

United States District Court
Western District of Missouri

PRINCIPLES FOR THE DISCOVERY OF
ELECTRONICALLY STORED INFORMATION

GENERAL PRINCIPLES

Principle 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 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 Principles should guide the parties as they engage in electronic discovery. They are intended to ensure that ESI is appropriately preserved and produced to allow for fair adjudication of the merits, while limiting the cost, burden, and time spent by all parties. 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 Principles also promote, when ripe, the early resolution of disputes regarding the discovery of ESI without Court intervention by helping the parties focus their discussion and work through e-discovery issues fairly and efficiently.

Principle 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 or responding to e-discovery in a cooperative manner. Cooperation in reasonably framing 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.

Principle 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 the parties’ claims and defenses and the needs of the case, considering 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. The Committee Note to Fed. R. Civ. P. 26(b)(1) provides additional information about this standard. In general, discovery requests for production of ESI and related responses should be reasonably targeted, clear, and as specific as practicable, and the burden or expense of proposed discovery should be determined in a realistic way.

Principle 1.04 (E-Discovery Liaisons)

In many cases, discovery and the meet-and-confer process may be aided by participation of “e-discovery liaisons.” If a dispute arises involving the technical aspects of e-discovery, each party shall designate an e-discovery liaison to promote early resolution of the dispute. An e-discovery liaison should 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, to the extent necessary to address proportionality factors in the specific case:

- 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 the party’s electronic systems and capabilities in order to explain those systems and answer related questions; and
- d) Be familiar with 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.

ESI DISCOVERY PRINCIPLES

Principle 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 Principle 1.03. The parties should strive to define a scope of preservation that is proportionate and reasonable in the context of the claims and defenses involved.
- 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 consistent with Local Rule 37.1.
- e) The parties should identify sources of ESI that are not reasonably accessible and any preservation expectations regarding those sources consistent with Rule 26. The parties should also consider identifying sources that (1) the parties believe could contain relevant information but (2) determine, under the proportionality factors, need not be preserved.

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

When a case involves e-discovery, the Court encourages the parties to engage in on-going meet-and-confer discussions and to use the Court’s *Checklist for Rule 26(f) Meet and Confer Regarding Electronically Stored Information* to facilitate ESI discussions. Such discussions should be framed in the context of the specific claims and defenses involved.

Principle 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.

Principle 2.04 (Disputes Regarding ESI Issues)

Disputes regarding ESI that counsel for the parties are unable to resolve after good-faith efforts shall be presented to the Court at the earliest opportunity consistent with Local Rule 37.1.

EDUCATION PRINCIPLES

Principle 3.01 (Judicial Expectations of Counsel)

The Court expects 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 Federal Rule Advisory Committee Notes; and
- c) These Principles and this Court’s *Checklist for Rule 26(f) Meet and Confer Regarding Electronically Stored Information*.

The Court does not require familiarity with the following items but notes that they may be helpful depending on the needs of a particular case.

- a) The Sedona Conference ® “Jump Start” Outline, available at <https://thesedonaconference.org/publications>
- b) The Sedona Conference ® Glossary: E-Discovery and Digital Information Management, available at <https://thesedonaconference.org/publications>
- c) EDRM Glossary, available at <http://www.edrm.net/resources/glossaries>