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IN THE MEDIA

John Rosenthal Discusses New California Discovery Requirements with *Legaltech News*

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Winston & Strawn partner John Rosenthal spoke with *Legaltech News* about the new California law that attempts to reign the issue of a bigger, longer, and more expensive discovery process by focusing on what goes on before discovery. Senate Bill 235 requires early disclosures unless a court orders otherwise. The law broadens the scope of the requirements found in Rule 26(a) of the Federal Rules of Civil Procedure, which required that parties provide the name, address, and telephone number of all individuals likely to have discoverable information that the disclosing party may use to support its claims or defenses.

John noted that he isn't sure the law will serve its intended purpose, which is to help make discovery more proportionate. "My concern is [that] this is not balanced towards the notion of proportionality. If they are going to be really serious about this, and say you have to do more upfront, then they ought to balance that with the fact that there ought to be less discovery on the backend," he explained.

The problem, he said, is that because the law isn't tied to any limitations, such as an obligation to renegotiate discovery, there is no guarantee that these new requirements will impact the scope of discovery.

John noted that historically, judges haven't always enforced Rule 26(a), with many instead either opting out of the requirements or putting "loose" obligations in place over the years.

"As a result, Rule 26(a) never achieved what it was designed to do in the federal system, in most jurisdictions," he said, adding that he couldn't point to a single time where parties were sanctioned for not complying with Rule 26(a) in recent years.

"I think [California] maybe will be a testbed, people will watch this," John said. "There was a push to try and take another shot at affirmative disclosures in the federal system, those pilot projects died. I would say if this does bear fruit, maybe the Federal Rules Committee looks at it again."

Read the full article.

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