

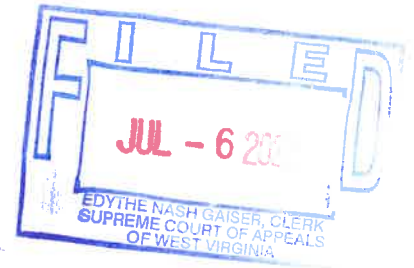
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June 30, 2022

Edythe Nash Gaiser, Clerk of Court  
State Capitol Rm E-317  
1900 Kanawha Blvd. East  
Charleston WV 25305

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Re: *Request for Public Comment on Proposed Amendments to the West Virginia Rules of Civil Procedure, No. 21-Rules-12*

Dear Madam Clerk,

My name is Alex Tsiatsos. I am an attorney practicing in Martinsburg, WV. I am writing to you in response to the Supreme Court of Appeals' request for comments to the proposed changes to the West Virginia Rules of Civil Procedure (Order no. 21-Rules-12).

I oppose these changes because they seek to convert our state rules into the federal rules. But there is no reason for this. There is nothing wrong with West Virginia's current rules. No one has identified any problems that need to be fixed.

I don't know the exact percentages, but I think it is fair to say that the vast majority of civil litigation in West Virginia takes place in state court. Practitioners are familiar with the state rules. Our state rules have been stable and they are well-understood. A significant amount of valuable commentary has grown up around our state rules, such as the time-honored *Litigation Handbook on West Virginia Rules of Civil Procedure* by Justice Cleckley *et al.*

There is no reason to upset all of this. The proposed changes would result in confusion and error as attorneys (inevitably) forget that a long familiar rule has changed. Granted, that is true whenever any law is changed, but this complete overhaul will only amplify that effect.

Any desire for uniformity with the federal rules is misplaced. Under our system of federalism, there is nothing inherently wise about following the federal model. The federal rules are not better just because they are federal. In fact, in some ways, they are worse. For example, the proposed adoption of Fed. R. Civ. P. 26 will create significant expenses and burdens for parties who would have to pay their lawyers to prepare initial disclosures and who would have to pay retained experts to draft reports themselves.

I represent both civil plaintiffs and defendants at about a 50:50 ratio. I clerked for a federal judge in law school and I have been involved in many federal cases in the Northern District over the last 15 years. Therefore, I think I have some basis to say this: one of the main reasons defendants seek removal to federal court is because the federal rules make it a more defendant-friendly forum. And, one of the main reasons for that, if one is being candid, is the increased cost and difficulty of federal court litigation – burdens that defendants are generally better able to bear. Those increased costs and difficulties stem, in large part, from the federal rules that the Court is now considering.

That is one of reasons why I advise my clients to avoid the federal forum, even when representing defendants who have the option to remove the case. There is just no need to jump through so many extra hoops to have your day in court. The West Virginia rules, as they exist now, are fine: they provide litigants with everything they need to fairly present their cases to the factfinders, and they allow the factfinders to make the appropriate decisions on the merit. (From a stylistic standpoint, I don't see that the federal rules are any better, either.)

Nothing said here should be understood to imply anything negative about the committee that prepared the proposal. I believe that the committee is composed of very honorable and intelligent people acting in good faith. But I do not understand what ultimately gained from copying the federal rules. The supposed value of any textual uniformity is greatly outweighed by the new burdens imposed on litigants and by the disruption that these changes would cause.

Therefore, I would ask the Court not to adopt the proposed rules. Or, at least, I would ask the Court not to change our state discovery rules (Rules 26-37). Thank you for your attention to this matter. Please let me know if you have any questions or comments.

Sincerely,

*/s/ Alex A. Tsiatsos*  
Alex A. Tsiatsos