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Court Provides Legal Arguments for Limiting E-Discovery Costs

Areas of Interest

Electronic Discovery &
Records Management

United States

In an opinion that surely will be cited in the future to oppose overly broad and burdensome discovery requests, Chief Magistrate Judge Paul Grimm of the United States District Court for the District of Maryland analyzed legal arguments that can be used to help limit e-discovery costs, and offered support for the notion that litigants have a duty to engage in efficient and cooperative discovery.

Duties When Responding to Discovery Requests

In *Mancia v. Mayflower Textile Servs. Co.*, 2008 WL 4595275 (D. Md. Oct.15, 2008), plaintiffs in a Fair Labor Standards Act class action case filed motions to compel discovery claiming that defendant's responses to interrogatories and document production requests were "wholly inadequate" due to the use of non-particularized, non-specific objections. Judge Grimm stated that, during his review of the objections, he noted obvious violations of FRCP 33(b)(4) (requiring that the grounds for an objection to an interrogatory must be stated with specificity), 34(b)(2) (requiring litigants to respond to document production in one of three appropriate ways), and the ruling in *Hall v. Sullivan*, 231 F.R.D. 468, 473-4 (D. MD. 2005) (ruling that the failure to object with particularity to document production requests waives the objection). Further, and more importantly, Judge Grimm noted that the failure of the defendants "to particularize their objections to the Plaintiffs' discovery requests suggested a probable violation of *Fed R. Civ. P 26(g)(1)*," which requires a party "to conduct a 'reasonable inquiry' before objecting to an interrogatory or document request."

Rule 26(g): The Duty to Conduct Reasonable Inquiry

Judge Grimm noted that Rule 26(g) is "[o]ne of the most important, but apparently least understood or followed" rules. The rule requires that discovery requests, responses and objections be certified by the attorney of record that "to the best of the person's knowledge, information, and belief *formed after a reasonable inquiry*," the response is consistent with the rules of procedure and warranted by existing law, is not interposed for any improper purpose (such as to needlessly increase the cost of litigation) and is neither unreasonable nor unduly burdensome or expensive. The court must impose an appropriate sanction on an attorney or party making a certification in violation of Rule 26(g).

Referencing the Advisory Committee Notes for the Rule, Judge Grimm's ruling details many "take away points" that should "regulate the way discovery is conducted," including the following:

- The Rule is intended to impose an "affirmative duty" on counsel to behave responsibly during discovery, and to ensure that discovery is conducted in a way that is consistent "with the spirit and purposes" of the discovery rules. Compliance with the spirit and purposes of these rules requires "cooperation by counsel to identify and fulfill legitimate discovery needs..." while avoiding "the cost and burden" of discovery that is disproportionate to what is at stake in the litigation.
- The Rule is intended to curb discovery abuse by requiring the court to impose sanctions if violated, absent "substantial justification," and the sanctions are intended to penalize the noncompliant and

deter others from noncompliance.

- The Rule "aspires to eliminate one of the most prevalent of all discovery abuses: knee-jerk discovery requests served without consideration of cost or burden to the responding party."

Reducing the Costs of Discovery

Judge Grimm noted that the excessive cost of discovery can be linked to the failure to engage in discovery as required by Rule 26(g) and as discussed in the Sedona Conference Cooperation Proclamation (2008), which advocates cooperation among parties as a way of reducing the costs of litigation. Recognizing the common argument that the cooperation that judges expect during discovery is unrealistic because of the demands of the adversarial system, Judge Grimm stated that there is nothing inherent in that system that precludes cooperation between parties during the process in order to achieve "orderly and cost effective discovery." Further, aware that one of the rationalizations for overbroad discovery requests is that the propounding party does not know enough information to narrowly tailor them, Judge Grimm noted that some of these issues would be mitigated if, before initiating discovery, parties met and discussed the amount in controversy and the quantity, type and sequence of discovery to be conducted in the case, so that costs to all parties are proportional to what is at stake in the litigation. Also, Judge Grimm noted that the act of making boilerplate objections is *prima facie* evidence of a Rule 26(g) violation.

Ultimately, Judge Grimm did not impose sanctions. He acknowledged that Rule 26(b)(2)(C) imposes an obligation on the court to limit unreasonable discovery requests, but stated that the facts did not allow him to determine the over-breadth or burden of the requests under Rule 26. He did, however, note his concern that the discovery sought by plaintiffs might be excessive or overly burdensome when he applied Rule 26(b)(2)(C)'s proportionality analysis, and he ordered the parties to meet and confer and do the following:

- Estimate the likely range of provable damages and attorneys' fees that could be awarded if plaintiffs prevailed at trial, and based on that range, attempt to quantify a workable discovery budget.
- Discuss the quantity and type of discovery already provided and the additional discovery still sought in order to determine whether plaintiffs' legitimate discovery needs could be fulfilled in a less burdensome and duplicative manner.
- Attempt to reach an agreement about what additional discovery should be provided.

This case should be read by anyone tasked with handling discovery because it gives an overview of the rules requiring cooperation during discovery and analyzes the duties of the parties to limit the costs associated with discovery.

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