

# CyberBytes™

## *Straight Talk about Electronic Evidence Discovery in Civil Cases- April 2006*

### Nothing Ventured-Nothing Gained

#### STAGE ONE

Your firm represents a high-profile corporation in a complex litigation matter that involves a wrongful termination complaint filed by an ex-senior executive. The client's VP of human resources has submitted that the termination was the result of numerous e-mails between the ex-employee and a major competitor that were intercepted by the client's IT department. The e-mails were presented to the ex-employee and he was asked to explain why company confidential information was sent to their competitor. He denied having sent the e-mails and was soon thereafter terminated.

#### STAGE TWO

In researching all of the known facts of the events and actions that contributed to the decision to terminate the

executive, three e-mail messages all sent within a matter of weeks prior to the termination were recovered from the corporation's e-mail system. The e-mails were sent to a senior executive working at the competitor's organization. The e-mail messages intimated that your client's employee was being recruited by the competitor. The ex-employee is currently employed by the same competitor.

#### STAGE THREE

Clearly, the intercepted e-mails in hand and the ex-employee's full time employment at the competitor's company will be useful to defend against the wrongful termination claim - but could there be more evidence not yet identified on the ex-employee's computer? You decide to hire a computer forensics examiner to take a closer look.

#### STAGE FOUR

After conducting a routine forensic examination of the laptop computer used by the ex-employee, some startling findings are reported. First, the examiner located and recovered dozens of Internet Service Provider (ISP), private e-mails in which the ex-employee had been routinely communicating with the same competitor which included vast amounts of the client's information and trade secrets. Additionally, the examiner found and recovered a significant number of deleted hard core pornographic images.

#### STAGE FIVE

After discussions with your client about the forensic examiner's findings, a decision has been made to file a counter claim against the ex-employee and the competitor for misappropriation of company confidential materials and

computer fraud. Following a motion for injunctive relief, you also have decided to launch an e-discovery request and a request for computer examinations of those computers used by the competitor's employee to whom the original e-mails were sent to by the ex-employee.

**SUMMARY**

In many cases where the user of a particular computer is no longer in the employ of a client, that same computer is re-formatted and assigned to another employee. A few months pass by and then something pops up that involves the ex-employee; a labor dispute claim, certain employees report that the ex-employee has been attempting to recruit them to work elsewhere, or the suspicion that the ex-employee misappropriated valuable information before going to work for a competitor. Don't forget to consider having a forensic examination of the ex-employee's computer immediately for relevant evidence. Even after being re-formatted and used for considerable time, relevant evidence is frequently recovered. Otherwise, nothing ventured-nothing gained.

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This document is neither designed nor intended to provide legal or other professional advice but is intended merely to be a starting point for research and information on the subject of electronic evidence discovery. While every attempt has been made to ensure accuracy of this information, no responsibility can be accepted for errors or omissions.

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