RECEIVED FOR ENTRY
M
JUL 09 2007
CLERK
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

IN RE: DEFAULT STANDARD FOR DISCOVERY OF ELECTRONICALLY STORED INFORMATION ("E-DISCOVERY")	))))	Administrative Order No. 174

ADMINISTRATIVE ORDER

1. Introduction. The court expects the parties to cooperatively reach agreement on how to conduct e-discovery. In the event that such agreement has not been reached by the time of the Rule 16[1] initial case management conference, the following default standards shall apply until such time, if ever, the parties reach agreement and conduct e-discovery on a consensual basis.

2. Discovery conference. At or before the Rule 26(f) conference (which is to be held at least 21 days before the initial case management conference), the parties shall exchange and discuss the following information:

a. A list of the most likely custodians of relevant electronically stored information ("identified custodians"), including a brief description of each person's title and responsibilities.

b. A list of each relevant electronic system that has been in place at all relevant times and a general description of each system, including the nature, scope, character, organization, and formats employed in each system. The parties shall also include other pertinent information about their electronically stored information and whether that electronically stored information is of limited accessibility. Electronically stored information of limited accessibility may include that created or used by electronic media no longer in use, maintained in redundant electronic storage media, or for which retrieval involves substantial cost.

c. The name of the individual designated by a party as being most knowledgeable regarding that party's electronic document retention policies ("the retention coordinator"), as well as a general description of the party's electronic document retention policies for the systems identified above.

---

[1]All references to "Rules" herein are to the Federal Rules of Civil Procedure.

d. The name of the individual who shall serve as that party's "e-discovery coordinator" (see ¶ 3).

e. Notice of any problems reasonably anticipated to arise in connection with e-discovery.

To the extent that the state of the pleadings does not permit a meaningful discussion of the above by the time of the initial case management conference, the parties shall either agree on a date by which this information will be mutually exchanged or be prepared to discuss the issues with the court at the initial case management conference.

3. E-discovery coordinator. In order to promote communication and cooperation between the parties, each party to a case shall designate a single individual through whom all e-discovery requests and responses are coordinated ("the e-discovery coordinator"). Regardless of whether the e-discovery coordinator is an attorney (in-house or outside counsel), a third party consultant, or an employee of the party, he or she must be:

a. Familiar with the party's electronic systems and capabilities in order to explain these systems and answer relevant questions.

b. Knowledgeable about the technical aspects of e-discovery, including electronic document storage, organization, and format issues.

c. Prepared to participate in e-discovery dispute resolutions.

The court notes that, at all times, the parties and their attorneys of record shall be responsible for responding to e-discovery requests. However, the e-discovery coordinators shall be responsible for organizing each party's e-discovery efforts to insure consistency and thoroughness and, generally, to facilitate the e-discovery process.

4. Timing of e-discovery. Discovery of relevant electronically stored information shall proceed in a sequenced fashion. After receiving requests for document production, the parties shall search their documents, other than those identified as not reasonably accessible because of undue burden or cost, and produce, subject to any objections appropriate under the Federal Rules of Civil Procedure, relevant responsive electronically stored information.

5. Search methodology. If the parties intend to employ an electronic search to locate relevant electronically stored information, the parties shall disclose any restrictions as to scope and method which might affect their ability to conduct a complete electronic search of the electronically stored information. The parties shall use their best efforts to reach agreement as to the method of searching and the words, terms, and phrases to be searched with the assistance of the respective e-discovery coordinators, who are charged with familiarity with the parties'

respective systems. The parties also shall use their best efforts to reach agreement as to the timing and conditions of any additional searches which may become necessary in the normal course of discovery. To minimize the expense, the parties may consider limiting the scope of the electronic search (*e.g.*, time frames, fields, document types).

6. Format. If, during the course of the Rule 26(f) conference, the parties cannot agree to the format for document production, electronically stored information shall be produced to the requesting party as image files (*e.g.*, PDF or TIFF). When the image file is produced, the producing party must preserve the integrity of the electronic document's contents, *i.e.*, the original formatting of the document, its metadata and, where applicable, its revision history. After initial production in image file format is complete, a party must demonstrate particularized need for production of electronically stored information in its native format.

7. Retention. At or before the Rule 26(f) conference, the parties shall attempt to reach an agreement that outlines the steps each party shall take to segregate and preserve the integrity of all relevant electronically stored information. In order to avoid later accusations of spoliation, a Rule 30(b)(6) deposition of each party's retention coordinator may be appropriate.

The retention coordinators shall:

a. Take steps to ensure that relevant e-mail of identified custodians shall not be permanently deleted in the ordinary course of business and that relevant electronically stored information maintained by the individual custodians shall not be altered.

b. Provide notice of the criteria used for spam and/or virus filtering of e-mail and attachments. E-mails and attachments filtered out by such systems shall be deemed non-responsive, so long as the criteria underlying the filtering are reasonable.

Within seven (7) days of designating the identified custodians, the retention coordinators shall implement the above procedures.

8. Privilege. Electronically stored information that contains privileged information or attorney-work product shall be immediately returned if the documents appear on their face to have been inadvertently produced, or if there is notice of the inadvertent production within thirty (30) days of such. In all other circumstances, Rule 26(b)(5)(B) shall apply.

9. Costs. Generally, the costs of discovery shall be borne by each party. However, the court may apportion the costs of electronic discovery upon a showing of good cause.

10. Court Order. Nothing herein limits the authority of a Judge to issue an e-discovery order on other terms and conditions. This Administrative Order may be amended, in whole or in part, by further Order of the Court.

It is so **ORDERED**.

TODD J. CAMPBELL
Chief United States District Judge

ALETA A. TRAUGER
United States District Judge

WILLIAM J. HAYNES, JR.
United States District Judge