Tucker Ellis LLP

E-Discovery "Self-Collectors" Beware: New Federal Rule Could Pose Problems

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On December 1, 2017, an amendment to Rule 902 of the Federal Rules of Evidence is expected to take effect that will undoubtedly change the way litigants handle e-discovery collections. The amendment, which can be viewed in its entirety here, adds two new subsections to the rule (subsections 13 and 14). The biggest impact on e-discovery will likely come through the enactment of the new subsection 14, which provides a simplified process for authenticating Electronically Stored Information ("ESI"). As long as litigants provide a certification from a "qualified person" that the ESI was collected through a reliable "process of digital identification," the litigants will no longer be required to authenticate ESI through trial testimony of a forensic expert—the ESI becomes self-authenticating.

Read the Client Alert here.

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