State by State Summary Report of E-Discovery Efforts

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Note: Changes since last Report include final adoption by Arizona and Indiana (eff. January 1, 2008) and proposals for Public Comment by Maryland (due November 13) and Ohio (due November 14)

As of this Report, nine states – **Arizona, Indiana, Idaho, Louisiana, New Jersey, Minnesota, Montana, New Hampshire** and **Utah** - have enacted e-discovery provisions in their civil rules, thereby joining Texas and Mississippi, which acted before the Federal Amendments of 2006 were drafted. In most cases, the amendments largely mirror the provisions of the Federal Amendments in whole or major part. However, Idaho, New Hampshire and Louisiana have adopted provisions unique to their situations.

Thirteen other jurisdictions - **Alaska, Florida, Illinois, Iowa, Kansas, Maryland, Nebraska, New Mexico, Ohio, Tennessee, Virginia, Washington** and the **District of Columbia** - are at various stages of undertaking action on some form of e-discovery amendments.

We are not aware of any significant rulemaking activity in the remaining states.

Details follow:

1. **Alaska**. The Alaska Supreme Court is currently considering proposals to adopt amendments based on the Federal Amendments.

2. **Arizona**. The Arizona Supreme Court has adopted a comprehensive set of e-discovery rules in response to a petition which largely mirror the Federal Amendment. See http://www.supreme.state.az.us/rules/ramd_pdf/r-06-0034.pdf

3. **Arkansas**. The Supreme Court has published for comment an which would presumptively eliminate a claim of privilege or work product waiver.

4. **California**. The California Judicial Council withdrew its proposed amendment (SPR06-13) which would have amended Section 212 of the California Rules of Court to require that parties "meet and confer" about preservation prior to the civil case management conferences. A lawyer for the Council was quoted as stating that it was dropped because of concern the conference would come too late for the parties to start talking about e-discovery production.

5. **Colorado**. The Committee on Rules of Civil Procedure agreed early in 2007 to wait and see how the federal amendments were working before taking any action. See http://www.courts.state.co.us/supct/committees/civrulesdocs/civilrules01-26-07.pdf.

6. **Delaware**. A member of the relevant Delaware Bar Committee reports that the State Rules Committee sees no need to act at this time.

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7. **District of Columbia**. The District of Columbia is required by law to follow the Federal Rules of Civil Procedure. The District of Columbia Court of Appeals has stayed the deadline for compliance to enable the Superior Court and its advisory committee time to revise the local rules.

8. **Florida**. A Subcommittee of the Rules Committee has been considering possible amendments based on the 2006 Federal Amendments.

9. **Idaho**. Idaho amended the Idaho Rules of Civil Procedure effective July 1, 2006 to include provisions modeled on the 2006 Amendments and Tex. R. Civ. P. 196.4. See http://www.isc.idaho.gov/rules/Discovery_Rule306.htm.

10. **Illinois**. A subcommittee of the Judicial Conference is reported to be evaluating the adaptability of the 2006 Amendments with recommendation expected to the Rules Committee in November, 2007 and public comments set for January, 2008.

11. **Indiana**. The Indiana Supreme Court has adopted E-Discovery Amendments largely replicating the Federal Amendments which will become effective on January 1, 2008. See http://www.in.gov/judiciary/orders/rule-amendments/2007/trial-091007.pdf

12. **Iowa**. The Iowa Supreme Court has released a series of amendments modeled on the 2006 Amendments for public comment, which has now ended. See http://www.judicial.state.ia.us/wfdata/frame4676-1022/File11.pdf

13. **Kansas**. The procedural subcommittee of the Judicial Council approved a motion in May, 2007 to recommend adoption of the Federal Amendments for Kansas, without the changes to Rule 26(f) or 26(a)(1) which have no counterpart in Kansas.

14. **Louisiana**. On June 25, 2007, the Governor signed Act No. 140 passed by the legislature to embody some, but not all, of the 2006 Federal Amendments. See http://www.legis.state.la.us/billdata/streamdocument.asp?did=447007.

15. **Maryland**. The Standing Committee on Rules of Practice and Procedure has submitted to the Court of Appeals a set of proposed e-discovery amendments which are similar but not identical to the Federal Amendments. Comments are due by November 13, 2007 and a public hearing is scheduled for December 3, 2007 at 2:00 in Annapolis, Maryland. See http://www.courts.state.md.us/rules/reports/158thReport.pdf.

