

# Judge Sasser Issues Standing Order on E-Discovery

Commentary by David Steinfeld, *Daily Business Review*

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David Steinfeld.

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Ten years ago when lawyers spoke of electronically stored information, or ESI, in most Florida state court cases they got strange looks and chuckles. Five years ago, lawyers in Florida began to slowly open their eyes to electronic discovery and began to view it as both a sword and a shield in litigation. And if you think you are behind the technology power curve now, consider that about five years ago my young nephew told me that emails were something older people used to send documents back and forth! Thanks, kid.

Still, even today most Florida lawyers regard e-discovery as something they'd hire younger lawyers to handle and something they might have to address in the future. Well, the future is now as the saying goes.

This summer, Palm Beach Circuit Judge Meenu Sasser became the first sitting state court judge in Florida to implement a standing order on ESI. That order is now applicable to every single case in her division. This is

"huge" as one of our current presidential candidates would say. This watershed event signals the start of a new trend in Florida with the bench becoming actively involved in and controlling the flow of e-discovery in civil lawsuits.

Judge Sasser's standing ESI order can be found in a variety of locations including her own division page on the circuit's website and on private e-discovery information sites such as the member page of Everythinge-Discovery.com. She created her order with assistance and input from the Palm Beach County Bar Association's circuit civil practice committee. It essentially creates a meet-and-confer obligation not unlike Federal Rule 26, but it is more pointed in its approach.

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The September 2012 Florida Procedural Rule Amendments brought e-discovery into the rules but omitted two components present in their federal procedural counterparts; the meet-and-confer and specific sanctions.

Like Rule 26, Judge Sasser's new order mandates that the parties discuss ESI, but it also requires that they address whether the case might qualify as complex litigation (Palm Beach County does not have a separate business court) and the costs and timeframe of e-discovery in the dispute. Also like Rule 26, the order requires the plaintiff to file a pleading with the court indicating the parties' compliance. But unlike Rule 26, Judge Sasser's order wisely invokes the existing case management conference as the mechanism for bringing bring the parties before the court before e-discovery issues spiral out of control.

This new ESI order idea is not a burdensome restriction on discovery or a heavy-handed approach from the court. Judges across the state have been watching e-discovery result in collateral litigation with unimaginable expenses and that have created new and complex burdens on our judges. This order is a response and reaction to that. This is the judge telling the lawyers, 'I don't care how you run your case, but you're going to know how to conduct e-discovery effectively and efficiently, and you are not going to waste the court's time with hearings on discovery issues that should be appropriately managed by the parties.' "

## Coming Soon

Recently, at the Florida Bar's annual Labor Day business law section retreat, several judges from around the state closely examined Judge Sasser's order in roundtable discussions. The keen interest that they expressed leaves only one reasonable conclusion — they are considering implementing her order or a modified version in their own jurisdictions.

Also, the Florida Bar's business law section e-discovery committee has decided to include Judge Sasser's order in materials it presents to judges. On Sept. 14, for that committee, David Hazouri and Bart Valdes included her order in a course to judges in Broward County. So the die has now been cast, and if judges around the state begin to adopt Judge Sasser's order, it is only a matter of time before all lawyers will have to build these issues into the regular handling of their lawsuits.

It is also foreseeable that in the near future the handling of ESI and the management of e-discovery will become a mandatory part of every civil action, not unlike mediation did back in the mid-'90s. In just a few years, young lawyers will ask us "old guys" at bar events what it was like practicing in the "before time," the time before Judge Sasser's order ... and we will feel even older and more out of date and sarcastically thank them for it.

## Get Ready

So how do lawyers young or old prepare for the reality that will very shortly be upon us in the form of standing ESI orders all over the state? Simple, continuing legal education courses. They are the best mechanism for training attorneys on useful and helpful information on any practice topic or change in the law and are regulated by the bar. Unfortunately, there seemingly aren't too many good opportunities outside of perhaps large conferences to learn the actual mechanical process of e-discovery except for one 8.5 credit course offered by Everything e-Discovery.

Everything e-Discovery trains judges, lawyers and paralegals on the mechanical process of e-discovery from what to put into retainer agreements to how to counsel on and assess a client's ESI to how to pick and use e-discovery software effectively to stay competitive.

The next live program is in West Palm Beach on Oct. 21. Judge Sasser will be present at that program and will speak about her standing order along with several other local judges. This catered program includes presentations by practicing attorneys skilled in e-discovery and by companies that provide critical services like forensic collections. It will even feature a cocktail reception with the judges afterward.

Register at [www.Everythinge-Discovery.com](http://www.Everythinge-Discovery.com). This IS the way to learn about e-discovery, to stay competitive in your profession and to ensure that you are prepared to comply with the standing ESI order that is coming to your jurisdiction soon.

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