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Access to Computer Hard Drive Images Not an Inherent Right During Litigation says Forensic Expert Greg Fordham of K&F Consulting

ATLANTA – Although parties to litigation have a duty to preserve electronic data, they may not be required to produce the data that has been preserved.

In a recently published article, *Access to Computer Hard Drive Images*, Fordham analyzes two decisions where courts have denied production of the entire hard drive. (See, *Peskoff v Faber*, 2007 WL 2416119 (D.D.C.) and *Calyon v Mizuho Securities USA, Inc.*, Slip Copy, 2007 WL 1468889 (S.D.N.Y.))

“Essentially these courts have taken the position that production and discovery of imaged hard drives is not an inherent right of the requesting party even if the data is easily accessible,” Fordham said.

“Whether data is producible still turns on its relevance to the case as well as other factors,” says computer forensics expert Greg Fordham of K&F Consulting.

With the advent of decisions like *Peskoff* and *Calyon* Fordham says litigators are likely to encounter greater resistance to production of entire computer hard drives unless the requesting party can effectively justify their requests by showing:

- discovery “discrepancies and inconsistencies”; or
- a nexus between the computer hard drive and the act initiating the lawsuit; or that,
- the producing party was not capable or willing to produce the requested information.

The full text of his article, including citations, is available and may be downloaded at no cost from www.knfcon.com/access2images.pdf. Fordham writes extensively on e-discovery matters and the Georgia Bar Association has approved his e-discovery presentation for CLE credit.

Although the first two criteria cited in *Calyon v Mizuho* should be easily understood by both requesters and courts, the third criteria is more involved and Fordham provides suggestions in his article.

“In the end, there may be no substitute for production of the entire hard drive. In those cases, the requester will simply need to be persistent and use every opportunity to incrementally convince the court of the merits of its requests and gain access to the evidence so crucial to its case,” Fordham says.

About K&F Consulting

With offices located in the metro Atlanta area, K&F Consulting services a nationwide clientele. The firm provides a variety of e-discovery, damages quantification, and computer forensics including database forensics and software forensics services. For more information on K&F Consulting visit www.knfcon.com or call 770-642-0311.