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## Compelling Production of Hard Drives & Metadata to Show Time Worked

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The Defendants in a disability suit brought a motion to compel for the following ESI from the Plaintiff:

- (1) The Plaintiff's desktop computer hard drive;
- (2) Any computer hard drive the Plaintiff used for business from March 23, 2005 until the present; and
- (3) All business computer storage media from March 23, 2005 until the present. *Kravetz v. Paul Revere Life Ins. Co.*, 2009 U.S. Dist. LEXIS 51230, 2-3 (D. Ariz. June 10, 2009).

### Defendants' Reasons Demanding for Hard Drives



The Defendants wanted a third party consultant to review the ESI from the Plaintiff's hard drives to determine how many hours the Plaintiff spent typing a day. *Kravetz*, 2-3.

### Plaintiff's Opposition to Producing Hard Drives

The Plaintiff fought the motion to compel as being overly broad and unduly burdensome. *Kravetz*, 3. The Plaintiff also offered an e-discovery expert declaration stating the Defendants would not be able to determine the number of hours the spent typing from the metadata of the ESI from the hard drives. *Kravetz*, 3.

## Analysis of Federal Rule of Civil Procedure Rules 26 & 34



Federal Rule of Civil Procedure Rule 26(b)(1) allows for “Parties [to] obtain discovery regarding any non-privileged matter that is relevant to any party’s claim or defense.” *Kravetz*, 3.

Federal Rule of Civil Procedure Rule 34(a)(1)(A), gives a requesting a party a right to “inspect, copy, test, or sample ‘any designated documents or electronically stored information.’” *Kravetz*, 3.

The Court found the Defendants demonstrated the relevancy of Plaintiff’s metadata to show the time spent working before and after his disabilities. *Kravetz*, 3-4. As such, the production of the hard drives and media was allowed.

### The Court Guarding Against Intrusiveness?



The Court order has a little twist: The Defendants “... may only extract metadata and other necessary electronic information regarding the amount of time spent on documents, but not the substance of the documents themselves.” *Kravetz*, 3-4.

While the Court did not outright cite the Advisory Notes to Federal Rule of Civil Procedure Rule 34(a), the Court seemed to be guarding against the massive intrusiveness of reviewing someone’s personal computer.

The Advisory Committee Notes state that the direction inspection of a computer has both privacy and confidentiality concerns. As such, “Courts should guard against undue intrusiveness resulting from inspecting or testing such systems.” *Diepenhorst v. City of Battle Creek*, Slip Copy, 2006 WL 1851243, 3, citing Advisory Committee Notes.

While the Court did not issue a protective order, and the analysis on compelling production of the hard drives was very brief, the limiting language of the discovery order did give the Plaintiff some protection from the imagining of both personal and business hard drives.