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New Guidance on Collecting Data From Personal Electronic Devices During Discovery

by Alex L. Rubenstein

The First District Court of Appeal of Florida recently issued a potentially instructive opinion that may provide a helpful road map for civil litigants seeking to obtain data from a party's personal cell phone.

In *Antico v. Sindt Trucking, Inc.*,¹ a wrongful death action brought on behalf of a woman killed in a car accident, the court affirmed a trial court order that granted Defendants' motion to permit its expert to examine the decedent's cell phone to determine whether she was using the phone at the time of the crash. Defendants supported their request with phone records and witness testimony.

The trial court's order allowed Defendants' expert to examine the cell phone in the presence of Plaintiff's counsel, permitted counsel to videotape the inspection, and set forth the following steps for extraction, review and production of the information:

1. Install write-protect software to ensure the phone's hard drive could not be altered during the inspection.
2. Download the contents of the phone's hard drive, making a master copy, a review copy, and a copy for Plaintiff's counsel.
3. Return the phone to Plaintiff's counsel immediately after copying the hard drive.
4. Review only the data on the hard drive for the nine-hour period permitted by the Court (including call records, text messages, web searches, emails sent and received, uploads, downloads, data changes and GPS data).
5. Summarize the data reviewed, including its type, use, date and time, and any other information deemed relevant.
6. Provide the summary to Plaintiff's counsel prior to disseminating any more specific findings. Plaintiff's counsel had ten days from service to object to the release of any or all of the data, citing grounds for each objection.
7. In the absence of any objections, Defendants' expert could release the findings to Defendants' counsel.

The appellate court found that the trial court's order struck the proper balance between Defendants' substantial interests and right to obtain relevant information and the decedent's privacy interests. In affirming this order, the District Court of Appeal of Florida has given litigants a potentially helpful resource for setting the parameters of data extraction and review from personal electronic devices. ■

¹— So. 3d —, No. 1D14-277, 2014 WL 5099433 (Fla. Dist. Ct. App. Oct. 13, 2014)

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