

(H.B. 2424)

(No. 297)

(Approved December 26, 2006)

## **AN ACT**

To amend Rule 23.1 and Rule 31.1 of the Rules of Civil Procedure of 1979, in order to establish that a party shall have the right to solicit that the other party produce and permit the inspection of saved electronic information or data.

### **STATEMENT OF MOTIVES**

The Rules of Civil Procedure of 1979 were adopted by the Supreme Court of Puerto Rico for the purpose of establishing that the same would govern all civil procedures before the courts. Said Rules are interpreted in a manner that would promote guaranteeing a fair, speedy and economic solution through the procedures.

One of the procedures conducted during a court action, and the best tool for a party to provide evidence in its favor, is the discovery of evidence, which is effected prior to trial. Rule 23.1 provides that the scope of the discovery of evidence includes allowing the parties to make discoveries about any non-privileged matter pertinent to the matter in controversy and also includes books, documents or objects among other things. Rule 31.1 establishes that a party shall have the right to request the production of any document or thing for inspection and that one party may notify another about what it proposes, according to certain procedures. The documents to

be produced and inspected may be copied and may consist of papers, books, accounts, letters, photographs or objects, among other things. These rules correspond to the text of the federal rules of civil procedure.

With the increase in the use of computers and the Internet, most natural and juridical persons accumulate large amounts of electronic data that may be useful and susceptible to being introduced in court. Thus, for example, in *State of Florida v. City of Clearwater*, SC02-1694 (09/11/03), the Florida Supreme Court determined that the electronic information (e-mails) received by public employees and contained in computers property of the government within a government agency, may be susceptible to being admitted in court and serve as evidence as product of the discovery of evidence procedure. This is so provided the agency has written policy which informs the employees that the agency reserves the right to maintain custody over, control and inspect e-mails.

However, in the United States the Standing Rules Committee approved certain amendments to the Federal Rules of Civil Procedure during a meeting held on June 15 and 16, 2005, particularly an amendment to Rule 26(b)(2) in order to establish the procedure to be followed concerning electronic information or data. In brief, the latter provides that there should be two alternatives: (1) that it be reasonably accessible or (2) that it not be reasonably accessible. This second alternative would require that the party required to produce the electronic information or data shows that the same is inaccessible. Even so, the judge may require that the information be produced "for just cause" and specify the terms and conditions for its divulgation or discovery and inspection.

However, considering the Rules of Civil Procedure, said evidence must be presented opportunely. For the purpose of expediting the procedures

prior to trial and protecting the rights of the parties, it is necessary to establish that that type of evidence may be discovered and inspected at the proper time so that it can be presented before the court.

It is necessary to establish that the electronic information or data susceptible to divulgence during the process of discovery of evidence must be divulged within the framework of procedural guarantees. For this reason this Legislature believes it necessary to begin the process for making available to the attorneys of the parties and to the courts access to important information and evidence during all procedures before the courts so as to guarantee and promote a fair, speedy and economic solution in every process.

***BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:***

Section 1.-Rule 23.1 of the Rules of Civil Procedure of 1979 is hereby amended to read as follows:

“Rule 23.1.-Scope of Discovery.

...

(a) In general. The parties may obtain discovery regarding any matter not privileged, which is relevant to the matter in controversy in the pending action, whether it relates to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, information electronically stored, documents or other tangible objects and the identity and address of persons having knowledge of any pertinent facts. It is not grounds for objection that the information sought will be inadmissible at the trial, if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

...”

Section 2.-Rule 31.1 of the Rules of Civil Procedure of 1979 is hereby amended to read as follows:

“Rule 31.1.-Scope.

(1) To produce and permit the inspection, copying or photographing, by or on behalf of the appellant party, of any designated documents, papers, electronically stored information translated, if necessary, into information comprehensible to those who solicit the same, books, accounts, letters, photographs, objects or tangible things, not privileged, which constitute or contain evidence relating to any of the matters within the scope of the examination permitted by Rule 23.1 and which are in its possession, custody or control; or

...”

Section 3.-This Act shall take effect immediately after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 297 (H.B. 2424) of the 4<sup>th</sup> Session of the 15<sup>th</sup> Legislature of Puerto Rico:

**AN ACT** to amend Rule 23.1 and Rule 31.1 of the Rules of Civil Procedure of 1979, in order to establish that a party shall have the right to solicit that the other party produce and permit the inspection of saved electronic information or data,

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, today 16<sup>th</sup> of August of 2007.

Francisco J. Domenech  
Director