

ARKFELD'S

**E-DISCOVERY UPDATE**

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## RECENT NEWS AND CASES

**United States Supreme Court Approves Electronic Discovery Changes to Federal Rules of Civil Procedure.** On April 12, 2006 the United States Supreme Court approved the proposed amendments to the Federal Rules of Civil Procedure. These rules concern the discovery of "electronically stored information" (ESI) and affect Rules 16, 26, 33, 34, 37, 45 and Form 35. The rules have been sent to Congress and will become effective on December 1, 2006 unless Congress acts to change or defer the amendments. The proposed amendments are available on the United States Supreme Court's web site at: <http://www.supremecourtus.gov/orders/courtorders/frcv06p.pdf>.

**Cross-Reference:** Michael R. Arkfeld, *Electronic Discovery and Evidence*, Chapter 7, Court Procedural Rules and Case Law.

**Court Orders Defendant to Make Available Employee Who Could Discuss Efforts to Locate E-Mail Attachment.** *Fischer v. United Parcel Serv. Co.*, 2006 WL 1046973 (E.D. Mich. Apr. 19, 2006). Defendant was unable to find an attachment to a responsive e-mail during the discovery process. The Court granted plaintiff's request to discuss with defendant's employee their search efforts to locate the attachment. The Court granted the discovery request ruling that even though the attachment may not be admissible and irrelevant, it could reasonably lead to the discovery of admissible evidence.

**Cross-Reference:** Michael R. Arkfeld, *Electronic Discovery and Evidence*, § 7.04[F] Relevancy and Overbroad Concerns - Rule 26(b)(1).

**Court Refuses to Allow Inspection of Computers Absent Evidence of Missing Data.** *Floeter v. City of Orlando*, 2006 WL 1000306 (M.D. Fla. Apr. 14, 2006). In this employment discrimination case the plaintiff requested the opportunity to physically inspect two computers and also wanted a computer printout of all e-mails from a specific police lieutenant. The Court citing Rule 34 stated that the a party does not have the right "to conduct the actual search." In addition, the Court ruled that their was no showing that any inspection of the computers or production of printouts of e-mail would lead to discoverable evidence.

**Cross-Reference:** Michael R. Arkfeld, *Electronic Discovery and Evi-* **Cont. Next Page**

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).

## (CONT.) RECENT CASES AND NEWS

*dence*, § 7.04[F] Relevancy and Overbroad Concerns - Rule 26(b)(1); § 7.07 Request to Produce and Inspect

**Supreme Court Agrees to Allow Citation to “Unpublished” Opinions in Federal Courts.** In a significant rule change the United States Supreme Court has decided to allow citations to "unpublished" federal court decisions. In this historic decision the rule will become effective unless Congress acts to countermand it before December 1, 2006. The text of the Order can be found on the United States Supreme Court web site at <http://www.supremecourtus.gov/orders/courtorders/frap06p.pdf>.

**Cross-Reference:** Michael R. Arkfeld, *Electronic Discovery and Evidence* (2005-2006 Ed.)

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