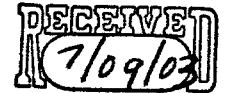


02-ED-040



Via E-mail

Date sent: Wed, 09 Jul 2003 11:51:06 -0500
From: Paul Lavelle <plavelle@nolalaw.com>
Subject:
To: marcusr@uchastings.edu

Dear Professor Marcus

I am a trial attorney in Louisiana. I am also a member of the Defense Research Institute and chair of its Electronic Discovery Task Force. The primary mission of our Task Force is to keep our membership informed about the developing law in the area of discovery of electronic evidence. Towards that end, we sponsor annual seminars where our faculties have included those on the cutting edge of the development of law in this area from the judiciary, corporate counsel offices and private practice. We also maintain a web page at the DRI web site (www.dri.org <<http://www.dri.org/>>) where we post recent developments and other resource material.

Over the past several years, in working, organizing the seminars and participating in countless discussions about Electronic Discovery I have recognized common goals that are basic to the concerns of the trial attorney, judge and corporate counsel. They are fairness and predictability. Certainly, the development of amendments to the Federal Rules governing Electronic Discovery will address the concerns about predictability and consistency. The challenge is going to be the development of amendments that can assure fairness to all parties concerned considering the continued development of technology and the costs associated with production of electronic files.

I believe that to assure fairness, the traditional method of cost allocation in discovery matters needs to be reconsidered. There is certainly an opportunity for discovery abuse if the economic value of production of electronic files is far greater than the value of the damages claimed in the underlying suit. Proper cost allocation has to be considered in rulemaking. Further, the rules need to address and define matters such as what constitutes due diligence in data retrieval. So called 'heroic' or extraordinary efforts for data retrieval should not be required unless when balanced in the context of a particular case they are deemed necessary.

I appreciate the opportunity to submit this comment. If you would like to use our Task Force to distribute information about the Rules Sub Committee or request comments from our membership please let me know.

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