

DISCOVERING NEW RULES

*Electronically stored
information now factors
into litigation.*

BY MELISSA ROGOZINSKI

It's 5:30 Friday night. Cold. Raining. It's been a hard week at work, and you just want to go home. Traffic on I-65 is packed. Then, a crash. The car behind you slips into your rear bumper, slamming you into the guard rail. You text your spouse, "Just wrecked. OK. Call soon." Six months later, you sue the driver who rear-ended you for damages.

Electronically stored information, which includes texting, has become its own issue in litigation. By now, most everyone in the legal industry knows that the federal and state rules have been amended to address the inundation of ESI in litigation. However, what many folks in the industry don't know is how to deal with it. ESI is overly voluminous, and calling it "cost-prohibitive" is laughable.

The Alabama Supreme Court amended the Alabama Rules of Civil Procedure, allowing for discovery of ESI in a lawsuit. These rules affect probate cases, domestic relation cases and civil cases like a car wreck case. The federal rules of civil procedure were amended in December of 2006. To get up to speed on these issues, the ESI Roundtable was formed to promote education on issues relating to what is commonly referred to as "e-discovery" and how it affects litigants. The roundtable includes Honorable Scott Vowell and Honorable Robert Vance, Jefferson County Judiciary; Allison Skinner, Sirote & Permutt; Marty Burke, Burr & Forman; Lloyd Gathings, Gathings Law; Pat Ballard, Ballard Law; Paul Zimmerman, Christian & Small; David Deusner, Bradley Arant; Rich Melville, Maynard Cooper & Gale; and Melissa Rogozinski, Merrill Corporation.

Since 2010, this group has written and presented numerous continuing legal education courses on a variety of e-discovery topics, like the e-Discovery Crash Course, Introduction to the Alabama Rules of Civil Procedure e-Discovery Amendments and Panel Discussion, Deposing the e-Discovery Witness and Social Media. Because of this collaborative effort, our litigation community can confidently and safely navigate the choppy waters of e-discovery.

So the next time you're in an accident, definitely notify your loved ones. Just think twice about texting them—it could work against you in a lawsuit.

For more information on the Birmingham ESI Round Table and the 2011 CLE Schedule, contact Melissa Rogozinski at melissa.rogozinski@merrillcorp.com or (205) 873-1234.



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