

August 29, 2016

Ms. Therese S. Barnes
Clerk of the Supreme Court of Georgia
244 Washington Street, S.W., Room 572
Atlanta, GA 30334

Dear Ms. Barnes:

On behalf of the U.S. Chamber Institute for Legal Reform (ILR), I write to express our strong support of proposed Uniform Superior Court Rule 6.8 which establishes important standards governing the preservation of evidence for litigation purposes. The proposed rule, which is based on the recently approved Federal Rule 37(e) that became effective in December 2015, would give litigants much needed certainty regarding the development and implementation of preservation policies for electronically stored information (ESI). Indeed, the current ambiguity in the law has prompted future litigants to over-preserve ESI at a great cost and for the sole purpose of reducing the risk of draconian sanctions.

The volume and cost of discovery in the electronic age amount in some cases to billions of pages and millions of dollars. Simply restoring emails on backup tapes used to store large quantities of data was estimated to cost \$9.75 million in a case from as early as 2002. A 2008 publication by the Institute for the Advancement of the American Legal System reported that even a typical midsize case then involved at least 500 gigabytes of data, resulting in costs of between \$2.5 and \$3.5 million for electronic discovery alone. And a 2010 survey of major businesses by the Lawyers for Civil Justice organization found that responding companies reported 743 e-discovery disputes between 2004 and 2009.

The proposed rule would also minimize abusive discovery tactics that are aimed at deliberately escalating litigation costs to leverage unjust settlements that are far removed from the merits of the case. A 2008 study of the fellows of the American College of Trial Lawyers conducted jointly with the University of Denver's Institute for the Advancement of the American Legal System concluded that the discovery system is broken. Nearly 71 percent of respondents believe that discovery is used as a tool to force settlement and nearly half of respondents feel that discovery is abused in every case.

Finally, we believe that approval of this proposed rule will help improve the state's current lawsuit climate ranking of 31st according to the Harris Interactive Poll, which represents a seven point drop from its 24th ranking in 2012. In terms of the key element of discovery measured by the poll, Georgia's ranking fell four places, from 27th in 2012 to 31st in 2015.

For the foregoing reasons, we urge the Justices of the Georgia Supreme Court to approve proposed Rule 6.8.

Sincerely,



Harold Kim
Executive Vice President
U.S. Chamber Institute for Legal Reform