

4. An opinion from the U.S. District Court for the Western District of Oklahoma denying a motion to compel production of documents in native form via Dropbox and to identify which documents were produced pursuant to which requests for production.

In *Miller v. Legacy Bank*, No. CIV-20-946-D, 2023 WL 7410627 (W.D. Ok. Nov. 8, 2023), Chief U.S. District Judge Timothy DeGiusti addressed whether a party could be compelled to provide a production of electronically stored information (ESI) through a particular medium and organized by request for production.

In this action involving denial of a loan application based on alleged racial discrimination, Plaintiff sought an order compelling Defendant to produce responsive documents in native form via a Dropbox link, rather than a flash drive, and to identify which documents were produced pursuant to which requests for production. *Id.* at \*1.

Chief Judge DeGiusti first addressed Defendant's production of documents via a flash drive. Plaintiff argued that Defendant should be compelled to produce certain documents via a Dropbox link, as opposed to a flash drive, because Plaintiff's document requests instructed Defendant to produce documents "in native format or otherwise with metadata intact." Notably, Plaintiff did not contend that Defendant improperly withheld relevant documents or that Defendant's discovery responses were incomplete or otherwise deficient.

Chief Judge DeGiusti noted that it is well settled that Rule 34(b)(2)(E)(ii) requires only that a party produce ESI "in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms" absent a request specifying a particular form. *Id.* at \*2. He further explained that a "party need not produce the same electronically stored information in more than one form." *Id.* (quoting Rule 34(b)(2)(E)(iii)). Here, Defendant first produced documents to Plaintiff via a Dropbox link but then made a supplemental document production via flash drive. But Chief Judge DeGiusti noted that regardless of whether documents had been produced via Dropbox or a flash drive, the documents themselves retained the same searchable PDF form. He therefore found that the "form" of produced information was a separate issue from how the information was delivered or stored, and he concluded that Defendant complied with its obligations under Rule 34 by producing the PDF documents by flash drive.

Chief Judge DeGiusti next addressed Plaintiff's argument that Defendant was required to identify which documents were produced pursuant to which request for production. He explained that Rule 34(b)(2)(E)(i) gives the party responding to requests for production two options: "A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request." Chief Judge DeGiusti noted that Defendant had elected to produce responsive documents as they were kept in the usual course of its business, which "practice is common in litigation involving business entities," and he concluded that there was "no reason to deviate from the practice in this case." Accordingly, Chief Judge DeGiusti found that Defendant had complied with its obligations under Rule 34 and denied Plaintiff's motion to compel.