

NORTH CAROLINA ADOPTS E-DISCOVERY RULES

On October 1, 2011, changes to the North Carolina Rules of Civil Procedure will bring E-Discovery to North Carolina state courts. The rule changes largely mirror the 2006 Amendments to the Federal Rules of Civil Procedure, with a few significant modifications.

Discovery Plans: Either party to a case now has the right to require the development of a discovery plan, which extends to all discovery in the case (not just E-Discovery). The parties are required to meet and discuss the possibility of settlement and the preparation of a discovery plan which addresses discovery of electronically stored information (“ESI”), production of ESI, discovery limitations or phasing, and the deadline for completion of all discovery.

Required Production of Metadata: The definition of ESI now expressly includes metadata enabling the discovering party to determine the date sent, date received, author, or recipients. The definition of ESI does not include other metadata unless the parties agree or the court so orders. This is a significant departure from the Federal Rules.

Privilege Logs: Privilege logs describing privileged material withheld from discovery are now expressly required.

Inadvertent Disclosure: The new rules protect privileged information inadvertently disclosed during discovery.

Sanctions: The amendments adopt a safe harbor provision which mirrors the federal rule, protecting a party from sanctions for losing ESI “as a result of routine, good faith operation of an electronic information system.”

Subpoenas: Rule 45 has been revised to provide that parties producing documents need not produce the same ESI in more than one format, or provide ESI that is not reasonably accessible because of undue burden or costs.

SUMMARY

Even those companies that rarely litigate in federal court should now take steps to comply with the discovery requirements applicable to our electronic age, including:

- Prompt and appropriate hold notices to preserve ESI;
- Protocols for collecting and processing ESI, including preservation and production of the specified metadata fields;
- Discuss electronic discovery issues with opposing counsel and develop a discovery plan.

Contact Information

If you have any questions regarding the issues raised in this alert, please contact either the Womble Carlyle attorney with whom you usually work or Womble Carlyle attorney Mark Henriques:

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