



NELSON • LEVINE • de LUCA & HORST
A LIMITED LIABILITY COMPANY
ATTORNEYS AT LAW

July 1, 2003

02-ED-028

Professor Richard L. Marcus
Reporter
Discovery Subcommittee, Civil Rules
Advisory Committee
Hastings Law School
San Francisco, California

Re: Federal Rule Amendments
Electronic Discovery

RECEIVED
7/01/03
Via E-mail

Pennsylvania Office:
Four Sentry Parkway, Suite 300
Blue Bell, PA 19422
Phone: 610.862.6500
Fax: 610.862.6501

New Jersey Office:
212 Carnegie Center, Suite 206
Princeton, New Jersey 08540
Phone: 609.919.6320
Fax: 609.520.1863

Internet: www.nldhlaw.com

Ohio Office:
266 North 4th Street, Suite 160
Columbus, Ohio 43215-2511
Phone: 614.228.1398
Fax: 614.463.9191

Michael R. Nelson
Direct: 610.862.6560
mnelson@nldhlaw.com
Cell: 215.837.4061

Reply to PA office

Dear Professor Marcus:

As a law firm involved in class action matters, Nelson Levine de Luca & Horst handles many cases involving electronic discovery. In advising clients of the need to preserve documents, we have found that the current rules apply so broadly that the destruction of any electronic media with potentially relevant information puts clients at risk of a potential spoliation argument. To avoid any such argument, we must advise clients to preserve all documents with potentially relevant information. This inevitably puts companies to great expense in seeking out and retaining all such media. Even when such media is retained, we have found that the opposing party rarely succeeds in obtaining even of a fraction of the information preserved.

The current discovery rules offer little help to control the costs capable of being imposed by opposing counsel at the onset of electronic discovery. The tactic of leveraging the costs of electronic discovery to force a settlement seriously hinders a company's ability to litigate claims on the merits. While courts have begun to recognize the challenges of electronic discovery, the federal rules should provide more guidance on the limits of a reasonable request for electronic data. Provisions implementing a cost-shifting arrangement for burdensome discovery and a "safe-harbor" for data not accessed in the ordinary course of business would help to eliminate the unfair burdens imposed when complying with such requests.

Nelson Levine de Luca & Horst appreciates the opportunity to provide these comments to the Discovery Subcommittee.

Very truly yours,

Michael R. Nelson
Chairman