

United States District Court
Southern District of Florida

Checklist for Rule 26(f) Conference
Regarding Electronically Stored Information (“ESI”)

In connection with the Federal Rule of Civil Procedure 26(f) conference and in preparing the Local Rule 16.1(b)(2) conference report, the Court encourages the use of the following checklist. The usefulness of any particular topic may depend on the nature and complexity of the matter.

I. Preservation

- The ranges of creation or receipt dates for any ESI to be preserved.
- The description of ESI from sources that are not reasonably accessible because of undue burden or cost and that will not be reviewed for responsiveness or produced, but that will be preserved in accordance with Federal Rule of Civil Procedure 26(b)(2)(B).
- The description of ESI from sources that: (a) the party believes could contain relevant information; but (b) has determined, under the proportionality factors, is not discoverable and should not be preserved.
- Whether to continue any interdiction of any document-destruction program, such as ongoing erasures of e-mails, voicemails, and other electronically recorded material.
- The number and names or general job titles or descriptions of custodians for whom ESI will be preserved (e.g., “HR head,” “scientist,” “marketing manager”).
- The list of systems, if any, that contain ESI not associated with individual custodians and that will be preserved, such as enterprise databases.
- Any disputes related to scope or manner of preservation.

II. Liaison

- The identity of each party’s e-discovery liaison, who will be knowledgeable about and responsible for each party’s ESI.

III. Informal Discovery About Location and Types of Systems

- Identification of systems from which discovery will be prioritized (e.g., e-mail, finance, HR systems).
- Descriptions and location of systems in which potentially discoverable information is stored.
- How potentially discoverable information is stored.
- How discoverable information can be collected from systems and media in which it is stored.

IV. Proportionality and Costs

- The amount and nature of the claims being made by either party.
- The nature and scope of burdens associated with the proposed preservation and discovery of ESI.
- The likely benefit of the proposed discovery.

- Costs that the parties will share to reduce overall discovery expenses, such as the use of a common electronic-discovery vendor or a shared document repository, or other cost-saving measures.
- Limits on the scope of preservation or other cost-saving measures.
- Whether there is relevant ESI that will not be preserved in accordance with Federal Rule of Civil Procedure 26(b)(1), requiring discovery to be proportionate to the needs of the case.

V. Search

- The search method(s), including specific words or phrases or other methodology, that will be used to identify discoverable ESI and filter out ESI that is not subject to discovery.
- The quality-control method(s) the producing party will use to evaluate whether a production is missing relevant ESI or contains substantial amounts of irrelevant ESI.

VI. Phasing

- Whether it is appropriate to conduct discovery of ESI in phases.
- Sources of ESI most likely to contain discoverable information and that will be included in the first phases of Federal Rule of Civil Procedure 34 document discovery.
- Sources of ESI less likely to contain discoverable information from which discovery will be postponed or not reviewed.
- Custodians (by name or role) most likely to have discoverable information and whose ESI will be included in the first phases of document discovery.
- Custodians (by name or role) less likely to have discoverable information from whom discovery of ESI will be postponed or avoided.
- The time period during which discoverable information was most likely to have been created or received.

VII. Production

- The formats in which structured ESI (database, collaboration sites, etc.) will be produced.
- The formats in which unstructured ESI (e-mail, presentations, word processing, etc.) will be produced.
- The extent, if any, to which metadata will be produced and the fields of metadata to be produced.
- The production format(s) that ensure(s) that any inherent searchability of ESI is not degraded when produced.

VIII. Privilege

- How any production of privileged or work-product protected information will be handled.
- Whether the parties can agree on alternative ways to identify documents withheld on the grounds of privilege or work product to reduce the burdens of such identification.
- Whether the parties will enter into a Federal Rule of Evidence 502(d) stipulation and order that addresses inadvertent or agreed production.