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The Honigman e-Discovery Practice Group, comprised of attorneys, IT experts and litigation support personnel, advises clients on e-discovery issues, records retention policies, and ESI management in the litigation context. For additional information on the e-Discovery Practice Group or these new rules, please contact Michael P. Hindelang at (313) 465-7412 or Timothy A. Devine at (313) 465-7334.

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Michigan Supreme Court Adopts New e-Discovery Rules

The Michigan Supreme Court recently adopted several amendments to the Michigan Court Rules that address the discovery of electronically stored information (ESI), commonly known as “e-discovery.” The new rules take effect on January 1, 2009.

Michigan’s new e-discovery rules address, among other things: how ESI should be preserved and produced; how the costs of e-discovery are allocated; and what role the trial court will play. The new rules also include a “safe harbor” provision designed to protect parties who, in good faith, inadvertently delete ESI relevant to litigation. With these changes, Michigan joins 19 other states and the federal courts in adopting specific rules to address e-discovery.

The rule changes recognize the central role electronic information now plays in all aspects of communication and commerce. ESI – in every variety, including emails, databases, spreadsheets, CAD-CAM, and many others – may be just as relevant to litigation as paper information. The new rules make clear that it must be carefully managed, preserved and, potentially, produced to an adverse party in litigation. The sheer volume of ESI can make it difficult and expensive to manage effectively, and these new rules identify procedures in light of the special challenges of e-discovery.

Under these new rules, ESI must be preserved in the same way as any other type of information. In other words, if a paper document would have needed to be preserved under the old court rules, both paper and electronic documents would need to be preserved under the new rules. The continuity of preservation requirements between paper and electronic data will permit clients to have a single records retention policy and minimize internal costs of compliance should litigation occur. Also, the rules contain a “safe harbor” provision similar to that contained in the recent amendments to the Federal Rules of Civil Procedure. This provision is designed to protect a party who inadvertently destroys ESI despite good faith efforts to preserve it.

Honigman has been on the cutting edge of e-discovery law and addressing the challenges of ESI and records retention. Michael P. Hindelang and Timothy A. Devine, co-heads of the e-Discovery Practice Group at Honigman, submitted a number of comments to the Supreme Court for its consideration in promulgating these new rules, and Mr. Hindelang participated in the Supreme Court hearing on this issue. The adopted rules acknowledge many of the challenges of e-discovery and set forth e-discovery procedures for state court litigants going forward.