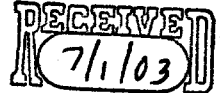


02-ED-021



Via E-mail

Date sent: Mon, 30 Jun 2003 12:32:30 -0700  
From: "Roy A. Umlauf" <RUmlauf@forsberg-umlau.com>  
Subject: Discovery Subcommittee Civil Rules Advisory  
Committee-Electronic  
Discovery  
To: marcusr@uchastings.edu

Dear Professor Marcus:

Re: Discovery Subcommittee Civil Rules Advisory Committee-Electronic  
Discovery

Our firm represents corporations and individuals in civil litigation. We have concerns about how discovery impacts our clients' business operations. Our clients use email extensively for communication. We represent a number of corporations that do not typically save their emails in the ordinary course of business but may potentially have them on back-up tapes that are periodically purged. It would be very expensive and time consuming to try to find deleted emails that are later sought in discovery. We believe that changes to the discovery rules should include at least the following:

1. Safe Harbor. A "safe harbor" provision should exist to protect a party who complies in good faith. Our clients should not be sanctioned for not preserving electronic back-up absent a court order. The rule should focus on those documents that are kept in the "ordinary course of business".

2. Costs/ Extraordinary measures. To the extent that a party is required to undertake extraordinary measures at great expense, the party requesting the discovery should have the burden of proving the necessity of the proposed discovery and the costs should be paid by the requesting party. The costs of discovery for our clients are already very high and we should not increase the burden to a civil litigant who has not chosen to be sued by imposing sanctions and extraordinary business costs.

I appreciate your considering our comments and look forward to hearing from you and your committee.

With best wishes, I am

Very truly yours,

Roy A. Umlauf  
Forsberg & Umlauf, P.S.  
900 Fourth Ave., Ste. 1700  
Seattle, WA 98164  
Direct Dial: 206-689-8551  
RUmlauf@Forsberg-Umlauf.com