

Northern California District Court Expands Information Retention Requirements

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The United States District Court for the Northern District of California has revised Civil Local Rule 16-9 and issued a new Standing Order for all Judges regarding the required contents of Joint Case Management Statements filed pursuant to recently-amended Federal Rule of Civil Procedure 26(f).

Prior to this change, each Judge in the Northern District could (and often did) have his or her own standing order regarding Joint Case Management Statements. Effective for all civil cases filed on or after March 1, 2007, the new Standing Order will be standardized for all Judges and will require identical information in all Joint Case Management Statements.

Most importantly, paragraph 6 of the new Standing Order specifically addresses the issue of evidence preservation in civil cases and requires discussion of the following topics in the Joint Case Management Statement:

6. **Evidence Preservation:** Steps taken to preserve evidence relevant to the issues reasonably evident in this action, including interdiction of any document-destruction program and any ongoing erasures of e-mails, voice mails, and other electronically-recorded material.

The requirement that routine record retention programs be suspended when litigation is reasonably anticipated or pending (commonly referred to as a “litigation hold”) has been in place for some time. The express expansion of this requirement to include voice mails and other “electronically-recorded material,” however, represents an important development – particularly for corporate litigants that may encounter substantial technological and monetary challenges and limitations in stopping the erasure of voice mails. Indeed, for companies operating on older and/or proprietary voice mail systems, targeted stoppage of voice mail erasure may be impossible as a practical matter. Coupled with the December 1, 2006 expansion of Federal Rule of Civil Procedure 34(a) to cover “sound recordings... and other data or data compilations stored in any medium

from which information can be obtained,” the Northern District’s new rules may present significant electronic information management challenges to companies.

The full text of the local rules changes and new Standing Order are available on the Public Announcements page of the Court’s website at <http://www.cand.uscourts.gov>. The Court has specified a public notice and comment period through March 30, 2007 regarding the new rules.

The new versions of the pertinent FRCP and the accompanying Notes are at http://www.uscourts.gov/rules/EDiscovery_w_Notes.pdf. Our firm’s overview of those December 1, 2006 FRCP changes is summarized at www.fenwick.com/docstore/publications/Litigation/Litigation_Alert_04-25-06.pdf

If you have any questions about what next steps your company should be taking to ensure the proper handling of electronic information and to enable cost-effective responses to discovery requests, do not hesitate to contact us.

More information about our Electronic Information Management (EIM) Group is available on our Web site <http://www.fenwick.com/services/2.23.o.asp?s=1055>.

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