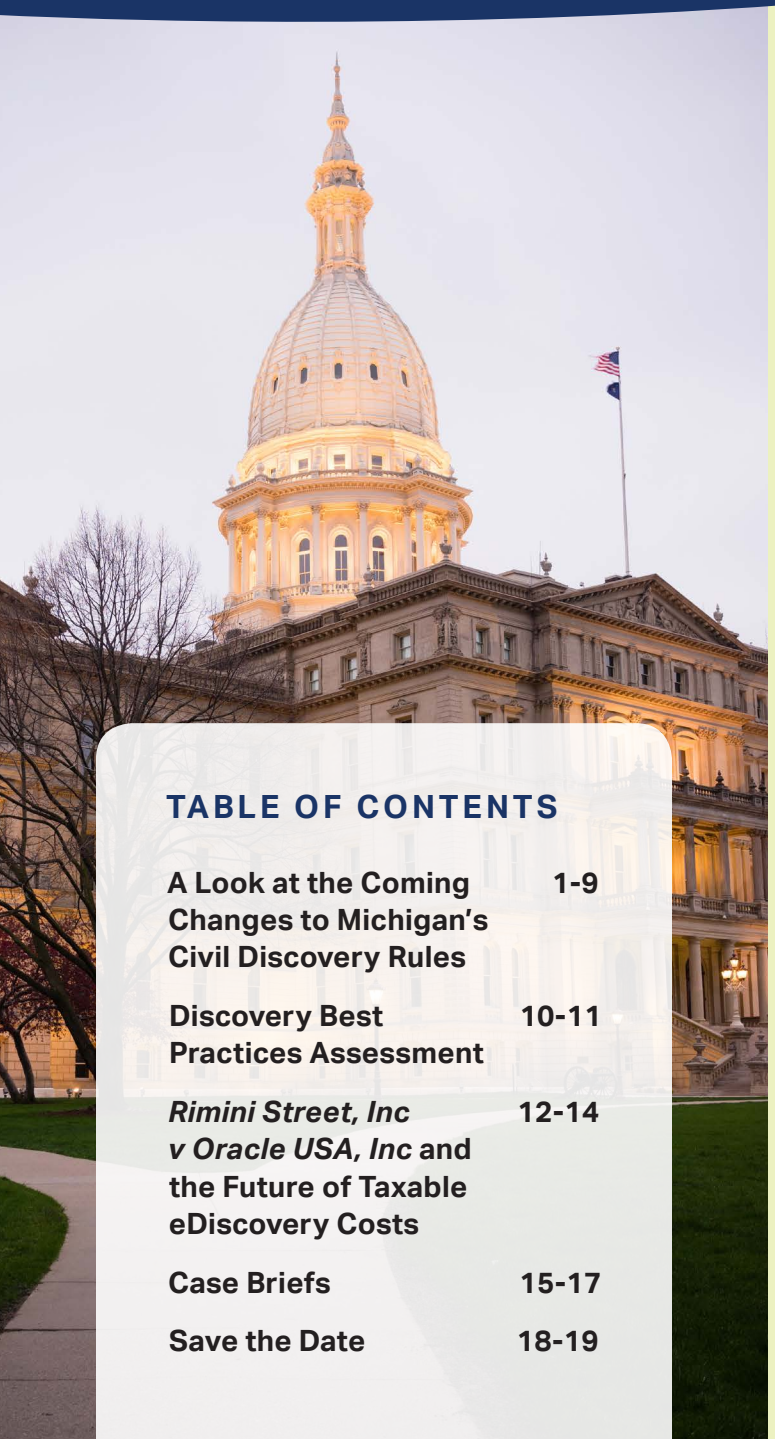
Warner Norcross + Judd

SUMMER 2019

DISCOVERY CENTER

A DATA ANALYTICS + eDISCOVERY NEWSLETTER

A Look at the Coming Changes to Michigan's Civil Discovery Rules



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On June 19, 2019, the Michigan Supreme Court approved the broadest changes to Michigan's Civil Discovery Rules since their enactment in 1985. The amendments will take effect on January 1, 2020.

Their adoption culminates a process that began in 2016 with the issuance of the State Bar of Michigan ("SBM") 21st Century Practice Task Force Report, which recommended changes to Michigan's Civil Discovery Rules to reduce the expense and burden of discovery, widely seen as an impediment to access to the civil justice system. Recognition of these problems with civil discovery had already led to significant changes to the Federal Rules of Civil Procedure as well as to many other state court civil procedure rules.

