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Via E-mail

Date sent: Wed, 25 Jun 2003 22:16:44 -0500  
From: John.Martin@tklaw.com  
Subject: Electronic Discovery  
To: marcusr@uchastings.edu

Professor Marcus:

I am a practicing defense lawyer in Dallas, Texas, and I also serve on the Texas Supreme Court Rules Advisory Committee. I have learned that the Judicial Conference Civil Rules Advisory Committee is considering amendments to the FRCP to address the increasing problems involving electronic discovery. Since I practice in both state and federal courts, primarily in Texas, I can tell you that the Texas Rules of Civil Procedure more clearly address the issue than do the FRCP. I recommend for your consideration Texas Rule of Civil Procedure 196.4 which gives courts and practitioners much more specific guidance with regard to a party's obligations in this area.

Specifically I suggest that the federal rules need to create a "safe harbor" in connection with retention of this type of information, and also should address some form of cost shifting because the burden on businesses to respond to requests for electronically stored information can be unduly burdensome.

Thank you for considering these comments.

John H. Martin  
Thompson & Knight LLP  
1700 Pacific Ave. Suite 3300  
Dallas, Texas 75201-4693  
Direct Telephone: 214.969.1229  
Fax: 214.969.1751  
email: John.Martin@tklaw.com