# A Practical Guide to Electronic Discovery

**Southern Utah Bar Association**
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**Note**: An electronic copy of this outline is at http://www.utd.uscourts.gov/judges/nuffer_resources.htm#Continuing. That version includes working hyperlinks. Please send corrections or suggestions to mj.nuffer@utd.uscourts.gov.

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**Pre-Litigation**

Review your client's retention policy:[1]

Does it consider these essential factors?
- Regulatory Compliance
- Business Goals: Disaster Recovery, Space Economy, Management Information, Information Security, Customer Information
- Litigation Duties

Does it have a robust "Litigation Hold" feature?
- Ability to suspend and modify retention policy in event of litigation

Does the policy include effective procedures?
- Valid design
- Dissemination and availability
- Communication during operations
- Training
- Compliance audits and evaluation
- Revision

Are your client's management and IT teams competent?

Capabilities

Knowledge
- Strategies and risks
- Retention obligations
- Procedures of electronic discovery
- Potential grounds for and scope of sanctions

Behavior

Are you and your consultant(s) competent?

Can you speak tech or do you have a staff member/consultant who will assist you?

Can your preservation and data analysis consultants speak to lawyers, judges and jurors?

Are you paying attention?

[1] For a basic introduction, see John P. Hutchins, Esq., Document Retention Basics, 865 PLI/Pat 785, PLI Order No. 8966 June-July, 2006.

**Planning in Litigation**

Meet with client IT staff and management

Preservation – Litigation Hold

Ensure it exists and is adequate, clearly understood, communicated, implemented, and monitored.

Understand and inventory systems.[2] Prepare for meeting with opposing counsel and potential 30(b)(6) depositions – defensive and offensive.

Meet with opposing counsel (Rule 26(f)) – and IT staff

> [T]he parties must confer as soon as practicable — and in any event at least 21 days before a scheduling conference is to be held or a scheduling order is due under Rule 16(b).
> In conferring, the parties must . . . discuss any issues about preserving discoverable information; and develop a proposed discovery plan.[3]

Discuss deleted data, archival data, inaccessible data, on-going operations.

Create a discovery plan

> A discovery plan must state the parties' views and proposals on . . .
> (C) any issues about disclosure or discovery of electronically stored information, including the form or forms in which it should be produced . . .
> (D) any issues about claims of privilege or of protection as trial-preparation materials, including — if the parties agree on a procedure to assert these claims after production — whether to ask the court to include their agreement in an order . . .[4]

Preservation letter? – a two-edged sword

Court conference (Rule 16(b)(2)(B))

> The scheduling order may
> (5) provide for **disclosure or discovery** of **electronically stored information**;
> (6) include any agreements the parties reach for asserting claims of **privilege** or of protection as trial-preparation material after information is produced . . . .[5]

[2] David K. Isom, Electronic Discovery Source Checklist for Plaintiffs and Defendants, ABA Commercial and Business Litigation Journal 6 (Spring 2004).
[3] Fed. R. Civ. P. 26(f).
[4] *Id.*
[5] Fed. R. Civ. P. 16(b).

Preservation orders and other extraordinary preliminary relief are met with widely varying receptions depending on the judge.

## Disclosure

> [A] party must, without awaiting a discovery request, provide to the other parties . . . a copy — or a description by category and location — of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment.[6]

## Discovery

Electronic information is now expressly within the discovery rules.

Rule 33 – Interrogatories

> (d) Option to Produce Business Records. If the answer to an interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing a party's business records (including electronically stored information), and if the burden of deriving or ascertaining the answer will be substantially the same for either party, the responding party may answer by:
>
> (1) specifying the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could; and
>
> (2) giving the interrogating party a reasonable opportunity to examine and audit the records and to make copies, compilations, abstracts, or summaries.[7]

Rule 34 – Production

> (a) Scope. Any party may serve on any other party a request . . . (1) to produce and permit the party making the request . . . to inspect, copy, test, or **sample**[8] . . . any designated documents or **electronically stored information** . . . [9]

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[6] Fed. R. Civ. P. 26(a)(1).
[7] Fed. R. Civ. P. 33(d).
[8] "The addition of testing and sampling to Rule 34(a) with regard to documents and electronically stored information is not meant to create a routine right of direct access to a party's electronic information system, although such access might be justified in some circumstances. Courts should guard against undue intrusiveness resulting from inspecting or testing such systems." Committee Note at 73, 2006 Amendment to Fed. R. Civ. P. 34(a).
[9] Fed. R. Civ. P. 34(a).

