Dear Members of the Court:

Please accept this email as my comments to the proposed changes to Rule 6. My review of these proposals indicates that the drafters wish to make motions practice in the state system similar to motions practice in the federal system. The fallacy in this effort is that motions are not practiced the same in the federal systems as they are in the state system. Under the rotation system for state judges, a judge may appear in a circuit for a motions term for a week with a roster of more than 100 motions set before him or her. In larger circuits, such as the 3rd or 14th, a judge may actually be in 5 counties in the course of that week. Inasmuch as most court's do not know anything about a case before it takes up a motion, it is highly unlikely that, with that amount of work in that amount of time, a judge will read, digest and take benefit of a fully briefed motion and record prior to or after a hearing. It is becoming more and more common place for courts to rule on simple motions from the bench and for larger motions to be taken under advisement with a requirement of a proposed order being submitted for the court's review after the hearing. This system, while not perfect, at least focalizes the work for counsel and avoids needless work.

Moreover, this rule benefits large firms and puts smaller firms at a distinct disadvantage. Larger firms have the staff and financial wherewithal to create great amounts of paper, some of which include additional needless work and arguments, that smaller firms do not have. Larger firms represent larger clients with better abilities to defend, accordingly, putting small clients at a disadvantage. My firm, for example, consists right now of me and one associate. I recently prepared a 25 page memorandum on a summary judgment motion; it took 2 lawyers a week to draft that memorandum. I am fortunate that my schedule allowed that amount of time. The memorandum was prepared in an arbitration where the Rules of Civil Procedure were being followed and where the arbitrator, an active retired circuit judge, had the time to read the submittals. However, he had to continue the actual trial in order to do so.

If the issue the drafters are attempting to address is better notice to the opposing parties of the grounds for the motion, this can easily be remedied by requiring in the face of the motion that the grounds be set out with particularity, including a statement of specific statutes, case law, or rule relied upon and how the law or precept applies to the situation. It seems to me this would have the full benefit of the proposed changes without the unnecessary work.

Most clients become frustrated with the system as it is. In the federal system, a case is assigned to one judge who, on his or her own, may elect to have a hearing or not and may rule from the briefs without oral arguments. The state system, with its much greater caseload and less resources, does not have this luxury, and neither do many of its practitioners. The rules changes should be denied as, frankly, unmanageable.

Thank you for your consideration of my comments and concerns.

David K. Haller

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David K. Haller
Haller Law Firm, P.C.
180 Meeting Street, Suite 230
Post Office Box 937
Charleston, SC 29402
(843) 577-7244
(843) 577-7288 (fax)

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