

Case Summary

Grubb v. Board of Trustees of the University of Illinois

2010 U.S. Dist. LEXIS 78485 (N.D. Ill. August 4, 2010)

University's Motion for Sanctions for Spoliation of Evidence was Unsuccessful

A university's motion for sanctions for spoliation of evidence was unsuccessful when it failed to show the spoliating party's bad faith.

Plaintiff John Grubb, a professor at the University of Illinois College of Dentistry (UIC), was terminated in August 2008. Shortly before his departure, an employee from UIC's information technology department contacted Grubb, explaining that he had been instructed to remove certain UIC software from Grubb's laptop computer. Grubb asked the employee to return in a few days so that he might supervise the work, fearing unauthorized access of unrelated confidential information on the laptop. When Grubb returned from lunch that day, however, he discovered that the employee had nonetheless accessed his laptop and removed the UIC software without him present.

Grubb subsequently contacted the American Board of Orthodontics, which had issued him the laptop, and informed the Board of his concern that confidential patient information had been accessed. Approximately one month later, a lawyer for ABO informed Grubb that he should stop using the laptop so that any digital evidence concerning the incident would not be lost. When Grubb discussed the matter with an ABO computer specialist, however, he was told that any data concerning the incident was likely lost due to his consistent use of the laptop in the interim month.

Four months later, ABO issued Grubb a new laptop. Grubb claimed he received a new laptop because he needed a faster machine with more memory. ABO's computer technician initially made a mirror image of the hard drive from Grubb's old laptop but later wiped both the hard drive and the mirror image.

Grubb eventually filed suit against UIC for unauthorized access of a computer system under the Computer Fraud and Abuse Act. UIC moved for sanctions due to spoliation of evidence, arguing that the wiping of Grubb's laptop hard drive had made it impossible to determine what actions the UIC employee had performed on Grubb's laptop.

After determining that the appropriate standard of proof for a sanctions motion is "preponderance of the evidence," the Northern District of Illinois held that UIC could not show Grubb had acted in bad faith. Grubb had merely returned the laptop to its owner and did not know, at that time, that ABO intended to delete all of the evidence contained on its hard drive. In addition, ABO's computer specialist had told Grubb that any digital evidence of the incident that had once existed was likely lost due to Grubb's continued use of the laptop. This opinion made it unlikely, the court said, that any useable data was available when Grubb returned the laptop to ABO. The court denied UIC's motion for sanctions, reasoning that the preponderance of the evidence showed that no useable data was lost and that Grubb had not acted in bad faith.