

California Electronic Discovery Act

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California's Electronic Discovery Act was signed into law on June 29, 2009, establishing procedures for parties to discover electronically stored information ("ESI") from opposing parties for use as evidence in state court actions.

"Electronically stored information" means information that is stored in any electronic medium. [California Code of Civil Procedure ("Cal CCP"), Section 2016.020(e)]

As such, ESI may include, among other things, social media, blogs, text messages, emails and other electronic files that exist on computers, cell phones, and/or other electronic devices.

The nature of ESI raises important procedural issues due to the digital/electronic form in which ESI exists, the manner and method by which it is stored, the metadata created as part of electronic files, and the burden and cost that can apply to its production as evidence.

As a general matter, under the Electronic Discovery Act, a subpoena may require the production of ESI, and may also require that the party serving the subpoena be permitted to inspect, copy, test, or sample the information. [Cal CCP 1985.8(a) (1)A]

The requesting party is permitted to specify the form or forms in which each type of subpoenaed ESI is to be produced. If the requesting party fails to specify the form, the person subpoenaed is required to produce the information in the form or forms in which it is ordinarily maintained, or in a reasonably usable form. [Cal CCP 1985.8(b) and (c)(1)]

One can imagine how these basic rules might lead to unreasonable or burdensome results. That's why the Electronic Discovery Act sets forth additional provisions to guide the courts, and parties involved in lawsuits, so that the benefit and value of this electronic evidence can inform fact finders and judges in a responsible and reasonable manner.

In the short time since the Electronic Discovery Act was passed, technology and social media has become an increasing presence in everyone's lives. Future articles in this series will address specific issues such as social media posts, blogs, and text messages, as well as the procedures for requesting or objecting to the production of this information, the potential for cost-shifting, and limits to this discovery.

Link to original article: <http://commercialcounselor.com/california-electronic-discovery-act/>

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