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## Northern District of California Seeks To Formalize eDiscovery Best Practices

On November 27, 2012, the United States District Court for the Northern District of California took steps to formalize best practices regarding the discovery of electronically stored information (“ESI”) by issuing the following:

- Guidelines for the Discovery of Electronically Stored Information;
- ESI checklist for use during the Rule 26(f) meet and confer process; and
- Model Stipulated Order Re: the Discovery of Electronically Stored Information.

These documents provide significant guidance to parties regarding the procedures that the court and counsel should utilize for eDiscovery issues while appearing in this jurisdiction.

The express purpose of the new Guidelines “is to encourage reasonable electronic discovery with the goal of limiting the cost, burden and time spent, while ensuring that information subject to discovery is preserved and produced to allow for fair adjudication of the merits.” Part one of the Guidelines stresses the importance of cooperation between the parties, and proportionality in the preservation, collection, search, review and production of ESI.

Part two of the Guidelines encourages parties to engage in meaningful discussion of electronic discovery by both formal (Rule 26(f) conferences) and informal means. The Guidelines stress that if parties are unable to resolve disputes regarding electronic discovery, such issues are to be presented to the court at the earliest possible opportunity. Interestingly, in keeping with the recommendations of Seventh Circuit’s Electronic Discovery Pilot Program, the Guidelines introduce the concept of an eDiscovery liaison. Under section 2.05 of the Guidelines, the liaison “will be, or have access to those who are knowledgeable about the location, nature, accessibility, format, collection, searching, and production of ESI in the matter.” It is the intention of the court that the eDiscovery liaison will facilitate discussion of the ESI relevant to a case and help to resolve disputes regarding reasonable discovery of ESI.

The ESI checklist that accompanies the Guidelines is intended for use “in cases where the discovery of electronically stored information (“ESI”) is likely to be a significant cost or burden.” The checklist is divided into categories: preservation, liaison, informal discovery about location and types of systems, proportionality and costs, search, phasing, production, and privilege, which provide a useful guide in any meet and confer regarding electronic discovery.

In addition, the court provided a Model Stipulated Order to serve as a convenient template for parties to memorialize any agreement regarding eDiscovery procedure in a given case and may help parties



address eDiscovery in a more efficient manner. The release of this Model Order follows on the heels of the adoption of other similar orders related to eDiscovery by other federal courts, including the Seventh Circuit, the Federal Circuit, the District of Delaware and the Eastern District of Texas (for patents). Although nuances exist among these model orders (e.g. handling of instant messages and mobile device data), the adoption highlights the acceptance of the need to further standardize the eDiscovery process in the courts.

The Northern District took other significant steps to bolster the impact of the new Guidelines. For example, the judges' uniform Standing Order regarding the Contents of Joint Case Management Statement now mandates that counsel have knowledge of the Guidelines. Additionally, the Joint Case Management Statement filed by parties pursuant to Local Rule 16-9, requires the parties to report to the court whether the parties have considered entering into a stipulated eDiscovery order.

The efforts of the Northern District of California establish the court among the judicial leaders to restrain unnecessary eDiscovery costs and formalize practical tools designed to allow parties to quickly and effectively address the actual merits of a case. As the amount of information and data types continues to rapidly expand and the cost to deal with the data volume and complexity during litigation grows exponentially, expect to see other courts following a similar path with developing a comprehensive approach to eDiscovery management.

Copies of the Guidelines and other documents, along with additional information from the court can be found at <http://www.cand.uscourts.gov/news/101>.

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