United States District Court
Northern District of California

GUIDELINES FOR THE DISCOVERY OF ELECTRONICALLY STORED INFORMATION

GENERAL GUIDELINES

Guideline 1.01 (Purpose)

Discoverable information today is mainly electronic. The discovery of electronically stored information (ESI) provides many benefits such as the ability to search, organize, and target the ESI using the text and associated data. At the same time, the Court is aware that the discovery of ESI is a potential source of cost, burden, and delay.

These Guidelines should guide the parties as they engage in electronic discovery. The purpose of these Guidelines is to encourage reasonable electronic discovery with the goal of limiting the cost, burden and time spent, while ensuring that information subject to discovery is preserved and produced to allow for fair adjudication of the merits. At all times, the discovery of ESI should be handled by the parties consistently with Fed. R. Civ. P. 1 to "secure the just, speedy, and inexpensive determination of every action and proceeding."

These Guidelines also promote, when ripe, the early resolution of disputes regarding the discovery of ESI without Court intervention.

Guideline 1.02 (Cooperation)

The Court expects cooperation on issues relating to the preservation, collection, search, review, and production of ESI. The Court notes that an attorney's zealous representation of a client is not compromised by conducting discovery in a cooperative manner. Cooperation in reasonably limiting ESI discovery requests on the one hand, and in reasonably responding to ESI discovery requests on the other hand, tends to reduce litigation costs and delay. The Court emphasizes the particular importance of cooperative exchanges of information at the earliest possible stage of discovery, including during the parties' Fed. R. Civ. P. 26(f) conference.

Guideline 1.03 (Discovery Proportionality)

The proportionality standard set forth in Fed. R. Civ. P. 26(b)(1) should be applied to the discovery plan and its elements, including the preservation, collection, search, review, and production of ESI. To assure reasonableness and proportionality in discovery, parties should consider factors that include the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. To further the application of the proportionality standard, discovery requests for production of ESI and related responses should be reasonably targeted, clear, and as specific as practicable.

ESI DISCOVERY GUIDELINES Guideline 2.01 (Preservation)

a) At the outset of a case, or sooner if feasible, counsel for the parties should discuss preservation. Such discussions should continue to occur periodically as the case and issues evolve.

b) In determining what ESI to preserve, parties should apply the proportionality standard referenced in Guideline 1.03. The parties should strive to define a scope of preservation that is proportionate and reasonable and not disproportionately broad, expensive, or burdensome.

c) Parties are not required to use preservation letters to notify an opposing party of the preservation obligation, but if a party does so, the Court discourages the use of overbroad preservation letters. Instead, if a party prepares a preservation letter, the letter should provide as much detail as possible, such as the names of parties, a description of claims, potential witnesses, the relevant time period, sources of ESI the party knows or believes are likely to contain relevant information, and any other information that might assist the responding party in determining what information to preserve.

d) If there is a dispute concerning the scope of a party's preservation efforts, the parties or their counsel should meet and confer and fully discuss the reasonableness and proportionality of the preservation. If the parties are unable to resolve a preservation issue, then the issue should be raised promptly with the Court.

e) The parties should discuss what ESI from sources that are not reasonably accessible will be preserved, but not searched, reviewed, or produced. As well as discussing ESI sources that are not reasonably accessible, the parties should consider identifying data from sources that (1) the parties believe could contain relevant information but (2) determine, under the proportionality factors, should not be preserved.

Guideline 2.02 (Rule 26(f) Meet and Confer)

