



BUSINESS LAW SECTION

OF THE FLORIDA BAR

eDiscovery and Electronic Evidence Case Law Update

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Florida State Court Decisions

Office of the Attorney General v. Smart Savings Center
2016 WL 4505893 (Fla.Cir.Ct. 2016)

Defendant held in civil contempt of court for willfully, intentionally and in bad faith refusing to comply with Court orders to produce documents and ESI, including computer records and emails.

Bosque v. State
41 Fla. L. Weekly D2175 (Fla. 3d DCA 2016)

Defendant entitled to a new trial because the State of Florida failed to produce audio recordings containing exculpatory evidence until after the trial was over.

In re: Amendments to Rules Regulating the Florida Bar 4-1.1 and 6-10.3 (Technology CLE Hours)
No. SC16-574 (September 29, 2016)

Effective January 1, 2017, Florida attorneys are required to obtain three hours of technology CLE during each three-year cycle. Also, maintaining attorney competence now includes understanding the risks and benefits associated with the use of technology.

Murphy v. Roth
2016 WL 5803658 (Fla. 4th DCA 2016)

Trial court did not abuse its discretion by denying plaintiff's motion for a new trial based on a juror's misconduct arising from the use of social media (Twitter) during trial.

Miller v. Bank of America
41 Fla. L. Weekly D2421 (Fla. 5th DCA 2016)

Trial court erred by allowing a screenshot of a purported business record because the foundation for the business records exception was not established.

Wheeler v. State
2016 WL 6611100 (Fla. 4th DCA 2016)

Cell phone photo and Facebook video of 18-year-old criminal defendant hitting and kicking a minor victim was insufficient evidence to support a conviction for aggravated child abuse (although the evidence was more than adequate to support a conviction for the crime of battery).

Robinson v. Ward

2016 WL 6609585 (Fla. 2d DCA 2016)

Attorney's cross-examination of a party witness with the party's own Facebook post was improper because the Facebook evidence was not disclosed to opposing counsel upon discovery several days earlier.

Inquiry Concerning a Judge No. 15-200

SC15-2148 (November 10, 2016)

Circuit Court judge reprimanded for several acts of misconduct, including sending an email to a defense lawyer (but not prosecutors) recommending ways to reduce sentences for non-violent offenders.

State v. Stahl

No. 2D14-4283, 2016 (Fla. 2d DCA 2016)

Trial court order denying State of Florida's motion to compel disclosure of iPhone passcode was reversed based on the Second DCA's determination that turnover of the passcode did not violate the Fifth Amendment rights of a defendant accused of a video voyeurism crime.

Florida Federal Court Decisions

Rocket Real Estate, LLC, et al. v. Maestres

2016 WL 4917151 (S.D.Fla. September 15, 2016)

The Court applied the scope of discovery under amended Rule 26(b)(1) to determine whether emails requested from the Plaintiffs were relevant and proportional to the needs of the case.

Gian Biologics, LLC v. Cellmedix Holdings, LLC

2016 WL 6568014 (M.D.Fla. November 4, 2016)

The Court denied plaintiff's motion for sanctions under Rule 26(g) because, at the time the defendants made their 26(g) certification, the parties had not yet negotiated search terms and the amount in controversy was small. The Court also told the parties they "should not object or argue based on what would lead to discovery of admissible evidence because effective December 1, 2015, the phrase 'reasonably calculated to lead to the discovery of admissible evidence' is no longer part of Rule 26(b)(1)."

Connectus, LLC v. Ampush Media, Inc.

2016 WL 6996147 (M.D.Fla. November 30, 2016)

Using the proportionality factors in Rule 26(b)(1), the Court determined that the burden on the Defendants to produce "all documents and reports" related to a disputed transaction was outweighed by any likely benefit of the discovery to the Plaintiff.

Keim v. ADF Midatlantic, LLC

2016 WL 7048835 (S.D.Fla. December 5, 2016)

Defendant filed a motion for sanctions pursuant to Rule 37(e)(1) arguing that the plaintiff failed to preserve cell phone evidence, including text messages, relevant to a TCPA case. The Court denied the defendant's motion for sanctions, in part because plaintiff was an individual that was "unsophisticated in litigation," and there was insufficient evidence for the Court to determine whether the text messages at issue were lost before or after the plaintiff's duty to preserve arose.

Edmondson, et al. v. Velvet Lifestyles, LLC, et al.

Case No. 1:15-cv-24442-JAL (S.D.Fla. December 5, 2016)

The Court ordered the defendants, who operate a private swinger's club in Miami, to produce the club's email distribution list to the plaintiffs, who are professional models that filed a Lanham Act false advertising action against the swingers' club. The Court determined that the email distribution list, but not the club's actual membership list, was within the scope of discovery under amended Rule 26(b)(1) and was therefore required to be produced by the defendants to the plaintiffs.

Eleventh Circuit Court Decision

United States v. Haymon

2016 WL 5859690 (11th Cir. October 7, 2016)

The District Court did not abuse its discretion by denying a criminal defendant's motion to suppress firearms and ammunition found in his home while police executed a search warrant. The evidence used by the police to obtain the search warrant included threats posted by the defendant on his Facebook page.

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