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## Due Diligence: Malware Virus No Excuse

If you think protecting your computer from malware, viruses, and other misfortune is somewhat important, but not a top priority, think again.

On March 26, 2010, the 4th US Circuit Court of Appeals upheld the dismissal of a wrongful termination case when the plaintiff's lawyer failed to respond to a Motion for Summary Judgment served by e-mail. The lawyer told the court he never received electronic notice of the motion because his "computer system experienced several problems ... that caused him not to receive various e-mails." He explained that his "computer was afflicted by a malware virus" and "his firm's domain name had temporarily expired when the Motion for Summary Judgment was filed."

Was the court overly harsh in its response? Probably not. The court's [opinion](#) lays out the aggravating circumstances:

- The lawyer knew that any notice of docket activity would arrive through e-mail pursuant to local rules of practice and procedure.
- He also knew the deadline for dispositive motions in the case was pending during the time the firm was experiencing computer problems.
- Nothing in the CM/ECF system indicated that the lawyer failed to receive notice of the filing.
- The lawyer was well aware of the computer and e-mail problems.
- He did not inform the court or opposing counsel of his inability to receive e-notices.
- He failed to check the CM/ECF system for docket activity, and had no system in place for doing so.
- When he became aware the deadline passed, the lawyer made a strategic decision *not* to contact opposing counsel.

The morale of the story: [Protect your computer](#) and don't bury your head in the sand. While more was going on here than a mere computer virus, this is still an important wake-up call as we continue to roll out [e-court in Oregon](#).

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