

ARKFELD'S

# E-DISCOVERY UPDATE

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## RECENT NEWS AND CASES

**Authentication Problems With Computer Records.** *In re Vee Vinhnee*, 336 B.R. 437 (B.A.P. 9th Cir. 2006). The bankruptcy court refused admission of computer records and noted that "it is becoming recognized that early versions of computer foundations were too cursory. . . [and] the increasing complexity of ever-developing computer technology necessitates more precise focus. . . [it goes beyond] the identification of the particular computer equipment and programs used."

**Cross-Reference:** Michael R. Arkfeld, *Electronic Discovery and Evidence*, § 8.13 Computerized Business Records.

**TIFF Production Rejected by Court, Native Files Ordered.** *Hagenbuch v. 3B6 Sistemi Elettronici Industriali S.R.L.*, 2006 WL 665005 (N.D. Ill. Mar. 8, 2006). The Court rejected defendant's argument that TIFF images were adequate production and ruled that TIFF images were not the equivalent of the original electronic data with its metadata, etc. even though TIFF images, were easier to bate stamp.

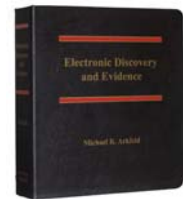
**Cross-Reference:** Michael R. Arkfeld, *Electronic Discovery and Evidence*, § 5.3 Electronic Data Formats; § 5.7 [H] Redaction - Privileged Material; § 7.7 [D] Kept in the Usual Course of Business; [F] Form of Production of Computer-based Data.

**Court Finds "Close Call" in Not Terminating Case for Lost Electronic Evidence.** *Adams v. Gateway, Inc.*, CIV.02-106, DOC.# 484 & #517 (D. Utah Mar. 6, 2006) (Memorandum Decision and Order and Order to Unseal). Though the Court decided against terminating the case against the defendant, it ordered negative inferences and attorney fees for nine items of evidence that were missing. The Court found "ample circumstantial evidence of bad faith spoliation. . . [and it] is this Court's considered opinion, upon review of the entire record, that terminating sanctions are a close call."

**Cross-Reference:** Michael R. Arkfeld, *Electronic Discovery and Evidence*, § 7.9, Sanctions.

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## SPECIAL POINTS OF INTEREST:



**Do You Need to Know About Electronic Discovery to Protect Yourself and Your Clients?**

Find the answers to your questions in the *Electronic Discovery and Evidence* (2005-2006 ed.) treatise by Michael R. Arkfeld, Esq.

To read the reviews and to order a copy of the acclaimed 2005-2006 edition of the *Electronic Discovery and Evidence* treatise visit Law Partner Publishing at ([www.lawpartnerpublishing.com](http://www.lawpartnerpublishing.com)).

[Just Released! Electronic version of the treatise!](#)

### Events

May 5, 2006—The *Electronic Discovery and Evidence* treatise and *E-Discovery Best Practices Guide* will be the course materials at the upcoming South Carolina State Bar E-Discovery seminar to be held on May 5, 2006 in Columbia, South Carolina. The featured speaker will be Michael Arkfeld. Join us! For further information click on [E-Discovery Best Practices Seminar](#) or go to the web site at <http://www.sctbar.org/events/index.pl> for further details.

### E-Discovery Course

To bring a CLE approved *Electronic Discovery and Evidence* course to your firm or organization contact us at [Michael@arkfeld.com](mailto:Michael@arkfeld.com) or visit [Arkfeld and Associates](#) site at [www.arkfeldandassociates.com](http://www.arkfeldandassociates.com).

### E-Discovery Expert

*E-Discovery Expert* is an electronic cross-referenced hyperlinked compilation of the acclaimed *Electronic Discovery and Evidence* treatise, *E-Discovery Best Practices* and *Practice Resources* providing a comprehensive system to assist you in the discovery and disclosure of electronic evidence. For further information visit: Law Partner Publishing at [www.lawpartnerpublishing.com](http://www.lawpartnerpublishing.com).

**Court Rules Disclosure of Information in Electronic Format was not a “Data Dump.”** *Jackson v. City of San Antonio*, 2006 WL 487862 (W.D.Tex. Jan 31, 2006). The plaintiff objected to defendants' production of comput-