**Scope of Discovery**

Rule 26(b)(2)(B) – (two tiers)

> (B) A party need not provide discovery of electronically stored information from sources that the party identifies as **not reasonably accessible** because of undue burden or cost. On motion to compel discovery or for a protective order, the **party from whom discovery is sought must show** that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.[10]

You must still *disclose* these sources if you may use them. In discovery responses, you must *identify* the sources. It would be wise to state why they are not reasonably accessible and provide factual support.

The decision whether to require a responding party to search for and produce information that is not reasonably accessible depends not only on the burdens and costs of doing so, but also on whether those burdens and costs can be justified in the circumstances of the case. Appropriate considerations may include: (1) the specificity of the discovery request; (2) the quantity of information available from other and more easily accessed sources; (3) the failure to produce relevant information that seems likely to have existed but is no longer available on more easily accessed sources; (4) the likelihood of finding relevant, responsive information that cannot be obtained from other, more easily accessed sources; (5) predictions as to the importance and usefulness of the further information; (6) the importance of the issues at stake in the litigation; and (7) the parties' resources.[11]

Rule 26(b)(2)(C) – Reasonableness limitations that govern all discovery:

> On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that:
>
> (i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;
>
> (ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or
>
> (iii) the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.[12]

[10] Fed. R. Civ. P. 26(b)(2)(B).
[11] Committee Note at 49, 2006 Amendment to Fed. R. Civ. P. 26.
[12] Fed. R. Civ. P. 26(b)(2)(C).

Argue the fact-sensitive elements of your case.

## Form of Production

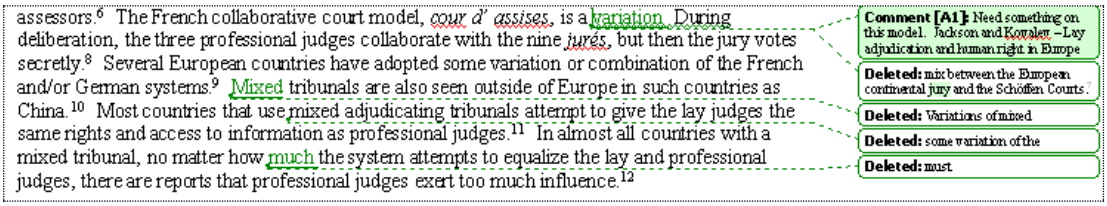
Rule 34(b) - – Point / Counterpoint

> The request . . . may specify the form or **forms** in which electronically stored information is to be produced.[13]

> (D) Responding to a Request for Production of Electronically Stored Information. The response may state an **objection to a requested form** for producing electronically stored information. If the responding party objects to a requested form — or if no form was specified in the request — the party must state the form or forms it intends to use.[14]

> (E) Producing the Documents or Electronically Stored Information. Unless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information:
> (i) A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request;
> (ii) **If a request does not specify a form** for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and
> (iii) **A party need not produce the same electronically stored information in more than one form** [15]

## What is Metadata and Does it Matter?


assessors.[6] The French collaborative court model, *cour d' assises*, is a variation. During deliberation, the three professional judges collaborate with the nine *jurés*, but then the jury votes secretly.[8] Several European countries have adopted some variation or combination of the French and/or German systems.[9] Mixed tribunals are also seen outside of Europe in such countries as China.[10] Most countries that use mixed adjudicating tribunals attempt to give the lay judges the same rights and access to information as professional judges.[11] In almost all countries with a mixed tribunal, no matter how much the system attempts to equalize the lay and professional judges, there are reports that professional judges exert too much influence.[12]

