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March 11, 2010 Webinar: How to Assure that Your Legal Hold Process is Legally Defensible

It has been three years since the Federal Rules of Civil Procedure were amended to provide a party protection from sanctions for failing to preserve electronically stored information. Rule 37(e), commonly referred to as the “safe harbor” provision, states:

Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good faith operation of an electronic information system.

Several state courts subsequently enacted similar safe harbor provisions.

During the last few years, courts have had an opportunity to apply the safe harbor rule. Most courts addressing the issue have held that in order to take advantage of the safe harbor protection, an organization needs to act affirmatively to prevent its data management system and employees from destroying or altering information, even if such destruction would occur in the regular course of business. In other words, “good faith” for purposes of the rule will involve the court examining the steps an organization took to implement a litigation hold.

During our March 11th webinar, we will provide guidance on what an organization should do to effectively implement a litigation hold. In particular, we will provide you with the following:

- Explanation of the safe harbor protection: how much protection does it really provide?
- Summary of recent case law which identifies the most common litigation hold problems.
- Overview of our recommended litigation hold process and form documents.

Miller Canfield will offer a free Webinar at 1:00 p.m. EST on Thursday, March 11, 2010 discussing this topic in greater detail. If you are interested in attending, please contact Virginia Herrick at 313.496.7548 or herrick@millercanfield.com. If you can not attend the live webinar we can send you the audio and PowerPoint slides to view at your convenience.

For more information about Miller Canfield’s Electronic Discovery + Records Management Group, or to request removal from our mailing list, please contact Jay Yelton at 269.383.5819 or yelton@millercanfield.com.