16. **Massachusetts**. The Advisory Committee on Rules has discussed the need for e-discovery rules and has decided to monitor experience under the Federal rules as well as experience in the state courts. In the meantime, the Chief Justice has distributed and posted copies of the Guidelines issued by the Conference of Chief Justice Guidelines.

17. **Michigan**. Reportedly the State Bar Representative Assembly has prepared a draft of possible e-discovery amendments based on the FRCP. It is unclear whether or to what extent this has been presented to the Supreme Court for action.

18. **Minnesota**. Effective July 1, 2007, The Minnesota Supreme Court adopted amendments to its Rules of Civil Procedure which mirror the Federal Amendments. Pithy and well-written interpretive comments are included. See http://www.courts.state.mn.us/documents/0/Public/Rules/RCP_effective_7-1-2007.pdf.

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19. **Mississippi**. Mississippi adopted e-discovery amendments in 2003 to its Rule 26 ("General Provisions Governing Discovery").

20. **Missouri**. The Judicial Rules Committee has decided to examine the issue of the need for e-discovery rules but has delayed action until 2008.

21. **Montana**. The Supreme Court of Montana has adopted amendments to its civil rules which incorporated all of the 2006 Amendments except the modifications to the "meet and confer" obligations, which have no counterpoint under Montana law. See. http://courts.mt.gov/orders/AF07-0157.pdf.

22. **Nebraska**. The Supreme Court sought public comment by August 31 on its limited proposal to amend Rules 33 and 34 to parallel the federal amendments. See http://www.supremecourt.ne.gov/rules/amendments/DiscoveryRulesCivilCases.pdf

23. **Nevada**. There are no current ongoing efforts to consider e-discovery rules.

24. New Hampshire. Superior Court Rule 62 was amended effective March 1, 2007 to require discussion of key e-discovery topics at meet and confers, including accessibility, costs, form of production and the need for and extent of litigation holds. See: http://www.courts.state.nh.us/supreme/orders/ord20070118.pdf

25. **New Jersey.** The New Jersey Civil Rules, effective September 1, 2006, incorporate the provisions of the 2006 Amendments with certain minor exceptions. See http://www.judiciary.state.nj.us/rules_toc.htm.

26. **New York**. The Advisory Committee on Civil Practice has reportedly determined that there is no need to add e-discovery rules. The Rules of Practice for the Commercial Division of the Supreme Court (trial level courts) were amended in 2006 (§202.70) to require consultations regarding e-discovery issues prior to a preliminary conference.

27. **New Mexico**. The Rules Committee is working on series of proposed e-discovery amendments based on the Federal Amendments.

28. **North Carolina.** Reportedly there is no interest at the Supreme Court in developing statewide e-discovery rules at this time. The North Carolina Business Courts have include provisions relating to discussion of e-discovery issues in their rules. See http://www.ncbusinesscourt.net/new/localrules/.

29. **Ohio**. The Supreme Court has published proposed e-Discovery rules with some changes from the Federal Amendments. Public comments are due by November 14, 2007. See http://www.sconet.state.oh.us/Rules/amendments/practiceProcedureOct07.pdf

30. **Oregon**. The Judicial Council has discussed reviewing the issue of e-discovery in the next rulemaking cycle.

31. **South Carolina**. The South Carolina Bar Practice and Procedure Committee has created a subcommittee to study and evaluate the issue of e-discovery amendments.

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32. **Tennessee**. The Tennessee Supreme Court and its Advisory Commission on Rules of Practice and Evidence has prepared draft of e-discovery rules which blend the Chief Justice Guidelines with the Federal Rule Amendments. It is unclear what the status of the proposal is, but reportedly action in anticipated by January, 2008.

33. **Texas**. Texas was the first state to enact e-discovery rules, having added §§196.3 and 196.4 to its Civil Procedure code in 1999.

34. **Utah**. The Utah Supreme Court has approved a set of e-discovery amendments (2007-03-28) largely based on the Federal Rules, effective November 1, 2007. The rules can be found at http://www.utcourts.gov/resources/rules/comments/20070328.

35. **Vermont**. The Rules Committee plans to take up consideration of e-discovery amendments in early 2008.

36. **Virginia**. The Advisory Committee on Rules of the Judicial Council requested comments by September 1, 2007 on the possibility of recommending the adoption of amendments based on the 2006 Amendments. The illustrative proposals are at http://www.valawyersweekly.com/archives/pdf/va/06/ediscovery.pdf

37. **Washington**. A subcommittee of the Washington State Rules Committee has proposed adoption of the provisions of the Federal Amendments. The proposal will not be considered by the Supreme Court until 2008 and would not come into effect until 2009 at the earliest.

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