



Motion to Compel to Camera Phone Photo

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Just as the Def Leppard Song Goes: All I got is a photograph — and it is not enough. (from the classic *Photograph*)

The Defendants requested a photo from a Plaintiff that was taken on his cell phone. The Plaintiffs in turn produced the photo.

There was one little problem with the production for the Defendants: They thought the photo was of poor quality. *Green v. Fluor Corp.*, 2009 U.S. Dist. LEXIS 49335 (M.D. La. June 11, 2009).

The Defendants brought a motion to compel production of the Plaintiff's camera phone and email account, in an apparent attempt to see a "better quality" photo.

Problems with the Motion to Compel: The Defendants never made a Rule 34 request to inspect or produce the Plaintiff's camera phone or his email account. Moreover, the Defendants did not state a form of production for the photo pursuant to Federal Rule of Civil Procedure Rule 34(b)(1)(C). *Green*, 1-2.

The Plaintiff had the right pursuant Federal Rule of Civil Procedure Rule 34(b)(2)(E) to produce the photograph in either the "form it is ordinarily maintained" or in a

"reasonably usable form." *Green*, 2.

The Defendants did not challenge the authenticity of the photo. Additionally, the Defendants did not claim that viewing the photo on the Plaintiff's cell phone or his email would give them anything new or useful. *Green*, 1-3.

The Plaintiff did not have to re-produce the photo. Federal Rule of Civil Procedure 34(b)(2)(E)(iii) only requires a party to produce electronically stored information in only one form. As such, the Defendants did not have a right under the Federal Rules of Civil Procedure to view the photo on the Plaintiff's email or cell phone. *Green*, 3.

The lesson learned: If you want a cell phone photo, be very specific in your request for production and state the form of production. A motion to compel cannot correct a failure to state the form of production in your original request.