

DECEMBER 15, 2011

The House of Representatives Judiciary Committee's Subcommittee on the Constitution Holds Hearing Regarding Costs and Burdens of Civil Discovery

On December 13, 2011 the House of Representatives Judiciary Committee's Subcommittee on the Constitution held a hearing regarding the costs and burdens of civil discovery. The subcommittee convened the hearing to question witnesses whether discovery costs emanating from the existing Federal Rules of Civil Procedure make civil litigation cost prohibitive.

After reciting that Rule 1 of the Federal Rules of Civil Procedure mandates that all rules "shall be construed and administered to secure the just, speedy, and inexpensive determination of every action," Subcommittee Chairman Trent Franks (R-AZ) commented that current discovery rules appear to fall short of this ideal, in that the current system "encourages parties to bury each other in onerous requests for more and more data of dubious evidentiary value." He continued to remark that "the problem is exacerbated by the explosion of potentially discoverable data in our digital world."

Three of the four witnesses highlighted the burdens associated with the discovery of electronically stored information under the current rules. Concerns include diminished access to courts because of high eDiscovery costs. The fourth witness advocated for "patience" towards the 2006 version of the Rules, which specifically address the discovery of electronically stored information.

As the hearing ended, the participants indicated that the session was more of an informational update for the subcommittee. Indeed, Representative John Conyers, Jr. (D-MI) remarked that the subcommittee, like the witnesses, is interested to review recommendations from the Federal Justice Center regarding the Rules in 2013 and suggested that the subcommittee should convene another hearing at that time to discuss the validity of the recommendations.

Copies of the written testimony from the four witnesses are available at the following link:

http://judiciary.house.gov/hearings/hear_12132011_2.html.

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