

CyberBytes

Subject: Sitting on the Sidelines

There is little doubt that in today's litigation arena, plaintiff and defense attorneys are struggling with requesting, reviewing and producing electronic documents and e-mails for discovery with particularity to deleted data. While most attorneys have varying degrees of awareness that with the help of computer forensic specialists, deleted data can often be recovered, such an undertaking is presumed to be a competing expense that the client would be resistant to approve.

In a recent survey conducted by CyberControls, LLC, practicing attorneys across the country were asked specifically what key factors led them to conclude that computer forensics support in commercial litigation was too costly for the majority of their litigation disputes. Here are some excerpts from that survey.

If you have considered utilizing computer forensics in a litigation matter, what specific reason most influenced your decision not to go forward?

- a) Unfamiliarity with the process of integrating a computer forensics strategy into the case. **28%**
- b) Reluctance to use outside experts. **14%**
- c) Assumption that the costs are very high and the results unsure. **44%**
- d) Appeared to not be sufficient time to use computer forensics. **7%**

In working with outside experts and specialists on a particular case, how important is collaboration in your strategy?

- a) I look to my outside experts and specialists to help me at the pre-filing stage to help me formulate my discovery strategy. **11%**
- b) I rely upon the experts and specialists to document a scope of work for the engagement so that the entire litigation team understands what needs to be accomplished and when. **7%**
- c) I prefer to manage the experts and specialists in my case on a need-to-know basis. **61%**

- d) I invite my experts and specialists to schedule routine update meetings. **12%**

What our management team has surmised from the results of this entire survey is that there is a tremendous amount of miscommunication and incorrect assumptions about the practice of computer forensic discovery in commercial litigation.

CyberControls, LLC recognizes its responsibility as a national provider of digital forensic discovery support services that education on this topic is the first step in assisting lawyers attain the necessary familiarity with digital forensic discovery from a requesting party and a producing party's perspective. Over the years, CyberControls has participated in a number of speaking engagement venues in professional association settings as well as before law firm litigation teams across the country. We invite you to get in touch with us should you be interested in discussing a formalized approach to having our computer forensic consultants deliver a presentation or round-table discussion to your firm.

If on the other hand, you or a colleague are faced with a particular e-discovery challenge that appears to be more than just a cursory request or review of e-docs that might include the discovery of certain deleted files, e-mails, or voice mail, we'd be happy to discuss the situation with you. No case is too small or large for CyberControls, LLC.

If your client has to win the case and you are considering whether or not there may be deleted data on someone's computer that would be useful to you, you have nothing to lose in exploring how digital forensics might play a role.