

Rule 7026-1 DISCOVERY OF ELECTRONIC DOCUMENTS (“E-DISCOVERY”)

(a) If the parties cannot agree on how to conduct e-discovery before the first pretrial conference, the following default standards shall apply.

(b) Each party shall designate an “e-discovery liaison,” through whom all e-discovery requests and responses are made.

(1) The e-discovery liaison shall be:

(A) familiar with and able to explain the party’s electronic systems;

(B) knowledgeable about the technical aspects of e-discovery, including electronic document storage, organization, and format issues; and

(C) prepared to participate in e-discovery dispute resolutions.

(2) At all times, counsel of record shall be responsible for compliance with e-discovery requests. However, the e-discovery liaisons shall be responsible for organizing each party’s e-discovery efforts to insure consistency and thoroughness.

(c) At least seven (7) days prior to the first pretrial conference, the parties shall exchange the following:

(1) A list of the most likely custodians of relevant electronic materials, including a brief description of each person’s title and responsibilities;

(2) The name of the individual responsible for that party’s electronic document retention policies (“the retention coordinator”);

(3) The name of the party’s e-discovery liaison;

(4) A list of each relevant electronic system that has been in place at all relevant times and a general description of each system, including: (a) the nature, (b) scope, (c) character, (d) organization, (e) formats employed in each system, and (f) whether the electronic documents are of limited accessibility (for example, documents created or used by electronic media no longer in use, maintained in redundant electronic storage media, or for which retrieval involves substantial cost);

(5) A general description of the party’s electronic document retention policies for the systems identified above; and

(6) Any problems reasonably anticipated to arise with e-discovery.

(d) Discovery shall proceed in a sequenced fashion.

- (1) After receiving requests for document production, a party shall search its documents, other than those identified as limited accessibility electronic documents, and produce responsive electronic documents in accordance with Fed. R. Civ. P. 26(b)(2).
- (2) Electronic searches of documents identified as of limited accessibility shall not be conducted until the initial electronic document search has been completed. Requests for information expected to be found in limited accessibility documents shall be narrowly focused with some basis in fact supporting the request.
- (3) On-site inspections of electronic media pursuant to Fed. R. Civ. P. 34(b) shall not be permitted absent exceptional circumstances, where good cause and specific need have been demonstrated.

(e) If a party intends to employ an electronic search, the party shall disclose any restrictions as to scope and method which might affect its ability to conduct a complete search. The parties shall reach an agreement as to the method of searching, and the words, terms, and phrases to be searched with the assistance of the respective e-discovery liaisons. The parties also shall reach an agreement as to the timing and conditions of any additional searches which may become necessary in the normal course of discovery. To minimize the expense, the parties may consider limiting the scope of the electronic search (e.g., time frames, fields, document types).

(f) Unless the parties otherwise agree, electronic documents shall be produced as image files, such as Portable Document Format (PDF) or Tagged Image File Format (TIFF). The producing party shall preserve the integrity of the electronic document's contents, i.e., the original formatting, its metadata and, where applicable, its revision history. For production of electronic documents in their native format, particularized need shall be shown.

(g) Within the first thirty (30) days of discovery, each party shall outline the steps each shall take to segregate and preserve the integrity of all relevant electronic documents (akin to the standard protective order). If spoliation is at issue, a Fed. R. Civ. P. 30(b)(6) deposition of the retention coordinator shall be scheduled at a mutually convenient time. The retention coordinators shall:

- (1) take steps to ensure that e-mail of identified custodians is retained and not permanently deleted in the ordinary course of business and that electronic documents maintained by the individual custodians are not altered; and
- (2) provide notice as to the criteria used for spam and/or virus filtering of e-mail and attachments; e-mails and attachments filtered out by such systems need not be produced provided that the criteria underlying the filtering are reasonable.

(h) Within seven (7) days of identifying the relevant document custodians, the retention coordinators shall implement the above procedures, and each party's counsel shall file a statement of compliance as such with the Court.

(i) Electronic documents that contain privileged information or attorney work product shall be immediately returned if the documents appear on their face to have been inadvertently produced or upon written notice of the inadvertent production.

(j) The costs of discovery will be borne in accordance with the applicable rules. However, the Court will apportion the costs of electronic discovery upon a showing of good cause.