**Comment [A1]:** Need something on this model. Jackson and Kovalev – Lay adjudication and human right in Europe

**Deleted:** mix between the European continental jury and the Schöffen Courts.

**Deleted:** Variations of mixed

**Deleted:** some variation of the

**Deleted:** must

Marjorie A. Shields, Discoverability of Metadata, 2006 A.L.R.6th 6 (2006)

[13] Fed. R. Civ. P. 34(b)(2).
[14] *Id.*
[15] *Id.*

What form do you want?

| | Native | PDF Text | PDF Image | TIFF | Paper |
|---|---|---|---|---|---|
| Metadata |  | Negotiate | | |  |
| Need special software? |  |  |  |  |  |
| E-Search |  |  |  |  |  |
| Bates stamped |  |  |  |  |  |
| Identified to original file/author | Negotiate! | | | | |
| As kept in ordinary course | | | | | |
| Identified to requests | | | | | |
| Familiar format | Develop expertise | | | |  |

## Privilege

> **(B) Information Produced.** If information is produced in discovery that is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.[16]

The volumes of information produced in electronic discovery may make privilege review prior to production difficult. While traditional production would contemplate privilege review by the producing party before production is made, alternative methods include:

a. production of massive unreviewed data, after which the responding party reviews for responsiveness, after which the producing party reviews the identified subset for privilege;
b. designation of a third party who will review for privilege and responsiveness; and/or;
c. agreement on application of search terms to electronic data to determine potential responsiveness to reduce the overall volume of material.

When the [privilege] review is of electronically stored information, the risk of waiver, and the time and effort required to avoid it, can increase substantially because of the volume of electronically stored information and the difficulty in ensuring that all information to be produced has in fact been reviewed. . . . **Rule 26(b)(5)(B) is added to provide a procedure for a party to assert a claim of privilege or trial-preparation material protection after information is produced** in discovery in the action and, if the claim is contested, permit any party that received the information to present the matter to the court for resolution. Rule 26(b)(5)(B) does not address whether the privilege or protection that is asserted after production was waived by the production.[17]

**FRE 502**[18] (Attorney-Client Privilege and Work Product; Limitations on Waiver) is intended to **reduce the risk of forfeiting** the attorney-client **privilege** or work-product protection so that **parties need not scrutinize production of documents** to the same extent as they now do. Under the new rule, the **inadvertent disclosure** of privileged or protected information would **not effect a waiver if reasonable steps were taken** to prevent the disclosure, **and retrieval** of the

[16] Fed. R. Civ. P. 26(b)(5)(B).
[17] Comment to 2006 Amendments at 54 to Fed. R. Civ. P. 26(b)(5)(B).
[18] Fed. R. Evid. 502.

information is **promptly demanded**. Also, the **disclosure** of privileged or protected information **would not waive** the privilege or protection accorded other information concerning the same **subject matter**, unless fairness so requires. Furthermore, **a confidentiality order entered by the court would bind all nonparties in any federal or state court**. The [proposal includes] a possible provision governing **selective waiver**, which would prevent a general waiver of the privilege or protection for information disclosed to a law enforcement or regulatory agency in the course of an investigation.[19]

The court considers the following five factors in its determination of whether an inadvertent disclosure of documents effects a waiver of the attorney-client privilege: 1) the reasonableness of the precautions taken to prevent inadvertent disclosure; 2) the time taken to rectify the error; 3) the scope of discovery; 4) the extent of disclosure; and 5) the overriding issue of fairness.[20]

**Sanctions**

Fed. R. Civ. P. 37(d) and (b)(2)

> If a party fails to provide information or identify a witness as required by Rule 26(a) or 26(e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the court, on motion and after giving an opportunity to be heard:
> (A) may order payment of the reasonable expenses, including attorney's fees, caused by the failure;
> (B) may inform the jury of the party's failure; and
> (C) may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(2)(A)(i)-(vi).[21]

> The court where the action is pending may, on motion, order sanctions if . . .
> (ii) a party, after being properly served with interrogatories under Rule 33 or a request for inspection under Rule 34, fails to serve its answers, objections, or written response. [22]

> (2) Sanctions by Court in Which Action Is Pending. If a party or [related person fails to obey an order for discovery], the court where the action is pending may issue further just orders. They may include the following:
> (i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;

