

NEW PROCEDURES FOR ELECTRONIC DISCOVERY EFFECTIVE DECEMBER 1, 2006

An amendment to the U.S. Federal Rules of Civil Procedure outlines new discovery procedures for electronically-stored information (ESI). Under this new rule, effective December 1, 2006, parties involved in civil litigation are required to produce ESI as part of the discovery process.

Companies are now expected to be able to locate and understand electronic information from data sources including:

- Antiquated data sources
- Archives
- Backup tapes
- Company file serves
- E-mails
- External storage devices, such as CDs, thumb drives, digital-camera memory cards or iPods
- Instant messages (IMs)
- Internal systems, such as a sales force tool or contact manager database
- Laptops and PCs, including home computers
- Networks and servers
- Portable devices, such as a Blackberry or Palm Pilot
- Voicemail messages

Companies should revisit their electronic data management policies to ensure compliance with the new rule. The most effective plans will offer provisions for:

- Recording of various types of hardware/software in use and the location of all ESI
- Document retention and destruction, including consideration of back-up and archival procedures, storage facilities, record custodians and a destroyed document log book
- Employee technology use training program, including procedures for written communication, data security, employee electronic data storage, and employee termination/transfer
- Litigation response team, including information technology personnel, who are familiar with all policies and can identify and locate all ESI upon notice of a lawsuit
- Periodic audits to ensure effectiveness and compliance with electronic data management policies

It is important to note that under the new rule, a party may not be sanctioned, absent exceptional circumstances, for the destruction of ESI that is lost as a result of a routine, good-faith operation of an electronic information system.

For more information regarding the successful management and preservation of ESI, or for general questions about electronic discovery, please contact Eric Rein or Patrick Stanton.