At the required Rule 26(f) meet and confer conference, when a case involves electronic discovery, the topics that the parties should consider discussing include: 1) preservation; 2) systems that contain discoverable ESI; 3) search and production; 4) phasing of discovery; 5) protective orders; and 6) opportunities to reduce costs and increase efficiency. In order to be meaningful, the meet and confer should be as sufficiently detailed on these topics as is appropriate in light of the specific claims and defenses at issue in the case. Some or all of the following details may be useful to discuss, especially in cases where the discovery of ESI is likely to be a significant cost or burden:

a) The sources, scope and type of ESI that has been and will be preserved --considering the needs of the case and other proportionality factors-- including date ranges, identity and number of potential custodians, and other details that help clarify the scope of preservation;

b) Any difficulties related to preservation;

c) Search and production of ESI, such as any planned methods to identify discoverable ESI and filter out ESI that is not subject to discovery, or whether ESI stored in a database can be produced by querying the database and producing discoverable information in a report or an exportable electronic file;

d) The phasing of discovery so that discovery occurs first from sources most likely to contain relevant and discoverable information and is postponed or avoided from sources less likely to contain relevant and discoverable information;

e) The potential need for a protective order and any procedures to which the parties might agree for handling inadvertent production of privileged information and other privilege waiver issues pursuant to Fed. R. Evid. 502(d) or (e), including a Rule 502(d) Order;

f) Opportunities to reduce costs and increase efficiency and speed, such as by conferring about the methods and technology used for searching ESI to help identify the relevant information and sampling methods to validate the search for relevant information, using agreements for truncated or limited privilege logs, or by sharing expenses like those related to litigation document repositories.

The Court encourages the parties to address any agreements or disagreements related to the above matters in the joint case management statement required by Civil Local Rule 16-9.

Guideline 2.03 (Cooperation and Informal Discovery Regarding ESI)

The Court strongly encourages an informal discussion about the discovery of ESI (rather than deposition) at the earliest reasonable stage of the discovery process. Counsel, or others knowledgeable about the parties' electronic systems, including how potentially relevant data is stored and retrieved, should be involved or made available as necessary. Such a discussion will help the parties be more efficient in framing and responding to ESI discovery issues, reduce costs, and assist the parties and the Court in the event of a dispute involving ESI issues.

Guideline 2.04 (Disputes Regarding ESI Issues)

Disputes regarding ESI that counsel for the parties are unable to resolve shall be presented to the Court at the earliest possible opportunity, such as at the initial Case Management Conference. If the Court determines that any counsel or party in a case has failed to cooperate and participate in good faith in the meet and confer process, the Court may require additional meet and confer discussions, if appropriate.

Guideline 2.05 (E-Discovery Liaison(s))

In most cases, the meet and confer process will be aided by participation of e-discovery liaisons as defined in this Guideline. If a dispute arises that involves the technical aspects of e-discovery, each party shall designate an e-discovery liaison who will be knowledgeable about and responsible for discussing their respective ESI. An e-discovery liaison will be, or have access to those who are, knowledgeable about the location, nature, accessibility, format, collection, searching, and production of ESI in the matter. Regardless of whether the e-discovery liaison is an attorney (in- house or outside counsel), an employee of the party, or a third party consultant, the e-discovery liaison should:

a) Be prepared to participate in e-discovery dispute resolution to limit the need for Court intervention;

b) Be knowledgeable about the party's e-discovery efforts;

c) Be familiar with, or gain knowledge about, the party's electronic systems and capabilities in order to explain those systems and answer related questions; and

d) Be familiar with, or gain knowledge about, the technical aspects of e-discovery in the matter, including electronic document storage, organization, and format issues, and relevant information retrieval technology, including search methodology.

EDUCATION GUIDELINES

Guideline 3.01 (Judicial Expectations of Counsel)

It is expected that counsel for the parties, including all counsel who have appeared, as well as all others responsible for making representations to the Court or opposing counsel (whether or not they make an appearance), will be familiar with the following in each litigation matter:

a) The electronic discovery provisions of the Federal Rules of Civil Procedure, including Rules 26, 33, 34, 37, and 45, and Federal Rule of Evidence 502;

b) The Advisory Committee Report on the 2015 Amendments to the Federal Rules of Civil Procedure, available at www.uscourts.gov/rules-policies/archives/committee-reports/advisory-committee-rules-civil-procedure-may-2014; and

c) These Guidelines and this Court's *Checklist for Rule 26(f) Meet and Confer Regarding ESI and Stipulated E-Discovery Order for Standard Litigation*.