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February 11, 2019

Supreme Court Advisory Committee
c/o Mr. Charles L. "Chip" Babcock
Chair, Supreme Court Advisory Committee
Jackson Walker L.L.P.
ebabcock@jw.com

 RE: Discovery Subcommittee's Revised Proposed Rules
Dear Chairman Babcock:

The Discovery Subcommittee has completed its review and rewrite of the discovery rules, consistent with our task of modernizing the rules, to improve efficiency and decrease the cost of litigation. For the most part, the recommended changes are the result of thorough discussions and approvals of the Discovery Subcommittee's proposals at SCAC meetings in September 2016, and February, April, and June 2017. What has not been taken up by the full SCAC are suggested changes to Rule 215 and an expanded rule on spoliation.

Our subcommittee's original recommendation on spoliation was limited in scope, dealing singularly with ESI in the manner of recent changes to the FRCP. We heard from a number of SCAC members that the federal rule is too narrow in scope and should not be limited to ESI. We also were advised that in modern litigation the burdens of discovery with ESI are so great that litigants deserve a more precise understanding of the 'duty' to preserve ESI for litigation purposes. Our subcommittee has examined both concerns and has an initial proposal for consideration by the SCAC.

Accordingly, you will find attached, the Discovery Subcommittee's revised proposed rules, including a new Rule 215, and draft spoliation rule, along with an alternative version submitted to our committee for consideration. It is our recommendation, given the prior and exhaustive consideration by the SCAC of the other discovery rules changes, that the full committee now limit its focus to what we do with Rule 215 and the issue of spoliation.

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Thank you and do not hesitate to contact me if there are questions about where are in work or with our proposed next steps.

Very truly yours,

A handwritten signature in black ink, appearing to read 'R.E.M.', with a stylized flourish at the end.

Robert E. Meadows

REM:mfv

Attachments

cc: Marti Walker; mawalker@jw.com (w/attachments)