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Comments:

The proposed revision of FRCP 26(b)(2) -- which would provide that emails and computer files would not be required to be produced if the party certifies that such discovery "is not readily accessible" -- flies in the face of both human nature and the recent history of discovery abuse and spoliation by corporate defendants. Any defendant wishing to hide something will certainly certify that this discovery is not readily accessible, leaving absolutely no recourse for the party attempting discovery. This renders the playing field grossly slanted in favor of the party wishing to hide documents.

The same holds true for the proposed revision of 37(f), which would provide that no sanctions of any kind could be obtained against any party that destroys e-mails/electronic files/computer files in a "routine" destruction via a document retention system. This simply begs for "routine" destruction of evidence. And that is blatantly unfair, defies logic and flies in the face of the purpose of the rules of discovery.

In this age of electronic documentation, the rules of discovery should be expanded to accommodate new technologies -- not contracted to help unethical wrongdoers destroy evidence with impunity. Why go about this piece-meal? Why not just eliminate all discovery of all such electronic documents? That will be the practical effect of these proposed amendments.

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