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Digital Evidence ‘Arms Race’ in Courtrooms Creates New Hurdles for Attorneys Says K&F Consulting’s Greg Fordham

ALPHARETTA, Ga.—Sept. 17, 2007 – Although paper continues to play a role in American Jurisprudence, it has been largely replaced by digital evidence, and while lawyers and judges have learned to deal with the realities of the new medium, so have the ‘evil doers’.

“The lesson for lawyers is that there is an undeclared war which has fostered a digital arms race of sorts,” said Greg Fordham, founder of K&F Consulting Inc.

“A lawyer’s hurdles with digital evidence are no longer limited to concerns about cost saving measures or protecting the smoking gun from legal maneuvering that is designed to keep it hidden,” he said.

“Now there is an ever increasing need to validate the production of digital data. This means that when a production request is being planned, the attorney must also consider what artifacts and elements should be included in order to facilitate the validation,” he added.

When paper evidence was king in the courtroom, it could be hidden with shredders, white out and various copier manipulations. In the digital age there are also ways to destroy data and make it unrecoverable.

However, any keyboarding activity on the computer is similar to standing at the edge of a pond and throwing a pebble into it. Both the ripples on the water and the footprints at the pond’s edge can be detected by experienced computer forensics analysts.

“Cyber criminals understand that being detected is still a long way from being convicted. Their objective is to so badly jumble and deface the remnants and artifacts

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normally used by forensic analysts that the evidence is useless in the courtroom,” Fordham noted.

But with the proliferation of anti-forensic tools, web sites and conferences teaching anti-forensic techniques, entering the e-discovery battle field with out the aid of a computer forensics ninja is ill advised.

Fordham has written extensively on forensic auditing and e-discovery matters and is an expert witness in many state and federal cases involving e-discovery and computer forensics. He is a contributing writer for the *2007 Construction Law Update* which was published earlier this year by Aspen Publishers and the Georgia Bar Association has approved his e-discovery presentation for CLE credit.

His article, *Anti-Forensics: The Judicial Arms Race*, may be downloaded without charge at www.knfcon.com/AntiForensics.pdf.

About K&F Consulting

With offices located in the metro Atlanta, K&F Consulting services a nationwide clientele. The firm provides a variety of e-discovery and computer forensic services including database forensics, software forensics as well as the more well known forms of computer forensics. For more information visit www.knfcon.com.