The SBM Civil Procedure & Courts Committee recommended, and the Court encouraged, the formation of the Civil Discovery Court Rule Review Committee ("Committee") to study the problem and propose revisions to Michigan's Civil Discovery Rules. The Committee began its work in 2016. The Committee drafted a proposed rules package that was approved and submitted to the SBM Representative Assembly in September 2017. The Representative Assembly overwhelmingly approved the Committee's proposal in April 2018 and recommended its adoption to the Court.

The Court solicited public comments on the proposed rules, and held a public hearing on them on May 22, 2019 before giving them final approval.

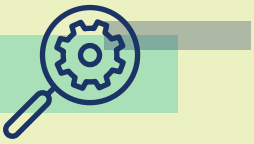
The changes include:

- Requiring parties, counsel and the court to take the dictates of MCR 1.105 seriously "to secure the just, speedy and economical determination of every action"
- Adopting initial disclosure requirements and presumptive limits on interrogatories and depositions
- Tying relevance to information concerning "claims and defenses" and adopting a proportionality standard in MCR 2.302(B) to determine the appropriate scope of discovery
- Adopting a clear standard for the imposition of sanctions for the loss of electronically stored information (ESI)
- Encouraging early and regular judicial case management, including the use of discovery plans, ESI Conferences, discovery mediation and appointment of a discovery mediator/ESI expert

In this newsletter, we will highlight the most significant changes and provide a quick "bullet point" analysis and practice tips.

To see the complete rules package along with Committee comments, visit www.wnj.com/WarnerNorcrossJudd/media/files/uploads/Documents/Rules.pdf.

MCR 1.105



Construction

amended rule:

These rules are to be construed, administered and employed by the parties and the court to secure the just, speedy and economical determination of every action and to avoid the consequences of error that does not affect the substantial rights of the parties.

practice tip

Let this Rule be your North Star whenever you draft discovery requests, respond or object to discovery requests or file or oppose discovery-related motions.

analysis:

- Adopts the language of current Federal Rule of Civil Procedure (FRCP) 1
- When adopting federal law, Michigan courts use federal case law as an interpretive guide
- Federal case law is persuasive, not binding
- In federal court all discovery rules must be interpreted in light of Rule 1
- Federal courts look for an appropriate balance between Rule 1 and liberal discovery policy

Required Initial Disclosures

amended rule:

The "general rule" found at MCR 2.302(A)(1) requires disclosure of certain "core" information without awaiting a discovery request, which includes the factual basis and legal theories underpinning a party's claims or defenses; the identity of witnesses a party may use to support its claims or defenses; a description by category (or copy) of all documents, ESI, etc., a party may use to support its claims or defenses whether or not the information is in the party's possession, custody or control, a computation of damages claimed along with information underlying the calculation; a copy of, or opportunity to inspect, insurance, indemnity or other agreements under which another party may be responsible to pay for all or part of a judgment; and the anticipated subject matter of expert testimony.

Initial disclosures required in specialty cases are set forth at MCR 2.302(A)(2)-(3). Actions exempt from the initial disclosure requirement are set forth at MCR 2.302(A)(4).

analysis:

- Initial disclosure requirement primarily based on Federal Rule of Civil Procedure 26(a)(1)
- Only Macomb and Oakland County business courts currently have initial disclosure requirement
- Designed to get basic information out sooner
- Disclosures "based on the information then reasonably available to the party"
- Duty to make a "reasonable inquiry" prior to submitting disclosure
- Signature certifies that disclosure is "complete and correct as of the time it is made"
- "Duty to disclose" is not synonymous with the "duty to produce"
- Documents not in a party's "possession, custody or control" must be disclosed
- Disclosure obligation not excused by opposing party's failure to disclose or insufficient disclosures
- Disclosures are subject to the duty to supplement
- "Knowing concealment" no longer required to sanction for failure to supplement

practice tip

Don't let disclosure deadlines bite you. Ideally, plaintiffs will have their disclosures ready by the time suit is filed. Defendants and other parties should begin working on their disclosures as soon as their time starts running – and maybe sooner where the litigation is "reasonably foreseeable."

