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Comments:

Dear Mr. McCabe,

I write in opposition to the proposed civil rules with respect to e-discovery. I am a litigation counsel in Massachusetts. Although I believe that specific rules are necessary to foster the disclosure of electronic evidence, the present proposal will serve only to discourage the same.

Much like the problems with the present pharmaceutical regulatory regime, the proposed rules will place too much in the hands of parties to declare electronic information. Although our present civil justice system relies on party honesty, I feel that relevant accessible discovery may be legally hidden by simply declaring the evidence as difficult to access. This places insurmountable burden on the requesting party, already burdened by voluminous discovery and unnecessary motion practice, to obtain disclosure.

I urgently encourage you to reconsider the present proposal in favor of a more narrowly defined rule relating to discovery. It is my belief that rules, particularly discovery rules, need to be objective. The proposed rules are far too subjective with respect to interpretation and presentation of the issues surrounding electronic discovery. The scope of discovery is intended to be broad. Therefore, where government intends to restrict discovery, it should make every effort to minimize the restrictions. Where industry has become largely electronic (as I am writing this via the Internet), restrictions on electronic discovery will encourage parties to hide incriminating evidence in areas where they may later claim is difficult to access.

Ultimately, it is important to consider the balance of the burden. A party claiming a burden to preserve and produce evidence must be viewed in the backdrop of the burden placed on a requesting party, particularly where the evidence is otherwise inaccessible.

Please reconsider the proposed rules.

Thank you for your time and consideration.

Stanley D.
Helinski, Esq.

February 4, 2005

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