



WHY STATES SHOULD ADOPT

THE MODEL RULES RELATING TO DISCOVERY OF ELECTRONICALLY STORED INFORMATION

The Model Rules Relating to Discovery of Electronically Stored Information address issues that have arisen during civil litigation due to the changing nature of information storage. Current estimates state that more than 90% of all business and government data is stored electronically. The dynamic nature of electronic storage in relation to paper documentation necessitates revision of state discovery and civil procedure rules.

Adoption of rules governing discovery of electronically stored information help promote consistency in state judicial proceedings and would do so in regard to a situation where uniformity is desirable and practicable. Moreover, adoption of the Model Rules benefits the public by enhancing awareness of the types of potentially relevant information an individual or company must preserve and by reducing litigation costs.

The Model Rules provide state court systems with rules covering:

- **Mandatory Conferences and Reporting.** The Rules require parties to confer regarding the forms of production and the extent to which data must be preserved and produced and questions of privilege at the outset of litigation. By mandating early agreement between parties on potential discovery issues the Rules provide for efficient and orderly discovery.
- **Scope and Form of Discovery.** The Rules recognize that electronically stored information may exist in multiple forms and that different forms of production may be appropriate for different types of information. The Rules allow the requesting party to specify the form of production and allows objection by the responding party.
- **Claims of Privilege.** Parties responding to discovery requests should permit discovery of information that is relevant, reasonable accessible, and not privileged. However, if privileged information is disclosed inadvertently, the Rules provide a procedure for a party to assert privilege after the disclosure.
- **Congruence with Federal Rules of Civil Procedure.** Discovery permitted by the Rules must comply with the laws of the discovery state. The Rules recognize that the discovery state has a significant interest in protecting its residents who become non-party witnesses in an action pending in a foreign jurisdiction from unreasonable or burdensome discovery requests. Moreover, all motions to quash or modify a subpoena must comply with the law of the discovery state.

For further information about the Model Rules Relating to Discovery of Electronically Stored Information Act, please contact ULC Legislative Program Director Katie Robinson at (312) 450-6600 or krobinson@uniformlaws.org.