Scope of Discovery

amended rule:

Parties may obtain discovery regarding any non-privileged matter that is relevant to any party's claims or defenses and proportional to the needs of the case, taking into account all pertinent factors, including whether the burden or expense of the proposed discovery outweighs its likely benefit, the complexity of the case, the importance of the issues at stake in the action, the amount in controversy, and the parties' resources and access to relevant information. Information within the scope of discovery need not be admissible in evidence to be discoverable.

analysis:

- Relevance determined by "claims and defenses," not "subject matter of the litigation"
- To be discoverable information sought now must be relevant AND proportional to needs of case
- Phrase "reasonably calculated to lead to the discovery of admissible evidence" has been deleted because it was used to unjustifiably expand the scope of discovery
- Six proportionality factors provided for by the rule are not exclusive
- "Amount in controversy" not to be given disproportionate weight

practice tip

Consider proportionality factors before drafting discovery requests. Narrowly tailor and target discovery requests to elicit information critical to proving/disproving facts at issue in the case by directing them to the most relevant individuals, data sources and time periods.

MCR 2.309(A)(2)

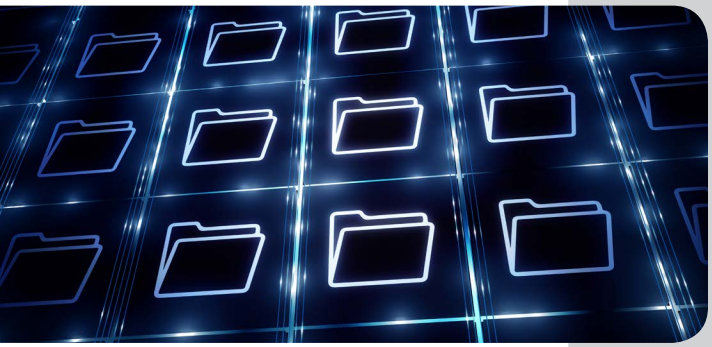
Limits
Interrogatories to Parties

amended rule:

Each separately represented party may serve no more than 20 interrogatories upon each party. A discrete subpart of an interrogatory counts as a separate interrogatory.

analysis:

- Interrogatory limit based on adoption of initial disclosure requirement
- Initial disclosures should provide information otherwise the subject of interrogatories
- 20 interrogatory limit is presumptive and subject to change by the court
- Subparts necessarily related to the main question should be counted as one interrogatory



practice tip

Make sure subparts have some relation to the primary question in the interrogatory. For example, an interrogatory asking for a party to identify medical treatment received with subparts for doctors seen, locations, times and dates of treatment, types of treatment received and cost of treatments would be considered one interrogatory since the subparts elicit information around a common theme. However, a "contention interrogatory" with subparts seeking information supporting multiple claims/defenses would be treated as separate interrogatories.

Failure to Preserve ESI

amended rule:

The rule authorizes sanctions against a party if ESI that should have been preserved is lost due to the party's failure to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery. Where the party acts with an "intent to deprive" another party of the use of the ESI in the litigation, the court may award severe sanctions, including dismissal or default. Otherwise, the court may only impose lesser sanctions no greater than necessary to cure the prejudice suffered.

practice tip

When moving for sanctions under the Rule make sure to specifically address the four predicate findings the court must make:

1) **A party failed to take reasonable steps to preserve ESI;**
2) **That should have been preserved;**
3) **Resulting in loss of the ESI; and**
4) **The ESI cannot be restored or replaced through additional discovery.**

If the court does not find favorably on any of these predicates, it cannot award sanctions.

analysis:

- Based on Federal Rule of Civil Procedure 37(e)
- Duty to preserve still defined by Michigan common law
- Applies only to ESI, not tangible/physical evidence
- Applies only to parties
- Similar to current Michigan law, but provides clearer guidelines for courts
- Must show irretrievable loss of ESI subject to duty to preserve resulting from a party's failure to take reasonable steps to preserve the ESI before sanctions can be considered by court
- If prejudice results, court can order sanctions no greater than necessary to cure the prejudice
- If court finds party acted with "intent to deprive," may order severe "case terminating" sanctions
- Negligence or gross negligence not sufficient to find "intent to deprive"
- Prejudice presumed where party acted with "intent to deprive"

MCR 2.401(C)
MCR 2.401(J)

Discovery Planning
ESI Conference, Plan and Order

amended rules:

MCR 2.401(C) requires parties to confer and prepare a discovery plan if ordered by the court or if requested in writing by a party. The discovery plan must address the topics set forth in MCR 2.401(B). The court may enter a discovery order governing disclosure or other aspects of discovery under MCR 2.401(C)(3). A failure to participate in good faith in developing a discovery plan may result in sanctions pursuant to MCR 2.401(C)(4).

