

For Immediate Release

## **New Federal Rules Effective December 1, 2006 May Require Companies to Save Electronically Stored Information, including E-mail & Voice Mail – but also provide “Safe Harbor” Protection**

### **Failure to comply may result in penalties & sanctions**

**NOVEMBER 21, 2006, St. Louis, Missouri** ...On December 1, 2006, amendments to the Federal Rules of Civil Procedure triggered by litigation (“E-Discovery Rules”) will likely force businesses to follow new procedures for storage, preservation and production of electronic documents and voice mail.

John W. Traeger, a partner at the law firm of Gallop, Johnson & Neuman in St. Louis, said, “Failure to follow the new E-Discovery Rules for electronically stored information (ESI) may result in sanctions and/or stiff penalties for corporations, entrepreneurial enterprises and not-for-profit organizations in the face of litigation or pending litigation.

“Because the threat of litigation may trigger a ‘litigation hold’ on certain electronic documents, all organizations should implement a carefully drafted record management program that addresses discoverable ESI,” Mr. Traeger said.

Pursuant to the new E-Discovery Rule, the scope of discoverable ESI now includes word-processed documents (including drafts), e-mail, voice mail; e-calendar entries, electronic presentations (such as Microsoft PowerPoint®), electronic spreadsheets (such as Microsoft Excel®), and, generally speaking, all other business-related information generated, stored or transmitted via a personal computer, laptop, wired telephone system, wireless cellular telephone, wireless voice/data/email device (such as a Blackberry®), and other electronic voice and data communications devices.

Failure to retain records that may be discoverable in litigation may expose the organization to significant legal and financial liability. Additional risks may include:

- Disruption of business during the discovery process.
- Potential damage to a company’s reputation based on allegations that records were illegally destroyed.
- Inadvertent disclosure of privileged and confidential information as part of the ESI discovery process.

“Many companies and not-for-profit organizations in St. Louis and nationwide are now implementing or planning to implement new ESI record management programs in order to take advantage of the E-Discovery Rules’ ‘Safe Harbor’ provisions, Mr. Traeger said.

The following are a few examples of action businesses can take to obtain Safe Harbor protection:

- Implementing new company policies and procedures for managing business records, including the retention and destruction of paper and electronic records, subject to federal and state retention requirements.
- Implementing new policies and procedures that place a “litigation hold” on all records that may be discoverable in litigation to protect against potential claims and sanctions, including claims of “spoliation of evidence.”
- ESI training programs for all employees.
- IT Director’s involvement in development of new policies, procedures and employee training programs.
- Confirming implementation of the new ESI policies and procedures.

**The new E-Discovery Rules will impact virtually every type of business, governmental and not-for-profit organization.** Businesses should closely monitor federal court decisions interpreting these new rules, and states that adopt the new federal rules.

For more information, contact John W. Traeger at Gallop, Johnson & Neuman in St. Louis at 314.615.6113. Mr. Traeger has extensive professional experience in dealing with federal, state and local regulatory authorities, and with ESI records management programs.

Founded in 1976, Gallop, Johnson & Neuman serves public and privately held corporations, small companies, start-up enterprises, entrepreneurs and non-profit entities, as well as individuals and families, in diverse practice areas. It is one of the ten largest law firms in St. Louis. Offices are located at 101 South Hanley Road, Suite 1700, Clayton, Missouri, 63105.

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