whitmire:

I write to respectfully urge my support for the proposed amendments to Rule 26. I believe the letters in support have expressed the practical common-sense application of the amendments, and I certainly agree with that analysis. I also believe that in the most basic sense, our rules of civil procedure exist to promote fairness, and to prevent guesswork by the parties, particularly in the realm of expert testimony. Plaintiffs of course bear the burden of proof; however, allowing the plaintiffs an opportunity to rebut expert designations streamlines the issues before the court, and is consistent with the way argument and evidence are presented throughout litigation and trial.

I appreciate the opportunity to submit this letter and am happy to address any questions.

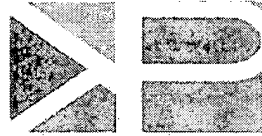
Respectfully Submitted,

W. Eric Stracener, Esq.

WAN

**MOTION#** 2018 2403  
attachment

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**KILPATRICK PHILLEY**  
ATTORNEYS AT LAW

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Re: *Comments on Proposed Amendments to MRCP 26*

Dr. Mr. Whitmire:

Please allow this letter to express my utmost support for the proposed change to Miss. R. Civ. P. 26 as to the procedure for rebuttal experts. The ways in which this proposal have would assist the parties, lessen the need for motions related to expert practice, and otherwise promote judicial economy in the court system have already been realized through use of this proposal's counterpart in the Federal Rules.

This proposal would assist to reduce the significant costs associated with expert designations on the Plaintiff's side which means that more cases may find their way into a settlement posture; which helps crowded dockets. Specifically, Plaintiffs would no longer be in a position where they are attempting to predict which issues Defendants will target as issues requiring expert testimony. This will undoubtedly reduce the number of experts retained in most cases as the Plaintiff will be able to await the Defendant's designation on fringe issues to see if it is truly a highly contested issue necessitating expert testimony.

In addition, the proposed rule protects Plaintiffs from a situation where Plaintiff's counsel fails to anticipate every expert that a Defendant may designate; which is impossible. Under the current rule, this situation leads to motions for authority to designate a rebuttal expert, lengthy briefs on the issue, and hearings. Additionally, the issue is left to the discretion of the trial judge. Not only does this increase litigation costs and require the trial judges to find time on crowded dockets to hear the motions, there is no predictability or uniformity in the rulings. Having a local rule, such as the proposed rule, would have alleviated the need to litigate the issue at all and provide uniformity.

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.

Thank you for allowing me the opportunity to comment.

Sincerely yours,

Jay M. Kilpatrick

JMK/

**MOTION#**

2018

2403

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