MCR 2.401(J) allows the parties to agree to, the court to order, or a party to move the court for, an ESI conference in cases where ESI discovery is reasonably likely. The parties must address the topics set forth in MCR 2.401(J)(1). Thereafter, the parties must submit an ESI discovery plan to the court as prescribed by MCR 2.401(J)(2). The court may enter an ESI discovery order based on the plan, a written stipulation or motion, or on its own under MCR 2.401(J)(4). MCR 2.401(J)(3) requires "ESI competence" for any attorney participating in an ESI conference.

analysis:

MCR 2.401(C)

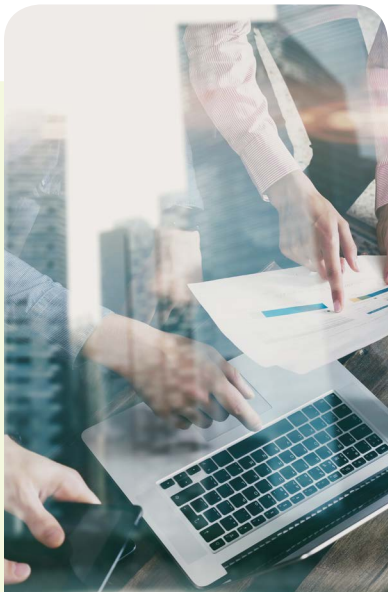
- Adapted from FRCP 26(f)(3), but not mandatory in every case as under the federal rule
- MCR 2.401(B)(1)(e)-(r) are new and cover, *inter alia*, disclosure and discovery-related topics
- Sanctions allowed broader than under FRCP, which only provides for monetary sanctions

MCR 2.401(J)

- No FRCP counterpart, but federal court local rules and state court rules have similar provisions
- ESI discovery plan must address topics set forth in MCR 2.401(J)(1)(a)-(m)
- Attorney or client representative at ESI conference must "be sufficiently versed in matters relating to their clients' technological systems to competently address ESI issues."

practice tip

Cooperation between counsel knowledgeable about the discovery/ESI issues in the case is essential to reap the benefits of the "meet and confer" sessions envisioned by these rules. It is in every stakeholder's best interest to craft discovery plans focused on what is "relevant and proportional to the needs of the case."



Mediation
Discovery Disputes

amended rule:

The parties may stipulate to or the court may order the mediation of discovery disputes. The discovery mediator may be the same as the case mediator appointed under MCR 2.411(B). The court may also appoint an ESI expert under Michigan Rule of Evidence 706. Upon stipulation of the parties, the court may also designate the ESI expert to act as the mediator of ESI discovery issues.

analysis:

- No direct FRCP counterpart, but similar to FRCP 53, which allows for appointment of Masters
- No limitation on when the parties or the court can invoke mediation
- Court-appointed ESI expert can with consent of parties act as discovery mediator
- Address modifications to mediator limitations in MCR 2.411(C)(3) and MCR 2.412(D) in order appointing mediator

practice tip

Engaging a mediator should not be a kneejerk reaction. Make sure it makes sense for your case. Otherwise, you may just be adding an unnecessary layer of delay and cost to the proceedings.

Other Noteworthy Changes

Practitioners should also note these changes to the Michigan Civil Discovery Rules.

Timing of Discovery
MCR 2.301(A)(1) & (4)

In cases where initial disclosures are required "a party may seek discovery only after the party serves its initial disclosures under MCR 2.302(A)." Additionally, the serving party must initiate discovery "by a time that provides for a response or appearance, per these rules, before the [established] completion date."

Time Limit on Depositions
MCR 2.306(A)(3)

"[a] deposition may not exceed one day of seven hours."

Discovery Subpoena to a Non-Party
MCR 2.305

The rule now applies only to non-party discovery. MCR 2.302(B)(6) allows cost-shifting for party discovery for both accessible and inaccessible ESI. MCR 2.506(A)(3) allows cost-shifting for non-party discovery only for inaccessible ESI. Generally non-parties are afforded greater protection from the burdens of litigation than parties, but not in this case.

