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Tuesday, June 4, 2019

Committee Secretary
Supreme Court Rules Committee
222 N. LaSalle St., 13th floor
Chicago, IL 60601

[redacted]

Re: Public Committee for Rules Committee hearing 6.19.19

Dear Secretary:

I write to comment on certain of the rules proposals to be discussed on 6.19. I also write to request time to testify on these matters as well. I write personally and not on behalf of any organization.

- **17-03** Rules 206 and 212: the two changes are salutary, and I support both. Proposed 206(g)(6) requires the trial court to permit a party to display a video recording of a deposition or excerpt of deposition. This commonsense rule is necessary because some trial judges forbade lawyers from using video clips of deposition statements of a witness because "it is too prejudicial," and required the lawyer to read from the transcript. This rule corrects such imperfect reasoning.

  Proposed 212(a)(2) correctly states Illinois law; the former version is too restrictive and does not correctly state Illinois law. A former statement of a party need not be "an admission" to be admissible. This because quite clear when the Rules of Evidence were approved effective 1/1/2011. Rule 801(d)(2) provides "a statement is not hearsay if ... (2) the statement is offered against a party and [six subparts]." The statement need not be contrary to the party's interests at trial to be admissible under IRE 801. The statement of a party is not hearsay and if the statement is otherwise relevant, not more prejudicial than probative, etc., the statement should be received in evidence. The proposed amendment brings Rule 212 into conformance with IRE 801. It also represents the practice of many trial judges before whom I have appeared since 2011.

- **18-1** Rule 218: I support the concept but not the language. The idea of adding a form for a HIPAA order as a suggested form, rather than a

mandatory form, is a good idea. One size does not fit all. There are cases where a trial court should have the authority to deviate from the suggested form order and the proposal does not allow for that option.

I would propose a modified version of Judge Ehrlich's proposal for Rule 218 to read as follows:

> 218(b): Protective Order for the Release of Protected Health Information. In any case where a plaintiff's medical condition is at issue, the plaintiff shall present at the initial case management conference a signed consent to the limited disclosure of protected health information to be produced in discovery. The consent shall be contained in a court order for the release of those records; the form provided is suggested for use.

I would also propose these modifications to the suggested form of order:

- Clarify that the consent and order do not authorize the release of records protected under the six classes of protected records listed on page 1;
- Remove the stipulations on p. 2 as unnecessary and argumentative.

- **18-04** Rule 345: I oppose the proposal that would allow amicus briefs to be filed in support or opposition to a PLA. The practice of our reviewing courts is to deny leave to file until after a PLA has been granted; I do not believe the courts need additional reading material to decide whether a case is worthy of granting or denying a PLA.

Sincerely,

Bruce R. Pfaff