



BUSINESS LAW SECTION
OF THE FLORIDA BAR

eDiscovery Case Law Update

July 5, 2016

Author: [Chris Dix](#) is a shareholder and commercial litigator at Smith Hulsey & Busey in Jacksonville.

Florida State Court Decision

Rivera v. Wells Fargo Bank

2016 WL 1579076 (Fla. 4th DCA 2016)

A loan servicer may pursue foreclosure of a mortgage secured by an electronic promissory note (“e-note”), and an e-note is a “transferable record” under the Uniform Electronic Transactions Act (adopted in Florida as §668.50, Florida Statutes).

Florida Federal Court Decisions

Douglas v. Kohl’s Department Stores

2016 WL 1637277 (M.D.Fla., April 25, 2016)

Plaintiff’s motions to compel defendant to make supplemental productions of ESI were denied based on the Court’s consideration of relevance and the proportionality factors listed in Rule 26(b)(1), Federal Rules of Civil Procedure.

Griffith v. Landry’s

2016 WL 2961528 (M.D. Fla., May 23, 2016)

After the close of discovery, defendants were not required to produce payroll data to plaintiffs in an “electronic, manipulatable spreadsheet format.” The data had already been produced to the plaintiffs in PDF (portable document format) prior to the close of discovery.

Freedman v. Suntrust Banks

2016 WL 3196464 (M.D. Fla., June 9, 2016)

The Court described the case as a “textbook example” of why parties need to meet and confer at the earliest possible time to discuss discovery of ESI. The Court also stated that “a Rule 30(b)(6) deposition should not be necessary to obtain straightforward information about a party’s electronic information systems.”

Selected Non-Florida Federal Court Decisions

Matthew Enterprise, Inc. v. Chrysler Group LLC

2016 WL 2957133 (N.D. Cal. May 23, 2016)

The rules governing parties' duties to preserve data "do not demand perfection." When a party's failure to preserve relevant email communications results in prejudice to another party, however, certain "curative measures" are appropriate under amended Rule 37(e), Federal Rules of Civil Procedure, including a party's right to present argument and evidence of spoliation to the jury.

Lifeguard Licensing v. Kozak

2016 WL 3144049 (S.D.N.Y. May 23, 2016)

The Court stated that the permissible scope of discovery under amended Rule 26(b)(1) "does not provide for discovery of 'likely,' 'anticipated,' or 'potential' claims or defenses." The Court also stated that a producing party is not obligated to search sources of ESI that are reasonably certain not to contain responsive information.