



Chapter 4

Best Practices in Electronic Discovery and Document Retention

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Effective December 1, 2006 the Federal Rules of Civil Procedure were amended to address the rapidly changing landscape of electronic discovery. These amendments apply to all cases filed following enactment, and may apply to cases pending on the date of enactment where “just and practicable.”¹ Now more than ever, potential litigants must prepare to navigate the treacherous waters of effective document management and electronic discovery well in advance of litigation.

The best practices in electronic discovery and effective record management are unavoidably intertwined. In this day and age, companies must proactively understand and manage their data—which is increasingly and exponentially becoming electronic in form—so as to best prepare for litigation.

Though we remain in the relative infancy of these new rules of engagement, three derivative objectives of the new rules have become evident. These objectives of transparency, preparedness, and communication guide the best practices suggested in this chapter. The chapter attempts to traverse the vast terrain of document retention and e-discovery best practices in the hopes of providing a clear insight on how best to position your company to be ready, willing and able to tackle its newly enhanced discovery obligations.

¹ Order of the Supreme Court, Rules of Civil Procedure, at *3, available online at <http://www.supremecourtus.gov/orders/courtorders/frcv06p.pdf> (last visited Apr. 16, 2007).