Award of Expenses of Motion
MCR 2.313(A)(5)

When a court grants a motion for a protective order under MCR 2.302(C) or grants a motion to compel under MCR 2.313(A), it may not award sanctions if the moving party did not first attempt in good faith to resolve the issue with the opposing party.

Early Scheduling Conference and Order
MCR 2.401(B)(2)(a)(2)(iii)-(iv)

The court is authorized to make changes to the "timing, form or requirement for disclosures under MCR 2.302(A)" and to "the limitations on discovery imposed under these rules" and to decide "whether other presumptive limitations should be established."

practice tip

READ and STUDY the revised rules! There's a lot to unpack! For a more in-depth commentary on the revised rules, visit www.wnj.com/WarnerNorcrossJudd/media/files/uploads/Documents/Overview.pdf

Discovery Best Practices
ASSESSMENT

Now that you've seen the approved amendments, you no doubt agree they will significantly change civil discovery in Michigan state courts. While these changes bring challenges, they also bring opportunities.

DOES your organization expect to respond to discovery as a party to litigation, as a non-party under subpoena or through its involvement in a government investigation? If so, it is increasingly important for your organization to have a discovery compliance team and updated ESI best practices in place.

EVEN IF your organization does have a compliance team and ESI best practices in place, these rule changes afford it an opportunity to revisit and fine-tune them.

WHY? Because almost all of the amended rules provide your organization with the opportunity to reduce the scope of its discovery obligations and/or the opportunity to shift all or part of its cost of compliance. However, to take advantage of that opportunity, you need to be prepared.

Your Organization Should be Able to Answer "YES" to These Questions

1. Does your organization have a "core" team of personnel (in-house and/or outside support) to respond to litigation and credible threats of litigation?
2. Are employees trained to recognize and report potential pre-litigation triggers to the relevant point person in your organization?
3. When the duty to preserve has been triggered, is your organization prepared to manage the "legal hold" process and defensibly preserve potentially relevant ESI and other sources of information?
4. Is your organization prepared to interview "key custodians" in order to identify the most likely sources of potentially relevant ESI and other information?
5. Has your organization prepared a "data map" of all custodians, sources and locations of ESI and physical documents?
6. Has your organization identified a point person to make the "reasonable inquiry" required to meet its "initial disclosure" obligations on a timely and consistent basis?
7. Has your organization identified a point person who is ready to participate in an ESI discovery conference and effectively assist counsel to negotiate the scope of preservation and discovery to limit business interruption and expense?
8. Is your organization prepared to demonstrate that ESI being requested by an opposing party is either "inaccessible" and/or "not proportional to the needs of the case"?
9. Does your organization know when and how data analytics can be utilized to reduce the burden and cost of identifying and reviewing potentially relevant ESI?
10. Are your employees trained on how to protect attorney-client and work product privilege when creating and sharing communications and other documents?

If your organization answers "Yes" to all of these questions, congratulations!

If your organization answers "No" or "Not Sure," to any or all of these questions, there is work to be done. Warner's Discovery Center would welcome the opportunity to provide you guidance and assistance. Please give us a call and let us help your organization make the most of the changes to Michigan's Civil Discovery Rules.

Rimini Street, Inc v Oracle USA, Inc

and the Future of Taxable eDiscovery Costs

In March, the United States Supreme Court, in the context of a copyright infringement case, held that a district court could only tax to the losing party those costs specifically authorized under 28 USC §§ 1821 and 1920. The holding negated an award to Oracle of $12.8 million for litigation expenses such as expert witness, eDiscovery and jury consulting fees. The Court did not specifically address what costs were included within the eDiscovery portion of the cost award. But, the Court's holding left no room for ambiguity: "A statute awarding 'costs' will not be construed as authorizing an award of litigation expenses beyond the six categories listed in §§1821 and 1920, absent an explicit statutory instruction to that effect."

In light of this holding, is there still room for the recovery of any eDiscovery costs? Before answering that question, let's first examine the relevant taxable cost language and the checkered history of eDiscovery cost awards.

