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6/28/03

02-ED-046

Date sent: Sat, 28 Jun 2003 01:30:54 -0400
From: mwilliams@huddlestonbolen.com
Subject: E-Discovery proposed rules
To: marcusr@uchastings.edu

Professor Marcus:

I am a trial lawyer who primarily defends self-insured corporations in litigation in Ohio, Kentucky and West Virginia. My understanding is that your committee is considering amendments to the federal rules that would cover e-discovery. I would like to add my thoughts on the need for a provision of any such rules that would incorporate a "safe harbor" that would allow certainty for my clients in how to deal with information stored in electronic databases that might be the subject of discovery requests.

Most of my clients are large corporations that generate a huge amount of material that could be the subject of a discovery request and which is preserved in an electronic medium. Prudent corporations utilize retention policies for both written and electronic information that is sometimes based on federal regulatory restrictions on how long certain information is to be kept or based on industry standards. Frequently I am forced to litigate the issues of whether the retention policies are reasonable and to defend why obscure information that was not foreseeably related to litigation was not preserved. Often the requests from plaintiffs' counsel, even in small cases, require enormous expenditure of funds, time and personnel resources to respond.

As with most aspects dealing with the transaction costs of litigation, my corporate clients are primarily interested in obtaining certainty as to the costs that they will have to incur. By providing a "safe harbor" that would let them know what would be expected in terms of retention of electronic information, and providing a cost-shifting mechanism that would require plaintiffs to pay for the reasonable cost of collecting this information, my corporate clients would be able to better manage their obligations for litigation.

I appreciate the opportunity to share my thoughts on this important issue. If I can be of assistance or provide further information to the committee, please let me know.

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