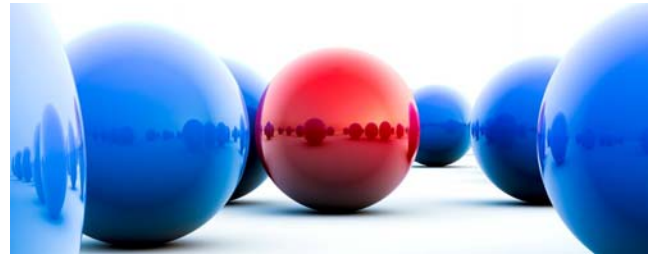


Thoughts on the Webinar:
“e-Discovery: How to Best Manage Your Cases”

- By Adam Rubinger



In this webinar, we were fortunate to hear the opinions of well respected leaders in the e-Discovery space. Participants included the Honorable Judge Andrew J. Peck from the Southern District of New York, William M. Schur General Attorney-Litigation for AT&T, and Leslie Wharton Senior Counsel at Arnold and Porter LLP, with George J. Socha, Jr. e-Discovery Consultant moderating. Many issues surrounding hot topics on e-Discovery were tackled during this panel discussion, but there were a few overarching themes that deserve follow-up discussion. One of the issues raised was the need for corporate counsel and their companies to be better prepared for e-Discovery.

Ever since the announcement that the Federal Rules of Civil Procedure would change to include electronically stored information (ESI) back in December of 2006, experts have been preaching to the business community that they had better get prepared. As our panelists discussed, a significant number of companies are still ill prepared for e-Discovery requests. As Judge Peck described in the webinar, most companies are taking a drive-by approach to the Rule 26(f) meet-and-confer conference. That is, companies who are NOT prepared for e-Discovery challenges are glossing through the conference and really not dealing with any of the e-Discovery issues that will inevitably come up in trial.

So what is a company to do? How exactly do they get prepared? Judge Peck spelled out a number of things that Counsel should come to the table with. One of them is to go to the meet-and-confer conference ready to actually discuss the e-Discovery issues. What is the form of production? Which keywords/culling strategies are the parties going to employ? Share the company’s in-house process for collection/preservation. Mr. Schur had a very interesting point towards the end of the webinar where he spelled out the difficulties of getting prepared for e-Discovery based on the sheer volume of systems, processes and procedures a multi-national Fortune 500 company faces. How do they do it? Is it even feasible for a company that size to spend the money it would take to be fully e-Discovery ready?

One of the things every company can do is prepare themselves in some way for e-Discovery. As Judge Peck said in the webinar, coming to the table with some transparency is better than hiding. Making a good faith effort to implement and then expose the court to the in-house processes may be the difference in receiving sanctions or an adverse inference.

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So, how does one get prepared? The first thing I advise all my clients to do is perform some type of assessment. You cannot plan and prepare for e-Discovery without knowing where you stand in terms of processes and procedures. Assess exactly where the gaps exist and expose them to the company. Is there a preservation plan? How are custodians notified? Is there a system to track custodian notification? Is IT notified that a preservation order is in place? Are backup tapes still in rotation? Have email auto-destruct features been shut off? Does the plan take into account the various types of litigations? Who do you go to for e-Discovery issues? These are a few of the many questions corporate counsel need to

ask themselves as they prepare for e-Discovery. If a company has not gone through some type of e-Discovery readiness assessment, they should. Once risks and gaps have been identified, specific plans can be created and implemented to help address some of the gaps exposed in the assessment.

Hiring an outside expert was discussed in many of the segments of the webinar. The use of experts who spend all day, every day dealing with e-Discovery issues is something that will pay itself back in no time. Having the opportunity to work with an expert who knows the pain that others have felt and has the tools to address that pain can be very helpful. Utilize an expert to assist in preparing for e-Discovery. They can assess the risks and help create and implement a plan to help the organization when it is hit with an e-Discovery request. One of the more interesting and newly burgeoning areas that experts are being used is in the area of search terms/culling strategies. The amount of data an e-Discovery case can generate is staggering. Experts can help in the area of data reduction and should be utilized to gain both efficiencies as well as legal defensibility. They can assist with culling strategies and provide tools to help reduce the dataset efficiently. The panelists brought up Judge Grimm and the various opinions he has regarding the use of experts in the context of search/culling strategies. They all agreed that hiring an expert and negotiating terms with opposing counsel was a good practice tip.

The webinar was a very enlightening 90 minutes that I am certain could have gone for an additional 90 minutes. Hats off to the panelists and moderator, I look forward to hearing from them all again soon.

To listen to the webinar on-demand go to:

http://westlegaledcenter.com/program_guide/course_detail.jsf?courseId=18967531

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