

Prior to Litigation:

- Review client's document retention policy.
- Assess client's litigation hold process.
- Ascertain client's network architecture.
- Ascertain client's data categories.
- Ascertain how client's data flows around the network.
- Ascertain client's backup tape rotation schedule.
- Determine what is reasonably accessible and not reasonably accessible data.
- Review the "routine, good faith operation" of client's computer system to document its routine operation. F.R.C.P. 37(f).

To Prepare for the Meeting:

- Establish litigation budget and obtain approval.
- Determine IT contact(s).
- Determine geographic locations.
- Determine key data custodians.
- Suspend IT processes as necessary, i.e. halt back up tape rotation, turn off SPAM filters, and suspend automatic deletion of e-mail.
- Issue litigation hold notices.
- Determine timeframe for collection.
- Estimate volume of collection.
- Determine standard data types that will be collected, i.e. .pst files, word processing files, Access databases, etc.
- Determine if legacy data needs to be collected and if special processing is required.
- Determine if proprietary data needs to be collected and if licenses are required for processing.
- Interview document custodians and educate on preservation obligations.
- Determine best way to collect the data and best people to collect the data, i.e. document custodian, outside vendor or IT personnel.
- Gauge how many duplicates are in the collection and how best to de-duplicate the collection, i.e. manually or with automated methods.
- Determine if redaction will be necessary and best methods to redact.
- Determine resources needed and timeframe to complete the relevancy review.
- Determine resources needed and timeframe to complete privilege review.
- Assess best production method for your case, i.e. how you want to receive the production and how you want to produce.
- Determine if there has been any spoliation or lost data and how best to defend such gaps in data at the meet and confer conference. Identify spoliation test for your jurisdiction.
- Assess whether you will request cost-shifting or how to best defend a cost-shifting request from opposing counsel.
- Assess whether you will request a preservation order or how best to defend against a request from opposing counsel for a preservation order.
- Decide if you want an IT representative to attend the meeting with you.
- Decide if you want your IT representative to interface with the IT representative of opposing party.
- Decide on 30(b)(6) witnesses who will be able to testify about:
 - Network configuration
 - Document retention plan

MEET & CONFER CHECKLIST (CONT.)

At the Meet & Confer Conference:	
<input type="checkbox"/>	Agree on scope <ul style="list-style-type: none"><input type="checkbox"/> Data custodians<input type="checkbox"/> Key witnesses<input type="checkbox"/> Geographic scope<input type="checkbox"/> Temporal scope
<input type="checkbox"/>	Agree on preservation and/or production of unreasonably accessible data.
<input type="checkbox"/>	Agree on handling of duplicates.
<input type="checkbox"/>	Agree on how to handle masters and attachments.
<input type="checkbox"/>	Agree on geographic locations.
<input type="checkbox"/>	Agree on key data custodians and witnesses.
<input type="checkbox"/>	Agree on how to de-duplicate the collection.
<input type="checkbox"/>	Agree on keyword search terms.
<input type="checkbox"/>	Agree on form of production. <ul style="list-style-type: none"><input type="checkbox"/> Native<input type="checkbox"/> Image only<input type="checkbox"/> Image and text<input type="checkbox"/> Paper<input type="checkbox"/> Direct access<input type="checkbox"/> Shared database repository<input type="checkbox"/> Metadata
<input type="checkbox"/>	Agree on Bates schema and other markings, such as Privacy Act.
<input type="checkbox"/>	Discuss cost shifting and whether it will be necessary.
<input type="checkbox"/>	Agree on priority of data to be produced.
<input type="checkbox"/>	Agree on rolling or static productions and due dates.
<input type="checkbox"/>	Agree on how to handle Privacy Act data, confidential and secret data, and business sensitive data.
<input type="checkbox"/>	Decide whether IT representatives from each side need to talk to one another about the data.
<input type="checkbox"/>	Determine if a clawback agreement is necessary.
<input type="checkbox"/>	Determine if a quick peek agreement is necessary.

After the Meet & Confer Conference:	
<input type="checkbox"/>	Reissue litigation hold notice as necessary to update information or remind custodians.
<input type="checkbox"/>	Audit litigation hold to ensure compliance.
<input type="checkbox"/>	Document chain of custody.
<input type="checkbox"/>	Document all litigation hold efforts.
<input type="checkbox"/>	Test key word searches.

For more information please contact:

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