

CyberBytes™

Straight Talk about Electronic Evidence Discovery in Civil Cases- December 2006

Action Speaks Louder Than Words

Like all new things, the new amended rules of the Federal Rules of Civil Procedure (FRCP), will be met with a variety of actions and inactions on the part of trial attorneys. This is not to say that many attorneys or their firms have neglected the impending rule changes that deal with the issues about electronically stored information (ESI). In fact, CyberControls' pretrial consultants have participated in dozens of seminar presentations across the country on this very topic over the past six months.

For other trial attorneys, the implications of the FRCP Rule changes will not be fully appreciated only because anything having to do with electronic discovery and production have been earnestly avoided up until now. Others will assume a "wait and see what happens"

attitude before they invest their valuable time to crash study these amendments that go into effect on December 1st, 2006.

Another direction that many attorneys may opt to choose is to finally recognize that the FRCP Rules have been changed, and therefore legal professionals have no choice but to adopt the necessary skills, knowledge, and practices to deal with ESI issues in commercial litigation. This choice in direction will ultimately prove to be the most effective approach in protecting their client's best interests in a legal dispute that involves electronic evidence.

One of the first steps in moving forward with the new FRCP Rules is to actually read through each of them. CyberControls provides a White Paper on the FRCP Rule amendments, "Practical Implications of the New FRCP Rules."

The next important point we offer is to fully appreciate that the state courts have also been provided "Guidelines for State Trial Courts Regarding Discovery of ESI", provided by the Conference of Chief Justices. These guidelines provide a comprehensive set of parameters for both litigators and judges that have drawn a substantial amount of content from the new FRCP Rules, so trial attorneys should think twice about assuming that the new wave of change with respect to ESI is limited to federal court cases.

Lastly, we urge our readers to give serious consideration as to amount of preparation they must undertake early on in the pretrial stage to be properly equipped for the meet-and-confer session that is now required in federal and state courts in order for opponents to disclose, discuss, and agree upon e-discovery request issues,

preservation of all relevant ESI documents and files and ultimately, the final production arrangements. The vast amount of attention required in order to assess the technical details related to all relevant ESI whether from a requesting party's or a respondent's perspective may represent one of the single greatest challenges for many attorneys.

Fortunately, CyberControls has recently released a complimentary service offering that specifically addresses this area of pretrial preparation, "ESI Assessment Report." This report is designed to provide legal counsel with a comprehensive inventory of a commercial client's Information Technology network environment as it relates to all relevant ESI pertaining to a specific case. The report is custom-tailored to address the specific concerns of either a requesting party or the producing party, in order to emphasize the options and recommendations that relate to the interests and duties of either party. The ESI Assessment Report will equip the attorney with all the necessary information to

conduct an effective meet-and-confer session that will support an agreeable outcome thus avoiding to have a judge weigh in on the matter with less favorable results.

CyberControls is a leading provider of electronic discovery production services, computer forensic analyses, and pretrial litigation consulting with special emphasis on ESI.

-Robert Guinaugh

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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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