

Florida Rules to Address Electronically Stored Information

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As of September 1, 2012, the Florida Rules of Civil Procedure ("Florida Rules") will, for the first time, directly address electronically stored information ("ESI"). Specifically, the following Florida Rules now address ESI:

Rule 1.200 (Pretrial Procedure)

Rule 1.201 (Complex Litigation)

Rule 1.280 (General Provisions Governing Discovery)

Rule 1.340 (Interrogatories to Parties)

Rule 1.350 (Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes)

Rule 1.380 (Failure to Make Discovery; Sanctions)

Rule 1.410 (Subpoena).

This change comes six years after the Federal Rules of Civil Procedure ("Federal Rules") were changed to encompass ESI. The Florida changes largely track the Federal Rules with some minor changes and additions which account for the evolution of eDiscovery over the past six years.

Perhaps the most significant difference between the Florida Rules and the Federal Rules is that the Florida Rules do not require a case management conference to discuss ESI unless the case qualifies as a "complex action." However, any party to a Florida action may notice such a conference to discuss ESI, thereby making it obligatory on the opposing party. The Florida Rules also provide a more detailed outline of topics to be addressed at a case management conference including preservation, format of production, and whether ESI should be produced in phases or limited to particular custodians, time periods or sources.

Another difference is that the Florida Rules now expressly authorize cost shifting for ESI when the producing party demonstrates that the information is not reasonably accessible because of undue burden or cost. Some federal courts have ordered cost shifting under an interpretation of the Federal Rules but the Federal Rules do not expressly provide for cost shifting.

Clients and attorneys, even in "run of the mill" state cases, must now consider eDiscovery. Experience suggests that dealing with eDiscovery early on, even before a case is filed, helps to

mitigate cost and to some extent complexity.

The amendments to the Florida Rules take effect on September 1, 2012. A full copy of the Court's decision is available by clicking [here](#).

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