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To <Rules_Comments@ao.uscourts.gov>
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Subject

04-CV-108

To Whom it May Concern:

I am writing on my own behalf and on behalf of my partner Richard Semsker to comment on the proposed electronic discovery amendments to the Federal Rules of Civil Procedure. We are concerned that the proposed amendment will provide an unfair litigation advantage to large organizations. A key element of litigation practice is that both sides are fairly equally empowered to obtain discovery. As a result, it is feasible for a small organization or individual to wage a claim against a large organization. The proposed changes would sharply erode that. For example, a party's ability to decline to produce electronic discovery based on a claim that the information is not "reasonably accessible" would be a departure from the current rules which require production even of documents that are not easily obtained. The Rules and courts have found many ways to deal with the balances that must be reached; there is no reason why these approaches cannot continue to be used for electronic discovery. I am particularly concerned with this provision as well as the provision permitting organizations to apply a privilege to previously-produced documents and proposed rule 37(f) regarding spoliation. My partner and I oppose each of these three proposals.

S. Micah Salb



Employment Law | Family Law | Civil Litigation

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