Taxable Costs Applicable to eDiscovery

The two general taxable cost statutes are found at 28 USC §§ 1821 and 1920. Section 1821 concerns witness fees and plays no role in court decisions addressing taxation of eDiscovery costs. And, of the six categories of taxable costs authorized under Section 1920, only one has been cited when allowing the recovery of eDiscovery costs. Subparagraph four provides for the recovery of "[f]ees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case...." Congress did not define the terms used, but one thing we know is that Congress did intend to include electronic records within the ambit of "making copies." In 2008, it amended the language of subparagraph four, substituting the word "materials" for "papers."

The Race Tires Case and Its Aftermath

In *Race Tires America, Inc LLC v Hoosier Racing Tire, Corp* 674 F3d 158 (3CA 2012), the District Court for the Western District of Pennsylvania faced the question of what, if any, eDiscovery costs, were taxable under Section 1920(4). The defendants, prevailing parties on their motion for summary judgment in this antitrust action, sought recovery for approximately $400,000 in eDiscovery costs for vendor eDiscovery expenses relating to imaging hard drives and servers, processing data and formatting electronically stored information. The district court approved approximately $370,000 of the request under the "exemplification" and "making copies" language. The court based its decision on the grounds that the:

1) Parties had agreed to an electronic production of documents;

2) Plaintiff doggedly pursued eDiscovery from the defendants;

3) Defendants produced massive quantities of ESI to plaintiff; and

4) The vendor's services were necessary to retrieve and produce the ESI.

The plaintiff appealed the award of costs.

On appeal, the Third Circuit Court of Appeals upheld approximately $30,000 of the award to the defendants. Surveying the law, the appellate court found that "exemplification" had been interpreted to mean either producing illustrative evidence or the authentication of public records. Based on these definitions, the court determined that none of the vendor's eDiscovery services fell within the purview of the statutory language. As to what fell within "making copies" the court found that "only the scanning of hard copy documents, the conversion of native files to TIFF, and the transfer of VHS tapes to DVD involved 'copying,' and that the costs attributable to only those activities [were] recoverable...."

Since the appellate court decision in *Race Tires*, many cases have wrestled with the question of what eDiscovery costs are recoverable under Section 1920(4). Some, like the Fourth Circuit Court of Appeals, have agreed with *Race Tires. See Country Vintner of North Carolina, LLC v E & J Gallo Winery, Inc.* Others, like the Sixth Circuit have adopted broader interpretations of the statutory language. *See Colosi v Jones Lang LaSalle Amers Inc* (allowing recovery for the cost of imaging of hard drives).

What Does *Oracle* Portend?

Does *Oracle* resolve these conflicting interpretations? Probably not. However, it does provide a clue that if the issue is squarely brought before the Court, it will interpret Section 1920(4) narrowly. This is in keeping with the Court's 2012 decision in *Taniguchi v Kan Pacific Saipan*, where the Court interpreted Section 1920(6) concerning recovery of costs for "compensation of interpreters," to exclude the cost of document translation. Referring to Section 1920 and taxable costs generally the Court stated:

> Taxable costs are limited to relatively minor, incidental expenses as is evident from § 1920, which lists such items as clerk fees, court reporter fees, expenses for printing and witnesses, expenses for exemplification and copies, docket fees and compensation of court-appointed experts. Indeed, "the assessment of costs most often is merely a clerical matter that can be done by the court clerk." *** Because taxable costs are limited by statute and are modest in scope, we see no compelling reason to stretch the ordinary meaning of the cost items Congress authorized in § 1920.

Reading *Oracle* in the light of *Taniguchi* it is unlikely that broad cost awards for eDiscovery services that do not closely resemble "making copies" will be sustained in the future. Costs incurred for imaging data sources, converting native data into a production format and transferring production data to a medium for delivery are most likely covered by Section 1920(4). Whereas, costs incurred for identifying, collecting, searching and reviewing documents, creating a database, hosting and storing data, and endorsing documents probably fall outside of the ambit of Section 1920(4).

However, until the Supreme Court answers the question directly or Congress clarifies Section 1920(4), litigants would be well-advised to keep meticulous, itemized records of all eDiscovery expenses. When submitting a bill of costs, be sure to include those eDiscovery expenses allowed under current precedent and any others for which a good faith argument for extension of existing law can be made.

Case **BRIEFS**

Henson v Turn, Inc
2018 WL 5281629 (ND Cal Oct 22, 2018)
In weighing privacy concerns in its proportionality analysis, the court found no authority for ordering plaintiffs to produce a complete forensic image of their mobile devices or for granting defendant the right to directly inspect them and the defendant otherwise provided no justification to sustain its request.

