MAGISTRATE JUDGE MICHAEL T. MASON
219 South Dearborn Street
Chicago, IL 60604

Courtroom 2266 **Telephone: (312) 435-5610**
Chambers 2270 **Fax Number: (312) 554-8238**
Web Site: http://www.ilnd.uscourts.gov

Courtroom Deputy - Rosa Franco
Room 2260
(312) 435-6051

STANDING ORDER FOR ELECTRONIC DISCOVERY ("ESI")
FOR CASES BEFORE JUDGE MASON

The purpose of this Standing Order is to facilitate compliance with the provisions of Fed. R. Civ. P. 16, 26, 33, 34, 37 and 45 relating to the discovery of electronically stored information ("ESI"). To the extent there is any conflict between this order and the aforementioned rules, the rules govern. This order is not meant to address every potential problem related to ESI discovery. If additional guidance is required, the parties are encouraged to consult the Sedona Principles published by The Sedona Conference® at www.thesedonaconference.org.

1. Duty to Investigate and Disclose: Prior to conducting the Fed. R. Civ. P. 26(f) conference, counsel should familiarize themselves with the client's informational management systems and their operation, including how information is stored and retrieved. Counsel should make a reasonable attempt to review the client's ESI, including currently maintained computer files and backup, archival and/or legacy data to determine what must be disclosed pursuant to Fed. R. Civ. P. 26(a)(1). Counsel must identify the key person(s) with the most knowledge of the client's information management systems who can facilitate reasonably anticipated discovery. Finally, counsel should analyze what information needs to be preserved and determine the scope of the "litigation hold."

2. Duty to Notify: A party seeking discovery of ESI shall notify the opposing party as soon as possible. If known at the time of the Fed. R. Civ. P. 26(f) conference, the party should identify as clearly as possible the categories of information sought.

3. Duty to Meet and Confer: During the Fed. R. Civ. P. 26(f) conference, counsel should discuss and attempt to agree on the following:

- the steps the parties will take to identify and preserve ESI;
- the scope of e-mail discovery and the e-mail and ESI search protocol;
- the form(s) in which ESI will be produced;

- whether "embedded data" and "metadata" exist, and whether it will be requested or should be produced;
- the method(s) of identifying pages or segments of ESI produced in discovery;
- the need for any protective orders and/or confidentiality agreements;
- the protocol in the event materials protected by the attorney/client and/or work product privilege are inadvertently produced; and
- if applicable, the terms of a "quick peek" or "clawback" agreement.

With regard to the form of ESI, the parties should discuss whether the production will be in native format, static image, or other searchable or non-searchable format. The parties are reminded that under Fed. R. Civ. P. 34(a)(2)(D), if the requesting party has not designated the form in which the ESI is to be produced or if the responding party objects to a requested form, the party must state the form(s) it intends to use.

It is anticipated that each parties' discovery needs will be satisfied from reasonably accessible sources. Unless the information sought is not accessible without incurring undue burden or cost, the parties should presume that the producing party bears all costs. This Court will not consider requests for costs sharing without a showing of good cause under Fed. R. Civ. P. 26(b)(2)(C). Examples of ESI which may involve undue burden or cost include, without limitation, systems data, archival media and backup tapes.

4. Duty to Meet and Confer when Requesting ESI from Non-parties: Parties issuing requests to produce ESI to non-parties should, after reviewing the requirements of Fed. R. Civ. P. 45(d), attempt to meet and confer with the non-party and discuss the issues set forth in paragraph 3, above.

5. Objecting to ESI Discovery: No party should object to the production of ESI on the basis of undue burden or costs unless the objection is stated with particularity, and not in conclusory or boilerplate language.

ENTER:

MICHAEL T. MASON

United States Magistrate Judge

Entered: February 18, 2010