[19] Brochure Summarizing Proposed Amendments to the Federal Rules (August 2006) quoted at ediscoverylaw.com.
[20] *Wallace v. Beech Aircraft Corp*. 179 F.R.D. 313, 314 (D.Kan.,1998) Ken M. Zeidner , Note Inadvertent Disclosure and the Attorney-Client Privilege: Looking to the Work-Product Doctrine for Guidance, 22 Cardozo L. Rev. 1315 ( 2001).
[21] Fed. R. Civ. P. 37(c)(1).
[22] Fed. R. Civ. P. 37(d)(1).

> (ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;
> (iii) striking pleadings in whole or in part;
> (iv) staying further proceedings until the order is obeyed;
> (v) dismissing the action or proceeding in whole or in part;
> (vi) rendering a default judgment against the disobedient party . . . [23]

Inherent judicial authority

> It has long been understood that certain implied powers must necessarily result to our Courts of justice from the nature of their institution, powers which cannot be dispensed with in a Court, because they are necessary to the exercise of all others. . . . These powers are governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.[24]

Statutory authority

> Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.[25]

Rule 37(f) "Safe Harbor"

> **(f) Electronically Stored Information.** Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information **lost as a result of** the **routine**, **good-faith operation** of an electronic information system. [26]

**Subpoenas**

Note that Rule 45 incorporates e-discovery concepts.

**Perspective**

Don't let the electronic discovery or sanctions sideshow obscure the merits.

[23] Fed. R. Civ. P. 37(b)(2).
[24] *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (U.S. 1991).
[25] 28 U.S.C.A. § 1927
[26] *Id.*

**Resources**

Best Practices in E-Discovery in New York State and Federal Courts (July 2011)
www.nysba.org/e-discovery/

Federal Judicial Center Materials on Electronic Discovery
http://www.fjc.gov/public/home.nsf/pages/196

The Sedona Conference www.sedonaconference.org
http://www.thesedonaconference.org/content/miscFiles/publications_html

Law.com E-Discovery News
http://www.law.com/jsp/lawtechnologynews/e_discovery.jsp

Lexis Nexis Applied Discovery Law Library
http://www.applieddiscovery.com/

Kroll Case Law Update & E-Discovery News
http://www.krollontrack.com/clu/

Electronic Discovery and Evidence Blog by Michael Arkfeld http://arkfeld.blogs.com/

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# Guidelines for Best Practices in E-Discovery in New York State and Federal Courts

Full text at www.nysba.org/e-discovery/

GUIDELINE NO. 1: The law defining **when a pre-litigation duty to preserve ESI arises** is not clear. The duty to preserve arises, not only when a client receives notice of litigation or a claim or cause of action, but it may also arise when a client reasonably anticipates litigation or knew or should have known that information may be relevant to a future litigation.

GUIDELINE NO. 2: In determining **what ESI should be preserved**, clients should consider: the facts upon which the triggering event is based and the subject matter of the triggering event; whether the ESI is relevant to that event; the expense and burden incurred in preserving the ESI; and whether the loss of the ESI would be prejudicial to an opposing party.

GUIDELINE NO. 3: **Legal hold notices** will vary based on the facts and circumstances but the case law suggests that, in general, they should be in writing, concise and clear, and should include: a description of the subject matter; the date ranges of the ESI to be preserved; a statement that all ESI, regardless of location or storage medium, should be preserved unless other written instructions are given; instructions on how to preserve the ESI and/or whom to contact regarding how ESI is preserved; and the name of a person to contact, if questions arise. Counsel should monitor compliance with the legal hold at regular intervals.

GUIDELINE NO. 4: Counsel should endeavor to **make the discovery process more cooperative** and collaborative.

GUIDELINE NO. 5: **Counsel should be familiar** with their client's information technology, sources of ESI, preservation, and scope and form of production, as soon as litigation is anticipated, but in no event later than any "meet and confer" or preliminary conference.