Robinson v MGM Grand Detroit, LLC
2019 WL 244787 (ED Mich Jan 17, 2019)
The court overruled plaintiff's objections to magistrate judge's order granting defendant's motion to compel production of Facebook, Google Photo and Google location data for the limited time period that plaintiff alleged he needed FMLA leave and was unable to work.

FCA US LLC v Bullock
2019 WL 258169 (ED Mich Jan 18, 2019)
In this trade secrets case, request to mirror image defendant's hard drive denied as not proportional to the needs of the case, but defendant ordered to produce deleted files from hard drive and at plaintiff's expense should an expert be required to obtain the deleted files.

Postle v SilkRoad Tech, Inc
2019 WL 692944 (D NH Feb 19, 2019)
The moving party under Federal Rule 37(e) must prove requisite elements by "clear and convincing" evidence.

Gaina v Northridge Hosp Med Center
2019 WL 1751825 (CD Cal Feb 25, 2019)
The court will not consider the proportionality of discovery requests underlying a motion for spoliation sanctions filed under Federal Rule 37(e).

Seattle Pacific Industries, Inc v S3 Holding LLC
2019 WL 1013426 (WD Wash Mar 4, 2019)
The evidentiary rules concerning impeachment of witnesses do not expand the scope of discovery, which would become virtually limitless if discovery requests could be "justified by nothing more than the hope of catching a witness in a lie."

Prado v Mazeika
2019 WL 1039896 (SD Ohio Mar 5, 2019)
The court granted motion to quash subpoena where extent of redactions necessary to alleviate confidentiality concerns rendered the discovery disproportionate to the needs of the case.

Udeen v Subaru of America, Inc
2019 WL 1173022 (D NJ Mar 12, 2019)
The court denied defendant's request to stay discovery in nationwide products liability class action, but limited discovery to "core issues," and required parties to "meet and confer" to narrow plaintiffs' discovery requests and to discuss any necessary third party discovery.

Williams v United States
2019 WL 1330714 (DDC Mar 25, 2019)
The court denied request for "location data" from deceased teenager's phone where information would be used to determine how teenager became infected with HIV; finding that the probative value of the data did not outweigh "the burdens that might be imposed on unrelated third parties, and ultimately the potential for harm is not proportional to the need for such evidence in this case."

Resnik v Coulson
2019 WL 1434051 (EDNY Mar 30, 2019)
The sanctions under Federal Rule 37(e)(2) awarded based on collateral estoppel effect given to intentional spoliation finding in state court divorce action.

Dean v Akal Security, Inc
2019 WL 1549017 (WD La Apr 8, 2019)
Counsel sanctioned for failing to modify overly broad Federal Rule 45 subpoena and for failing to "meet and confer" under court's local rules prior to filing motion to enforce non-party's compliance with subpoena.

Michael Kors, LLC v Ye
2019 WL 1517552 (SDNY Apr 8, 2019)
In a case with relatively low damages, effective advocacy must be balanced against the need to keep litigation costs down, by narrowing discovery requests, seeking compromise over objections, and meeting and conferring in good faith to resolve disputes and avoid court intervention – "all critical obligations under Rules 1 and 26."

Leidel v Coinbase, Inc
2019 WL 1585137 (SD Fla Apr 12, 2019)
Objection to document request overruled where response would require defendant to produce reports by querying an existing dynamic database and not create "new documents."

Drivetime Car Sales Co, LLC v Pettigrew
2019 WL 1746730 (SD Ohio Apr 18, 2019)
The defendant may request a protective jury instruction to insulate himself from effect of adverse inference instruction awarded against co-defendant for spoliation of ESI.

Enoch v Hamilton Cty Sheriff's Office
2019 WL 1755966 (SD Ohio Apr 19, 2019)
A motion for spoliation sanctions is considered untimely when filed after the close of discovery and only in response to motion for partial summary judgment.

Cahoo v SAS Institute Inc
2019 WL 1771803 (ED Mich Apr 23, 2019)
Federal unemployment compensation program regulations do not override mandatory shifting of "significant expense" of compliance with subpoena under Federal Rule 45(d)(2)(B)(ii).

