



04-CV-140



Nobody
<nobody@uscbgov.ao.dcn>
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To Rules_Support@ao.uscourts.gov
cc
bcc
Subject Submission from <http://www.uscourts.gov/rules/submit.html>

Salutation:
First: William
MI: O.
Last: Solms, Jr.
Org:
MailingAddress1: 9100 South Dadeland Blvd., Suite 1602
MailingAddress2:
City: Miami
State: Florida
ZIP: 33156
EmailAddress: wos@solmslaw.com
Phone:
Fax:
CivilRules: Yes
Comments:

Dear Rules Committee:

As a member of the Southern District of Florida, I am opposed to the proposed changes to the Federal Rules of Civil Procedure concerning discovery of electronic information. There should be no safe haven for a party or potential party to be shielded by a rule when it comes to destruction of information; if that party chooses not to store or preserve information, they have a right to make that choice, but it should be at their peril.

At the same time, I would agree that accidental production of privileged information should not violate the status of that information; I think this amendment will facilitate discovery. The correction of an error, however, should be made in a timely manner such that production and then withdrawal of the information cannot be used wilfully to defeat the opponent's reliance on said information. The courts can exercise their discretion if the privileged status of information was indeed waived based on the conduct of the party or its agents.

The rules of discovery should not otherwise be altered. The other proposed changes appear to favor corporate defendants who do not have the burden of proof. If a corporation or any business is going to be allowed to destroy information within the statute of limitations regarding breaches of its conduct or contract by a change to a rule of procedure, there should also be a penalty assessed which eases the burden of proof on behalf of the aggrieved party. I believe the present system presents the fairest position to both parties concerning spoliation.

Thank you for your consideration... Bill Solms.

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