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*United States District Court for the District of Connecticut
Adopts E-Discovery Local Rules*

The United States District Court for the District of Connecticut this month amended the Court's Local Rules to address the recent amendments to the Federal Rules of Civil Procedure (FRCP) regarding the discovery of electronically stored information.

The new Local Rules are designed to track the amendments to the FRCP and to ensure that issues regarding the discovery and production of electronically stored information are addressed early in a case. The most significant change to the Local Rules relates to the initial case planning conference. The District's Rule 26(f) Report now requires parties to certify that counsel "discussed the disclosure and preservation of electronically stored information." Specifically, parties must discuss:

- the location and format of electronically stored information;
- appropriate steps for preserving electronically stored information;
- the form in which electronically stored information will be produced;
- search terms to be applied in connection with the retrieval and production of electronically stored information;
- the allocation of costs for assembling and producing electronically stored information; and
- procedures for asserting privilege and work product claims after production of documents or electronically stored information.

The parties need to set forth in the Rule 26 Report the agreed upon procedures for the preservation, disclosure and management of electronically stored information. To the extent parties cannot reach agreement, they must outline their respective positions on how discovery of electronically stored information should be handled. This new Local Rule means that clients and attorneys need to focus early in the case on understanding where relevant electronic information is stored and how to search for, save and produce this data.

Other amendments to the Local Rules include:

- Local Rule 5(a) (E-filing), codifies that "most" cases in the District will be e-filing cases. Parties are still permitted to seek a waiver of the e-filing requirements and individual Judges can still designate a case as a "paper" filed case.
- Local Rule 26(c) (discovery definitions) is amended to make clear that a request for production of "documents" includes electronically stored information.
- Local Rule 37 (discovery disputes) now permits parties to seek expedited consideration of a motion to compel production of documents or electronically stored information if the moving party believes "that there is a significant risk that material information will be destroyed before the motion is decided. . ." See also Local Rule 7(a)(3) (which now provides that "for good cause shown" a party may seek expedited consideration of any motion).

This Alert only summarizes the highlights of the recently amended Local Rules. If you have any questions about the amendments to the Local Rules or e-discovery obligations generally, please feel free to contact any one of the members of Wiggin and Dana's e-Discovery Task Force.

THOMAS F. CLAUSS, JR., a litigation partner, co-chairs the firm's eDiscovery task force. A former member of the Eastern District of New York's Committee on Civil Litigation, former co-chair of the American Bar Association Litigation Section's Sub-Committee on Pretrial Practice and Discovery, former co-chair of WESFACCA's Committee on Litigation and Insurance, and former secretary of the Federal Bar Council's Second Circuit committee, Mr. Clauss has been involved in discovery and civil litigation reform for over 20 years. He has lectured on those reforms, and on the attorney-client privilege and internal investigations, has been a PLI trial practice instructor, and has served as general counsel for the U.S. subsidiary of an international pharmaceutical company. As a trial lawyer, Mr. Clauss regularly counsels clients on their eDiscovery obligations and this developing area of the law.

TIM DIEMAND, a litigation partner, co-chairs the firm's eDiscovery task force and frequently counsels clients on eDiscovery issues. Involved in several high-profile commercial cases where eDiscovery issues are front and center, Mr. Diemand has most recently been successful in defending a large corporation faced with a motion challenging the sufficiency of the company's litigation hold practices and its electronic document retention practices. Mr. Diemand currently serves on the Connecticut Bar Associations Local Rules Committee that is tasked with revising the Local Rules in the District of Connecticut to conform to the recently developed federal eDiscovery rules.

ERIKA AMARANTE, a litigation partner, has served as Wiggin and Dana's internal expert on eDiscovery issues for several years. Beginning in 2000 when eDiscovery issues were just emerging, Ms. Amarante attended several national conferences on the best practices and procedures for eDiscovery, and has been training and counseling Wiggin and Dana attorneys and others on these matters ever since. Ms. Amarante has given several in-house presentations on eDiscovery, and recently became a member of the Connecticut Bar Association Litigation Section's eDiscovery Task Force.

GATES GARRITY-ROKOUS, a partner in the firm's white-collar defense, investigations, and corporate compliance practice group, confronts eDiscovery issues on a regular basis. Mr. Garrity-Rokous was part of the Wiggin and Dana team of lawyers and paralegals who investigated the initial allegations of document destruction in Arthur Andersen's Houston office, and assisted in the defense of that firm at its trial on federal criminal obstruction charges. Since then, he has assisted clients in developing electronic document retention policies and procedures, and defended challenges from government investigators regarding the adequacy of clients' preservation and production efforts.

JAMES CRAVEN, is a senior litigation associate and an elected member of the Connecticut Bar Association House of Delegates. Mr. Craven's practice includes advising his commercial, financial, health care, and product manufacturing clients about their electronically stored information and the obligations and duties they have with respect thereto. Jim is a member of the Connecticut Bar Association, Litigation Section eDiscovery Task Force and the Connecticut representative to the Defense Research Institute Medical Liability and Health Care Law Section. Jim also serves on the Steering Committee for the Medical Liability and Health Care Section's national meeting and was recently invited to present a talk about electronic health records eDiscovery issues at the Connecticut Health Lawyers Association 2006 Annual Symposium.

ROBERT HOFF, a senior associate in Wiggin and Dana's litigation and white collar defense practices, has been responsible for overseeing the production of electronic data to opposing counsel and various government agencies in numerous matters. Mr. Hoff frequently interacts with opposing counsel and government attorneys to find sensible and appropriate solutions to eDiscovery issues, and also counsels clients on eDiscovery best practices, including appropriate litigation holds and document collection efforts.

IRIS GAFNI-KANE, an associate in the firm's white-collar group, focuses her practice on regulatory compliance and related investigations, including drafting and implementing compliance policies related to document preservation and collection. Ms. Gafni-Kane has been involved in numerous government and internal investigations involving complex document collection and preservation issues, including participating in the Arthur Andersen criminal defense, and other SEC, and state Attorney General investigations. Ms. Gafni-Kane also has extensive experience with eDiscovery in civil litigation, including implementing efficient methods for preserving, collecting, and reviewing large amounts of electronic documents.