May 6, 2020

Senator John Eklund
Chair, Ohio Senate Judiciary Committee
1 Capitol Square, 1st Floor
Columbus, OH 43215


Dear Chairman Eklund:

Thank you for the opportunity to write in support of the proportionality rule in the proposed amendment to Ohio Civil Rule 26.

By way of background, The Ohio Alliance for Civil Justice (“OACJ”) was founded in the mid-1980s to stop lawsuit abuse and promote a common-sense civil justice system in Ohio. The OACJ is comprised of representatives of dozens of Ohio trade and professional associations, small and large businesses, medical groups, farmers, non-profit organizations and local government associations for a combined representation of more than 100,000 individuals and businesses. Our leadership team includes representatives from the following organizations: NFIB, Ohio Chamber of Commerce, Ohio Council of Retail Merchants, Ohio Hospital Association, Ohio Manufacturers’ Association, Ohio Society of CPAs, and the Ohio State Medical Association.

Specifically, the OACJ supports the proportionality rule being amended into Civil Rule 26. This amendment provides alignment with the Federal Rules of Civil Procedure.

Discovery is extremely important in civil litigation. Discovery provides the opportunity for each party in a case to request documents, electronically stored information ("ESI") and other relevant materials for the party to prove their case. However, the response to a discovery request can sometimes be overly burdensome and not make economic sense due to the amount in controversy in the case.

The proportionality rule as applied to the scope of discovery is important because it focuses the discovery on the relevant issues, rather than permitting broad discovery well beyond the scope of the case. The proportionality rule provides responding parties the ability to protect themselves if the discovery is too broad and burdensome.

This standard is especially important due to technological advances. Although technology is helpful in the sense that litigants do not have boxes filled with documents, technology can actually bog down the discovery process. Search terms are utilized to search each device and sometimes those search terms yield a massive return of documents. The search function on most standard pieces of technology is not sophisticated enough to understand if the search term within the document is actually relevant to the discovery request. Therefore, an individual must
review each document, which is extremely time consuming and often very costly. Discovery should not create such a burden to the opposing party that it is cost prohibitive to defend against claims.

With the explosion of ESI and the burgeoning cost of collecting, reviewing, and producing massive data sets in discovery, the focus on proportionality provides protection from the overly burdensome and overly broad discovery. This rule allows the party responding to the discovery to request the ability to argue against it with the several factors mentioned in the amendment. Therefore, the rule provides the court a standard to follow when deciding what discovery request is appropriate. The rule gives the court a powerful tool to narrow overly broad discovery requests—even when the information may be otherwise relevant. This standard gives the parties the ability to understand how a discovery request should be tailored to a case.

In addition, the standard provides more predictability to the parties. The parties are able to point to the elements within the rule for arguments as to why the actual request is overly burdensome. The court then has more information and facts to analyze when determining if the request is overly burdensome, broad or too expansive. Therefore, the proportionality provision provides courts with another tool to curb potentially abusive litigation tactics and to tailor discovery as appropriate in each case.

Thank you for allowing the OACJ to provide testimony in support of the proportionality provision in Civil Rule 26. We ask the committee to support this amended change to Rule 26.

Sincerely,

[Signature]

Chris Ferruso
OACJ Chair
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Established in 1987, The Ohio Alliance for Civil Justice is a non-profit, broad-based coalition that includes many of Ohio’s trade and professional associations, along with a large number of small & large businesses, medical groups, agricultural organizations, and others. To read more about the alliance’s mission and to learn more about our coalition, please visit www.ohiociviljustice.org.