



1025 Connecticut Avenue, NW, Suite 200
Washington, DC 20036-5425 USA

tel +1 202.293.4103

fax +1 202.293.4701

www.acc.com

February 21, 2017

Via email to: ark@rsclaw.com

Allan Keyes, Esq., Chair
Civil Rules Committee
Ryan, Smith & Carbine, Ltd.
P.O. Box 310
Rutland, VT 05202-0310

Re: Association of Corporate Counsel supports proposed amendments to Rules 1, 26, 34(b), 37(f) and 55(c) of the Vermont Rules of Civil Procedure

Dear Mr. Keyes:

On behalf of the Association of Corporate Counsel (“ACC”) and the ACC Northeast Chapter, we would like to register our support for the proposed amendments to Rules 1, 26, 34(b), 37(f) and 55(c) of the Vermont Rules of Civil Procedure. The proposed rule amendments will benefit corporate legal departments by further harmonizing with the Federal Rules of Civil Procedure and by reducing the burdens and costs of discovery associated with the overly broad scope of the current rules.

ACC is a global bar association that promotes the common professional and business interests of in-house counsel, with over 40,000 members employed by over 10,000 organizations in 85 countries. ACC’s Northeast Chapter, which includes our members in Vermont, represents nearly 1400 in-house lawyers in the region. As attorneys who lead and work within corporate legal departments, ACC members are uniquely aware of the exorbitant costs and burdens of litigation. Changes to the rules of civil procedure such as those proposed by Vermont will help ACC members reduce the costs and burdens of litigation on their organizations.

The proposed amendments, as they close gaps with the Federal Rules, will allow more consistent approaches to discovery procedures, as many companies must prepare for potential litigation in numerous jurisdictions. ACC members have a common interest in encouraging adoption of consistent national and international standards, especially when it will result in more sensible, less burdensome proceedings for all involved parties. ACC supported the 2015 amendments to the Federal Rules, and fully supports the Vermont changes as proposed.

Of particular interest to ACC members are the proposed amendments to Rule 26(b) narrowing the scope of discovery and adding proportionality. These amendments will reduce unnecessary and abusive discovery requests, lower costs and increase adjudications on the merits, without impairing the ability of parties to discover the information they need for claims and defenses.

In-house counsel and their clients welcome the limitation of discovery in proposed Rule 26(b)(1) to information that is “relevant to any party’s claim or defense,” as opposed to the current rule’s standard of being reasonably calculated to lead to the discovery of admissible evidence. The breadth of the “reasonably calculated” standard has led in many cases to virtually unlimited discovery. By making clear to parties and courts that discovery must be focused on information relevant to the particular claims and defenses at issue in the litigation as opposed to any matter that “might” be relevant or “could” lead to relevant information, the newly formulated Rule 26(b) should greatly reduce the cost and burden of discovery.

ACC further supports the requirement in proposed Rule 26(b)(1) that discovery be “proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” Inserting this proportionality language into the text of Rule 26(b)(1) will streamline the scope of discovery, ensuring that discovery is focused on the particular needs of the case and the importance of the requested discovery as it relates to claims or defenses actually at issue. This should significantly reduce the amount of material parties are required to produce and improve the ability of in-house counsel to predict, plan and budget for the discovery obligations of their clients.

By limiting the amount of permissible discovery, the proportionality requirement will also help alleviate the risk of unintended disclosure of privileged information to an adverse party. The constant technological innovations and increases in electronic data have made it difficult to ensure that all relevant documents are produced. Additionally, in-house counsel and their outside lawyers spend an inordinate amount of time and money to preserve work-product and the attorney-client privilege among the volumes of documents produced. By significantly reducing the amount of information that counsel and their clients must search, review and produce, the proportionality requirement will trim the expense of discovery and lessen the risk that privileged material will be disclosed in error.

Current discovery rules unnecessarily subject entities to prohibitive costs and burdens in responding to voluminous discovery requests and can effectively deprive litigants of having their day in court by coercing parties to settle claims simply to avoid the expense of discovery. ACC supports the proposed amendments as an important step forward in making litigation a more efficient process for resolving disputes.

Sincerely,



Amar D. Sarwal
Vice President & Chief Legal Strategist
Association of Corporate Counsel

Mary Blatch
Director of Advocacy and Public Policy
Association of Corporate Counsel

Dannette Wineberg
President, ACC Northeast Chapter
Association of Corporate Counsel