Black v Wrigley
2019 WL 1877070 (SD Cal Apr 26, 2019)
The plaintiff and counsel ordered to show cause why sanctions should not be issued for service of improper subpoena under Federal Rule 45, where subpoena was issued on the date of the discovery deadline, required production of documents more than 100 miles from non-party's residence, was overly broad and was not withdrawn upon non-party's request.

Cole v FBI
2019 WL 1904883 (D Mont Apr 29, 2019)
Applying the current "relevant and proportional" discovery standard, rather than the obsolete and improper "reasonably calculated to lead to the discovery of admissible evidence" standard argued by plaintiffs, resulted in the court denying the plaintiffs' motion to compel responses to their temporally unlimited interrogatories and document requests seeking "any and all" documents over broad topics and wide time frames.

McLean v USCCB
2019 WL 2004617 (D Minn May 7, 2019)
A motion for jurisdictional discovery was denied as disproportionate to the needs of the case where plaintiffs "were unable to craft discovery requests that are specific, focused, and tailored to their assertions concerning general and specific personal jurisdiction" and the defendant was amenable to suit elsewhere.

4DD Holdings, LLC v US
2019 WL 2064535 (Fed Cl May 10, 2019)
Instructing contractors to delete relevant ESI with knowledge of foreseeable litigation equates to "intent to deprive" necessary to justify award of adverse inference jury instruction under Federal Rule 37(e)(2).

Save the Date 9.27.19

4th Annual ACEDS Detroit Symposium
2019 Midwest eDiscovery Conference

On September 27th, please join the Association of Certified eDiscovery Specialists (ACEDS) for its 2019 eDiscovery Symposium, "To eDiscovery and Beyond," at the Greektown Casino in Detroit. This year's keynote speaker is acclaimed eDiscovery Thought Leader Maura Grossman. Panelists include former Magistrate Judge for the Southern District of New York, Andrew C. Peck, well-known for his eDiscovery expertise especially in the area of technology-assisted review (TAR). Closing remarks will be given by Mary Mack, Executive Director of ACEDS.

The day promises to be insightful and thought-provoking, with a healthy dose of fun.

TOPICS WILL INCLUDE:

Whether TAR Will Become Mandatory and If So, When and How

Are courts ready to order the use of TAR for document review in litigation? If so, what role will manual review continue to play, if any?

In-House Counsel Panel Discussion

In the corporate law department, what are the "best practices," what is trending and what does the future hold in the areas of information governance, data privacy and eDiscovery?

AI – A Practical Look at Its Resources

How can we best leverage AI to protect sensitive data and bridge the gap between privacy and eDiscovery?

Update on Data Privacy Laws (Nationally and Internationally)

What can organizations expect now that the EU General Data Protection Regulation is in effect and with the California Consumer Privacy Act going into effect next year?

Michigan's New Discovery Rules (Judicial Panel)

With forthcoming changes to Michigan's Civil Discovery Rules, what should practitioners know and what will their likely impact be?

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Regular $125; Early Bird $75

Non-Members
Regular $195; Early Bird $145

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FOR EARLY BIRD RATE, REGISTER BY AUGUST 27, 2019

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Warner Discovery Center

Jay Yelton, Partner	jyelton@wnj.com
Myra Willis, Senior Project Manager	mwillis@wnj.com
Adam Cefai, Litigation Support Manager	acefai@wnj.com
Zach Nevenzel, Staff Attorney	znevenzel@wnj.com
Jeremy Nufer, Staff Attorney	jnufer@wnj.com
Bruce Olson, Staff Attorney	bolson@wnj.com
Todd Rooze, Staff Attorney	trooze@wnj.com
Kenneth Treece, Staff Attorney	ktreece@wnj.com
Ashley Tyler, Project Manager	atyler@wnj.com
Tim Winslow, eDiscovery Support Specialist	twinslow@wnj.com

next issue:

We will focus on a topic of growing importance:

DATA PRIVACY

The Warner Norcross + Judd Discovery Center offers wide-ranging eDiscovery and Data Analytic services. Our discovery professionals have 100+ years of combined expertise in discovery practice with a special emphasis on electronic data.

We are available to answer your questions regarding the discovery process and will work with you to develop a customized suite of services that fits your needs and your budget.

our services include:

- Data Intake
- Data Processing
- Data Hosting
- Data Review
- Data Production
- Data Analytics
- Early Case Assessment
- Project Management
- Discovery Dispute Mediation
- Discovery Management & Consulting

wnj.com