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Sent: Tuesday, February 02, 2010 12:29 PM
To: Leetham, Michelle; Barnes, Jerry; nyee@consultclerity.com
Subject: CAA: E-discovery: new standards example from the Northern District of Illinois

As we discussed today....
Paul

For those of you the follow the e-discovery standards wars from the court systems, here is the latest from the 7th Circuit and Northern District of Illinois. In particular note the process envisioned by Rules 2.02-04, including the use of professional "liaisons." **The link to the full rules is below.** The rules have been in effect since last October, but on a selective basis. Note the reference to an upcoming webinar.

Principle 2.02 (E-Discovery Liaison(s))

In most cases, the meet and confer process will be aided by participation of an e-discovery liaison(s) as defined in this Principle. In the event of a dispute concerning the preservation or production of ESI, each party shall designate an individual(s) to act as e-discovery liaison(s) for purposes of meeting, conferring, and attending court hearings on the subject. Regardless of whether the e-discovery liaison(s) is an attorney (in-house or outside counsel), a third party consultant, or an employee of the party, the e-discovery liaison(s) must:

- (a) be prepared to participate in e-discovery dispute resolution;
- (b) be knowledgeable about the party's e-discovery efforts;
- (c) be, or have reasonable access to those who are, familiar with the party's electronic systems and capabilities in order to explain those systems and answer relevant questions; and
- (d) be, or have reasonable access to those who are, knowledgeable about the technical aspects of e-discovery, including electronic document storage, organization, and format issues, and relevant information retrieval technology, including search methodology.

Principle 2.03 (Preservation Requests and Orders)

(a) Appropriate preservation requests and preservation orders further the goals of these Principles. Vague and overly broad preservation requests do not further the goals of these Principles and are therefore disfavored. Vague and overly broad preservation orders should not be sought or entered. The information sought to be preserved through the use of a preservation letter request or order should be reasonable in scope and mindful of the factors set forth in Rule 26(b)(2)(C).

(b) To the extent counsel or a party requests preservation of ESI through the use of a preservation letter, such requests should attempt to ensure the preservation of relevant and discoverable information and to facilitate cooperation between requesting and receiving counsel and parties by transmitting specific and useful information. Examples of such specific and useful information include, but are not limited to:

- (1) names of the parties;
- (2) factual background of the potential legal claim(s) and identification of potential cause(s) of action;
- (3) names of potential witnesses and other people reasonably anticipated to have relevant evidence;
- (4) relevant time period; and
- (5) other information that may assist the responding party in assessing what information to preserve.

(c) If the recipient of a preservation request chooses to respond, that response should provide the requesting counsel or party with useful information regarding the preservation efforts undertaken by the responding party. Examples of such useful and specific information include, but are not limited to, information that:

- (1) identifies what information the responding party is willing to preserve and the steps being taken in response to the preservation letter;
- (2) identifies any disagreement(s) with the request to preserve; and
- (3) identifies any further preservation issues that were not raised.

(d) Nothing in these Principles shall be construed as requiring the sending of a preservation request or requiring the sending of a response to such a request.

Principle 2.04 (Scope of Preservation)

(a) Every party to litigation and its counsel are responsible for taking reasonable and proportionate steps to preserve relevant and discoverable ESI within its possession, custody or control. Determining which steps are reasonable and proportionate in particular litigation is a fact specific inquiry that will vary from case to case. The parties and counsel should address preservation issues at the outset of a case, and should continue to address them as the case progresses and their understanding of the issues and the facts improves.

(b) Discovery concerning the preservation and collection efforts of another party may be appropriate but, if used unadvisedly, can also contribute to the unnecessary expense and delay and may inappropriately implicate work product and attorney-client privileged matter.

Accordingly, prior to initiating such discovery a party shall confer with the party from whom the information is sought concerning: (i) the specific need for such discovery, including its relevance to issues likely to arise in the litigation; and (ii) the suitability of alternative means for obtaining the information. Nothing herein exempts deponents on merits issues from answering questions concerning the preservation and collection of their documents, ESI, and tangible things.

(c) The parties and counsel should come to the meet and confer conference prepared to discuss the claims and defenses in the case including specific issues, time frame, potential damages, and targeted discovery that each anticipates requesting. In addition, the parties and counsel should be prepared to discuss reasonably foreseeable preservation issues that relate directly to the information that the other party is seeking. The parties and counsel need not raise every conceivable issue that may arise concerning its preservation efforts; however, the identification of any such preservation issues should be specific.

(d) The following categories of ESI generally are not discoverable in most cases, and if any party intends to request the preservation or production of these categories, then that intention should be discussed at the meet and confer or as soon thereafter as practicable:

- (1) "deleted," "slack," "fragmented," or "unallocated" data on hard drives;
 - (2) random access memory (RAM) or other ephemeral data;
 - (3) on-line access data such as temporary internet files, history, cache, cookies, etc.;
 - (4) data in metadata fields that are frequently updated automatically, such as last-opened dates;
- and
- (5) backup data that is substantially duplicative of data that is more accessible elsewhere;
 - (6) other forms of ESI whose preservation requires extraordinary affirmative measures that are not utilized in the ordinary course of business.

(e) If there is a dispute concerning the scope of a party's preservation efforts, the parties or their counsel must meet and confer and fully explain their reasons for believing that additional efforts are, or are not, reasonable and proportionate, pursuant to Rule 26(b)(2)(C). If the parties are unable to resolve a preservation issue, then the issue should be raised promptly with the Court.

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Sent: Monday, February 01, 2010 7:21 PM
To: Lurie, Paul M.
Subject: Important Notice for All Northern District of Illinois E-Filers

To: Northern District of Illinois E-Filers

From: Chief Judge James F. Holderman on behalf of the
Seventh Circuit Electronic Discovery Committee,
Chaired by Magistrate Judge Nan Nolan

Re: Free Webinar on the Principles of the Seventh Circuit
Electronic Discovery Pilot Program Phase One
February 17, 2010 at Noon C.S.T.

You are cordially invited to attend, electronically and free of charge, the first nationally broadcast in-depth discussion of the Principles Relating to the Discovery of Electronically Stored Information adopted by the Seventh Circuit Electronic Discovery Committee. The program will be broadcast on LAW.COM on Wednesday, February 17, 2010 at Noon C.S.T.

Beginning October 1, 2009, the Electronic Discovery Pilot Program Phase One was launched in the district courts of the Seventh Circuit, with emphasis in the Northern District of Illinois. The Pilot Program applies the Principles to over 80 specifically selected cases. The Principles were drafted by a 40-member Committee comprised of trial judges and lawyers, including in-house counsel, private practitioners (plaintiff and defense), government attorneys, academics and litigation expert consultants. To learn more about the Principles click on the following link to the 7thcircuitbar.org/Principles.

The goal of the Principles is to provide incentives for the early and informal information exchange on commonly encountered issues relating to evidence preservation and discovery, paper and electronic, as required by Federal Rule of Civil Procedure 26(f)(2). The Principles provide guidance on how to streamline the discovery process (e.g., suggesting formats of electronic discovery which are generally not required to be preserved, thus requiring a party to discuss the need for such formats early in the pretrial litigation process) and how to resolve disputes regarding electronic discovery.

The Principles also contain novel ideas, such as the use of e-discovery liaisons, to assist parties in efficiently managing discovery, particularly discovery involving complex electronically stored information. The Principles have generated a tremendous amount of interest in the legal community nationally.

To learn more about the February 17, 2010 webinar and to register click on the following link to the [webinar](#).