

The Rules

Rule 16(b):

Provides that the scheduling order may address disclosure or discovery of electronically stored information (ESI).



Rule 26(b):

Requires counsel to have a “Meet and Confer” to discuss ESI-related issues with opposing counsel prior to commencing discovery.



Rule 26(b)(2)(B):

This rule allows the responding party to produce all accessible, relevant, non-privileged and responsive ESI and then possibly avoid production of inaccessible ESI unless production is later ordered by the court.



Rule 26(b)(5):

Institutes a procedure for asserting claims of privilege and work product protection following an inadvertent production of ESI by allowing for either of three agreements: “Claw Back,” “Quick Peek” or “Open Peek.”

Are You Prepared

Leverage More Than 10 Years of eDiscovery Experience

Where can you obtain the guidance you need to go into your next meet and confer and scheduling conferences with confidence?

Daticon Electronic Evidence Discovery draws on more than 10 years of electronic discovery experience for the entire course of your eDiscovery project, from the first project kick-off meeting and Rule 26 conference, through data collection, processing, review and production. We know the questions you will likely be asked during your meet and confer and the subsequent scheduling conference. We will advise you on the most efficient ways to process, review and produce your data.

Who can efficiently handle reasonably accessible data and support you if you need to produce inaccessible data at a later date?

Our electronic discovery experts utilize processes designed specifically to manage your huge volumes of accessible data, and the array of file formats contained within, in an expeditious manner. We can assist with collection of data and the restoration of many types of inaccessible data. We will be able to support you during the entire course of eDiscovery.

What reasonable steps can you take to avoid inadvertent production of ESI?

Discovery Partner®, Daticon EED's hosted review system, is built to maximize review speed while maintaining accuracy. This will decrease the pressure to review at a speed that may compromise important decisions on the privilege nature of documents. With our identification and grouping of Exact Duplicates across custodians we facilitate consistency in coding. We also offer Near Duplicate and email thread analysis, providing you with additional tools to make your review as efficient as possible.

What is the best way to handle the review and production of native files?

Discovery Partner was designed to support the efficient review of native files, the form in which most documents are ordinarily maintained or in which they are reasonably usable. We take you straight to production in native format or can convert to TIFF.

Who can help you navigate to a Safe Harbor, away from sanctions for loss of data?

Our team can work with the corporate IT department to ensure the proper preservation and collection of data. Once we take custody of your data, our protocols will maintain the integrity of the data through the processing phase and beyond. We will then host the data for review in our secure environment. Even after your data has been safely produced, we remain available to defend our processes, at trial, if necessary.

The Rules

Rule 34 (b):

Provides a procedure for the parties to identify the form or forms of ESI to be provided by providing a default form for the production of the ESI in the event it is not agreed upon during the "meet and confer." The default form for producing ESI is that form "in which it is ordinarily maintained [or] reasonably usable."

Rule 37(f):

Creates a "Safe Harbor" by providing that absent exceptional circumstances, a court may not impose sanctions on a party for failing to provide ESI lost as a result of routine, good-faith operation of an electronic information system.