



BUSINESS LAW SECTION
OF THE FLORIDA BAR

eDiscovery Case Law Update

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Florida State Court Decisions

[Eveland v. State of Florida](#)

2016 WL 1273264 (Fla. 2nd DCA April 1, 2016)

Trial court's order revoking a defendant's community control (probation) was reversed because the testimony of the defendant's parole officer was insufficient to authenticate the electronic records of the defendant's electronic GPS monitoring device.

[Maslak v. Wells Fargo Bank, N.A.](#)

2016 WL 1552803 (Fla. 4th DCA April 6, 2016)

Trial court erred in admitting a "screen shot" of a computer record as evidence of a borrower's payment history because the witness did not lay a proper foundation describing (i) the loan servicer's procedures for inputting payment information into the loan servicer's electronic information system and (ii) the manner in which the loan servicer received and processed payments.

Florida Federal Court Decisions

[Living Color Enterprises, Inc. v. New Era Aquaculture, Ltd.](#)

2016 WL 1105297 (S.D. Fla. March 22, 2016)

Party that admitted deletion of text messages after the duty to preserve arose was not sanctioned under amended Rule 37(e), Federal Rules of Civil Procedure, because the Court determined (i) there was no prejudice to the requesting party and (ii) there was no evidence of an "intent to deprive" or bad faith. The Court also held that amended Rule 37(e) does not permit an adverse inference instruction or other severe sanctions against a "relatively unsophisticated party" whose destruction of electronic evidence was negligent rather than willful.

[Hankinson v. Class Action R.T.G. Furniture Corp.](#)

2016 WL 1182768 (S.D.Fla. March 28, 2016)

The relevance and proportionality factors in amended Rule 26(b)(1), Federal Rules of Civil Procedure, were considered by the Court in determining whether to grant the plaintiffs' motion to compel.

Selected Non-Florida Federal Court Decisions

[Best Payphones v. The City of New York](#)

2016 WL 792396 (E.D.N.Y. Feb. 26, 2016)

Amended Rule 37(e), Federal Rules of Civil Procedure, only addresses sanctions for failure to preserve electronically stored information, and not tangible things, including paper documents.

[Noble Roman's, Inc. v. Hattenhauer Distrib. Co.](#)

2016 WL 1162553 (S.D.Ind. March 24, 2016)

A requesting party's subpoena constituted "discovery run amok," where the requesting party never attempted to demonstrate that requested information was proportional to the needs of the case, as required by amended Rule 26(b)(1), Federal Rules of Civil Procedure.

[In re: Subpoena of American Nurses Association](#)

2016 WL 1381352 (4th Cir., April 7, 2016)

The United States Court of Appeals for the Fourth Circuit determined that a non-party's attorney's fees which are "necessary to a discovery proceeding under Rule 45 are expenses that may be shifted to the discovery-seeking party." The Court also permitted the non-party's e-discovery vendor fees to be shifted to the discovery-seeking party.