December 21, 2009

Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

RE: Proposed amendment to Rule 6 of South Carolina Rules of Civil Procedure

Dear Mr. Shearouse:

I am writing regarding the request for written comments regarding the proposed amendment to Rule 6 of the South Carolina Rules of Civil Procedure. I strongly oppose the proposed amendment in its present form. My opposition to the proposed amendment is two fold. First, I believe a requirement that a written motion be accompanied by a supporting memorandum is unnecessary. Second, I am concerned about the cost that will be added to the litigation process by such a requirement.

I have an active litigation practice. I file motions on a regular basis. Most are simple, straight forward motions to compel discovery or for protective orders. I do file summary judgment motions and motions to dismiss. My observation is that most of these motions can be easily described to a trial judge at the motion hearing in 5 minutes or so. I do file supporting memorandums when I feel they are necessary. Sometimes they are read by the judge before the hearing and sometimes they are not.

I believe that requiring an accompanying supporting memorandum will add unnecessary expense to the litigation process. Clients and lawyers are already burdened with substantial pre-trial expenses, in the form of extensive written discovery and deposition discovery. This will add just one more expense to an already costly system of justice.

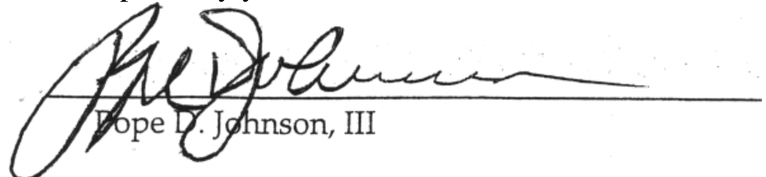
I recently had the occasion to speak to Judge Joe Anderson, who was lamenting that he had just, in November, tried the first civil case he had tried in federal court all year. I expressed to him my concern that the federal court with its rules, judges' preferences, requirements of memorandums, pre-trial briefs, etc., all before the trial, had made it too hard for lawyers to ever

want to go to federal court. He readily agreed that the system had made it almost prohibitive for the ordinary diversity jurisdiction case to be worth filing in federal court. As you know, the federal court requires supporting memorandums with written motions. However, the federal judges frequently grant or deny motions without affording the parties a hearing, which is contrary to what occurs in state court.

Frankly, I am surprised that members of the Bar are proposing this amendment to Rule 6. However, if Rule 6 is to be amended, I suggest that the proposed amendment be modified and only require that if a party intends to file a supporting memorandum, the supporting memorandum, like affidavits, must be filed with the motion, with any responding memorandum being filed at least two days prior to the hearing. Such a change in the proposed amended Rule 6 would not burden lawyers and clients with the cost and trouble of filing memorandums where they are not necessary but would give structure to the procedure of submitting memorandums to trial judges.

As we all know, there are fewer and fewer civil trials, largely because of the mediation system. However, adding additional burden and expense to an already costly system of justice makes no sense to me. I urge that the proposed amendment to Rule 6, as currently drafted, be rejected.

Respectfully yours,



Pope D. Johnson, III

PDJIII/sww

cc: rule6@sccourts.org