

NEW FEDERAL RULES EFFECTIVE DECEMBER 1, 2006 Companies May Be Required to Save Electronically Stored Information

On Friday, December 1, 2006 new Federal Rules of Civil Procedure went into effect mandating that parties in federal civil cases plan for Electronic Discovery at the outset of their cases. These new rules will also undoubtedly spur litigants to more frequently request electronic data in their opponent's possession. While the new rules, in many respects, codify principles that have been evolving over the past few years in court decisions, the setting-down of these principles into rules of civil procedure is a significant event.

Is my company affected?

If your company uses email, or utilizes computers for any business functions (*e.g.* word processing, spreadsheets, database applications), and:

- your company becomes a plaintiff or defendant in a federal lawsuit; or
- your company is served with a federal subpoena seeking documents or data,

then these rules will apply. In addition, those state courts that have not already promulgated e-discovery rules are almost certain to do so in the coming years.

What impact will these rules have on my operations?

While the range of impacts defy a one-sentence summary, several items are significant:

- Your IT department will need to be in early, close contact with your legal team;

- Your company's standard policies on retention or destruction of documents will likely need to be suspended or modified;
- Your company's email and electronically-stored information may be subject to review and production—this may become an expensive litigation cost; and
- Failure to properly preserve, locate, review and produce electronically stored information can result in significant sanctions. In a recent case in Florida, a prominent Wall Street investment bank was hit with a \$1.6 billion dollar judgment as a direct result of e-discovery missteps.

A one-page summary of the rule changes is referenced on the reverse side.

Armstrong Teasdale / Lawgical Choice

Armstrong Teasdale's E-Discovery Team was formed over two years ago in anticipation of our client's growing need for e-discovery training, consultation, planning and execution. The Team is led by Dan Nelson and John Cowling. Dan, a litigation partner, has taught on e-discovery topics both regionally and nationally; John is both a practicing partner at Armstrong, and the head of the firm's wholly-owned subsidiary, Lawgical Choice.

Lawgical Choice, founded in 2002, provides a range of litigation support services, including electronic data gathering and computer forensic services. Armstrong's affiliation with Lawgical Choice gives Armstrong and its clients a unique perspective; in addition to understanding the legal implications of e-discovery, Armstrong and its clients benefit from Lawgical Choice's experience on the technology side.

QUICK REFERENCE GUIDE

Brief Description	Fed.R.Civ.P.
Duty to preserve	16(b), 26(a), 26(f)
Adopt a two-tiered approach to discovery based on accessibility of data	26(b)(2)
Implement a procedure for handling privilege and work product claims post-production	26(b)(5)
Allow interrogatories to be answered by electronically stored information (ESI)	33(d)
Address the scope of production of ESI and distinguish ESI from “documents”	34(a)
Address the form of production of ESI	34(b)
Create a limited “safe harbor” in connection with the routine, good faith operation of computer systems	37(f)
Conform subpoena practice to party discovery amendments	45

For further information, please contact John Cowling or Dan Nelson,
or the Armstrong Teasdale attorney with whom you normally consult.

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