

CHAIKIN
SHERMAN
CAMMARATA
SIEGEL P.C.

Attorneys at Law

David Luria	Erin Shanley	Silvia G. G. G. G.
Robert M. G. G. G.	Henry M. G. G. G.	Joseph M. G. G. G.
Michael G. G. G.		Donald J. G. G. G.

June 4, 2010

VIA FACSIMILE/1st CLASS MAIL

David Luria, Esquire
Rules Attorney Advisor
SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
500 Indiana Avenue, N.W.
Room 5400
Washington, D C. 20001

**RE: Proposed Amendments to
Superior Court Rules of Civil Procedure**

Dear Mr. Luria:

I am writing to comment on the proposed change to SCR Civil 16(b)(5)(A)(i) concerning Discovery Requests; Depositions.

The proposed deadline for motions for physical or mental examinations is thirty (30) days before the date set for the end of discovery. The proposed deadline will not leave sufficient time for the motion to be briefed, and ruled on, an examination to be scheduled and a discovery deposition (if needed) to be taken before the close of discovery. Moreover, the proposed deadline for motions for physical or mental examinations will now fall after the deadline for the opponent's Rule 26(a)(2)(B) Statement. Presumably, the opinions of a retained medical expert would have been required to be provided in a written report with the Rule 26(a)(2)(B) Statement.

We respectfully request that the Rules Committee reconsider this deadline, which if left as is, will likely lead to delays, and continuances of the discovery deadline.

Thank you for your time and attention to this matter.

Very truly yours,



Joseph Cammarata

JC/ks

State Farm Insurance Companies*



One State Farm Plaza
Corporate Law, A -3
Bloomington, IL 61710

Michael Bogc
Counsel, CTCU, CLU, ChFC
Phone: 309-766-7902
Fax: 309-766-1919
michael.bogc.c2vp@statefarm.com

June 4, 2010

David Luria
Attorney Advisor
Superior Court of the District of Columbia
500 Indiana Avenue, N.W., Room 5400
Washington, D.C. 20001

RE: Proposed Amendments to Superior Court Rules of
Civil Procedure 16, 26, 33, 34, 36, 37, 45 and new CA Form 115

Dear Mr. Luria:

Please accept these comments from the State Farm Insurance Companies regarding the proposed amendments to the Rules of Civil Procedure for the Superior Court of the District of Columbia, particularly as they relate to electronic discovery (e-discovery).

For the most part, State Farm does not have concerns where the proposed Rules track the 2006 Amendments to the Federal Rules of Civil Procedure (FRCP). The District of Columbia amendments incorporate the current FRCP 2006 Amendments on e-discovery. Modeling the District's e-discovery rules after the federal law creates uniformity which allows potential litigants to better address the requirements of the rules. This uniformity also allows reference to authority in other jurisdictions which may have persuasive value.

The Scope of Discovery section divides e-discovery into two tiers. The first section deals with "reasonably accessible" electronically stored information (ESI) and the second tier addresses "not reasonably accessible" information. State Farm supported the tier division in the 2006 Amendments and also supports it in the District of Columbia. Limiting the first-tier to ESI "reasonably available in the ordinary course of business" would help curtail the excess of overly broad electronic discovery requests. Parties would not be forced to search and restore information that was only saved for purposes of disaster recovery, except for good cause showings.

In regards to the second tier, the sheer volume of electronic information that could be produced in response to an overly broad e-discovery request dictates some restriction on what ESI parties produce. If the ESI is not reasonably accessible in the ordinary course of business, a party should not be forced to produce it without a good cause presentation.

State Farm appreciates that the Comments state litigants should look to the 2006 Amendments to the FRCP for guidance. This will allow attorneys in Superior Court in the District of Columbia to argue the federal case law on e-discovery should be applied.

State Farm also has some suggestions for the proposed Amendments. They should include mandatory cost shifting for requests of "not reasonably accessible" ESI. We support a presumption of cost shifting when a party requests retrieval, review, and production of "not reasonably accessible" electronic information. The presumption could be overcome by a clear and convincing demonstration of substantial need and relevance. A cost allocation provision would be a deterrent against an extraordinary foray into critical business systems which may disrupt key operations. At the same time, it would allow the requesting party to obtain relevant electronic information when it is truly justified.

Large companies such as State Farm face exorbitant costs in searching for "not reasonably accessible" data. A cost shifting presumption would help reduce these costs, especially when overbroad, irrelevant requests are received. A specific word search of a large company's entire back-up or disaster recovery system could cost millions of dollars. Furthermore, it is burdensome to complete these searches because the search may negatively impact normal business operations. If a requesting party seeks such information, and is unable to demonstrate a substantial need or relevance, then the requesting party should be required to pay the costs.

Rule 37(e) includes a safe harbor provision protecting State Farm from sanctions for failing to disclose ESI in certain circumstances. Of course, we appreciate a reasonable safe harbor. State Farm, however, suggests the section require a high degree of culpability (intentional or reckless failure to preserve information) if sanctions are to be awarded.

Finally, State Farm suggests that use the terms "inspect", "test", or "sample", when used in the context of ESI, does not automatically allow direct access to the responding party's system.

Thank you for your consideration of these comments in finalizing the amendments to the Rules of Civil Procedure. Please contact me if you have any questions regarding State Farm's perspective.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Boge". The signature is fluid and cursive, with the first name "M." and the last name "Boge" clearly distinguishable.

Michael D. Boge
Counsel