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01/21/2005 10:42 AM

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Subject Opinion on newly proposed discovery rules

04-CV-102

An opinion on the newly proposed discovery rules pertaining to electronic information:

"Rule 26(b)(2). A party need not provide discovery of electronically stored information that the party identifies as not reasonably accessible. On motion by the requesting party, the responding party must show that the information is not reasonable accessible. If that showing is made, the court may order discovery of the information for good cause."

The acceptance of this rule would have been okay back ten years ago when the market was new to the push of the electronic age. However, in today's business and private sectors, the majority of communications (much higher in larger corporations) is performed by means of electronic based communications. We the people and the federal court system MUST set the precedence and place responsibility on each individual business to maintain a document management system that is fair and equal to all individuals and equally accessible and in compliance with current federal rules concerning the destruction and/or deletion of such information. Without doing this, the injustice is horrific. As for the wording "not reasonably accessible". This clause should not even exist! If a business chooses to participate in the use of and allowance of its personnel to utilize this form of communication, then that same business MUST be responsible for ensuring that all communications utilized by it's personnel are stored effectively. That means in an easily accessible and readable manner. The courts have continually provided privileges to businesses that include the right to monitor employee electronic data, including emails and internet access. If the court systems are going to continue to provide this right of invasion upon the privacy of its employees, then in order to promote justice, provide fair and equal rights and protect the people, this court MUST allow the people the proper access to this same information upon litigation, without the risk of this information being destroyed or inaccessible. Otherwise, this court must begin to ensure electronic privacy to all individuals. There can not be a double standard, which is exactly what this new rule will provide. If an employee for example is terminated due to communications within an email, if that employee claims foul play, or discrepancies, or states that it was in reply to a communication he had received prior, this employee will lose all rights to prove his case, because the information he requests is destroyed or not accessible. This court can not allow this double standard. If this information is not accessible or has been destroyed due to some internal policy, then these same communications should not be accessible to the employer at ANYTIME. If a business can not maintain an appropriate storing system that is accessible at anytime when faced with litigation, for its electronic information, then this same business should not be provided the right to track, monitor, view, read and/or store for example ANY emails of its personnel. They should be destroyed immediately! By ruling in favor of this new discovery rule, I honestly feel that the court is committing a further injustice not

only to the people, but a further injustice to the already lacking, unclear, ambiguous, "see how many interpretations you can come up with to hinder justice, because the discovery rules allow you to" failing discovery rules.

As for the proposal of the following:

"Rule 37. (f) Unless a party violated an order in the action requiring it to preserve electronically stored information, a court may not impose sanctions under these rules on the party for failing to provide such information if: (1) the party took reasonable steps to preserve the information after it knew or should have known that the information was discoverable in the action; and (2) the failure resulted from loss of the information because of the routine operation of the party's electronic information system."

Because of "routine operation of the party's electronic information system." You mine as well just give every defendant corporation or business out there permission to destroy all evidence at any time pertaining to any matter. What if this same consideration was provided to Enron? I am sickened inside to think that our legal system would even consider placing such a rule into effect. Bottom line is that the courts should be enforcing, demanding, requiring every corporation, company, business out there that is utilizing electronic forms of communication to maintain its record (if it records, monitors, views, reads the private communications of its personnel) to be maintained for not less than 6 months. There is very minimal expense involved, regardless of defensive opponents that of course will argue otherwise. The fact remains that six months of electronic communications could easily be stored on a backup hard drive that costs under $300 in the average business. I can't express how strongly I am against this ruling.

Although, the above is just an opinion of one of the "people". I should also note that I am not an Attorney, I have no political ties and am just an average citizen who has worked as a paralegal in the area of employment law and workers' compensation law, who has become disheartened by the daily injustices that I have witnessed and the courts have allowed to continue, due to ineffective, unjust, ambiguous, discovery rules. I truly feel that the new rules that have been proposed are a further injustice, they certainly do not leave me with the feeling of "and justice for all".

Sincerely yours,
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