04-CV-131

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01/28/2005 09:21 AM

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Comments:

I run a three-attorney firm in Cleveland, Ohio. Our practice is limited to primarily representing plaintiffs in employment civil rights cases. I am writing to oppose two particular proposed changes to the Federal Rules of Civil Procedure regarding electronic discovery.

Proposal #1: "Rule 26(b)(2). A party need not provide discovery of electronically stored information that the party identifies as not reasonably accessible. On motion by the requesting party, the responding party must show that the information is not reasonable accessible. If that showing is made, the court may order discovery of the information for good cause."

Under the present rules, relevant requested information must be produced even if its custodian claims that it is difficult to access. No exemption like the one this amendment would create is available for paper discovery, and electronic information is usually more accessible than paper records. In employment cases, discovery documents make or break many cases. By allowing employers to claim that important documents are not "reasonably accessible," this proposed change would give employers who discriminate against and/or harass employees more protection from plaintiff's lawyers actually seeing important documents that may prove violations of civil rights laws. It would not be an exaggeration to say that many civil rights plaintiffs will lose their cases as a direct result of this change, if the proposed change goes into effect.

Proposal # 2: "Rule 37. (f) Unless a party violated an order in the action requiring it to preserve electronically stored information, a court may not impose

sanctions under these rules on the party for failing to provide such information if: (1) the party took reasonable steps to preserve the information after it knew or should have known that the information was discoverable in the action; and (2) the failure resulted from loss of the information because of the routine operation of the party's electronic information system."

Under the present rules, entities that may become parties to litigation are deterred by the potential for charges of spoliation from destruction of discoverable electronically stored information. The proposed rule change will undoubtedly encourage companies to set up systems in which data is "routinely" purged at very short intervals, thereby eliminating the possibly of having any documents to show that the company unlawfully discriminated against and/or harassed employees. Once again, such a change would be fatal to many civil rights plaintiffs who largely rely on a paper trial to prove discrimination when company officials and scared and/or intimidated company employees do not testify forthright about the events in question.

For these reasons, I strongly oppose these two changes to the Federal Rules of Civil Procedure. Please ensure that these proposed changes are not passed, for they serve as an injustice to employment civil rights litigants.

Sincerely,

Caryn M. Groedel

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