

Insights: Publications

And The Truth, or Lack Thereof, Shall Set You Free - PART TWO

LitSmart E-Discovery Blog

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As recently discussed by my colleague Nicole Allen, when there is an ESI protocol applicable to a case, parties must adhere to its terms. In *Burris*, there was a stipulated protective order, formalized as a court order by the judge and amended twice, that set forth procedures regarding discovery of ESI. While the Plaintiff's conduct in this case was particularly egregious, the judge notes many times in this order that the excuses offered by the Plaintiff regarding why he engaged in this conduct were contrary to the agreed upon definitions and categories of relevant information proscribed in the protective order and subsequent addendums. Plaintiff contended that there was essentially a cut-off date after which no relevant ESI could have been created in attempting to justify his deletion of data; however, as the judge pointed out in his analysis, the protective order defining what ESI was relevant included no cut-off date or time frame that limited when relevant ESI could have been created. When parties negotiate an ESI protocol and the court accepts that protocol, everyone involved in the case should understand those agreed upon terms and procedures and follow them. The court will expect nothing less.

Related People



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