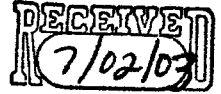


02-ED-029



Via E-mail

Date sent: Tue, 01 Jul 2003 14:30:44 -0700
From: Chris Tompkins <ctompkins@bpmlaw.com>
Subject: Electronic discovery
To: "'marcusr@uchastings.edu'" <marcusr@uchastings.edu>
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Professor Marcus:

I am an attorney involved in a civil defense practice in Seattle. I write to offer brief comments in connection with the Civil Rules Advisory Committee's consideration of electronic discovery issues. I have seen serious difficulties arise in connection with such discovery in my practice.

Perhaps the most serious is attempts by plaintiff's counsel to obtain copies of all "documents" and information generated by the use of computers, including intermediary information never intended to be preserved as a document. Efforts to require permanent or long term saving of back up tapes, for instance, or individual email messages, place serious burdens and expense on our corporate clients.

A related issue is the uncertainty as to what steps are, or may be, required for a company to comply with its obligation to preserve electronic information. Courts are inconsistent in their approach to the issues, and there are serious dangers presented if a corporate employee innocently destroys a draft of a document or an email which an attorney may later contend should have been saved.

The Safe Harbor provisions of the April 14 Report would go a long way toward alleviating this difficulty.

The cost of locating and "translating," or obtaining access to, electronic information can also be overwhelming. The cost shifting provisions discussed in the Report, as I understand them, would again go a long way toward easing the issue.

Thank you for your efforts in this regard, and for your consideration of these brief comments.

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