GUIDELINE NO. 6: To the extent possible, r**equests for the production of ESI a**nd subpoenas seeking ESI should, with **as much particularity as possible**, identify the type of ESI sought, the underlying subject matter of the ESI requested and the relevant time period of the ESI. Objections to requests for ESI should plainly identify the scope and limitations of any responsive production. Boilerplate language which obscures the particular bases for objections and leaves the requesting party with no clear idea of what is or is not being produced should be avoided. If necessary, counsel should meet and confer to resolve any outstanding disputes about the scope or format of production.

GUIDELINE NO. 7: Counsel should **agree on the form of production of ESI** for all parties prior to producing ESI. In cases in which counsel cannot agree, counsel should clearly identify their respective client's preferred form of production of ESI as early in the case as possible and should consider seeking judicial intervention to order the form of production before producing ESI. In requests for production of documents or subpoenas and objections to requests to produce or subpoenas, the form of production of responsive ESI should be clearly stated. If the parties have previously agreed to the form of production, the agreement and the form should be stated.

In any event, counsel should not choose a form of production based on its lack of utility to opposing counsel.

GUIDELINE NO. 8: **Producing ESI should be conducted in a series of steps**, as follows: (1) initial review; (2) search for and collection of ESI; (3) processing of ESI to eliminate duplicates and render it searchable; (4) culling the ESI to reduce volume; (5) review by counsel; and (6) production.

GUIDELINE NO. 9: Parties should carefully evaluate how to collect ESI because certain **methods of collection may inadvertently alter, damage, or destroy ESI**. In considering various methods of collecting ESI, parties should balance the costs of collection with the risk of altering, damaging, or destroying ESI and the effect that may have on the lawsuit.

GUIDELINE NO. 10: Parties may **identify relevant ESI by using technology tools** to conduct searches of their ESI. In most cases, parties may search reasonably accessible sources of ESI, which includes primarily active data, although if certain relevant ESI is likely to be found only in less readily accessible sources or if other special circumstances exist, less readily accessible sources may also need to be searched. The steps taken in conducting the search and the rationale for each step should be documented so that, if necessary, the party may demonstrate the reasonableness of its search techniques. Counsel should consider entering into an agreement with opposing counsel, if appropriate, regarding the scope of the search and the search terms.

GUIDELINE NO. 11: Counsel should **conduct searches using technology tools to identify** ESI that is subject to the attorney-client **privilege**, the **work product** immunity and/or material prepared in anticipation of litigation. Counsel should document its privilege searches and verify the accuracy and thoroughness of the searches by checking for privileged ESI at the beginning of the search process and again at the conclusion of the process. To avoid the situation in which an inadvertent production of privileged ESI may possibly be deemed a waiver of the privilege, counsel should consider, as appropriate, entering into a non-waiver agreement and having the court incorporate that agreement into a court order.

GUIDELINE NO. 12: Counsel should take reasonable steps to c**ontain the costs of e-discovery.** To that end, counsel should be knowledgeable of developments in technology regarding searching and producing ESI and should be knowledgeable of the evolving custom and practice in reviewing ESI. Counsel should evaluate whether such technology and/or such practices should be used in an action, considering the volume of ESI, the form of ESI and other relevant factors.

GUIDELINE NO. 13: **Parties should discuss the expected costs and potential burdens**, if any, presented by e-discovery issues as early in the case as possible. If counsel expects that the client will incur disproportionate, significant costs for e-discovery or that e-discovery will otherwise present a financial burden to the client, counsel should endeavor to enter into an agreement with opposing counsel to allocate the costs of e-discovery or, if necessary, seek a court order as early in the case as possible and before the costs are incurred, allocating the costs of e-discovery and identifying which party pays for what e-discovery costs.

GUIDELINE NO. 14: **Courts may issue sanctions** for spoliation, or the intentional or negligent destruction or failure to preserve relevant ESI.

## Materials on Electronic Discovery: Civil Litigation

This page contains links to articles, PowerPoint slide presentations, and other items of interest on electronic discovery. Unless otherwise noted, these materials were prepared by Federal Judicial Center staff for use in judicial and continuing legal education programs and are not subject to copyright. They may be downloaded and republished without permission. (Go here for Materials on Electronic Discovery: Search and Seizure of Computers and Data in Criminal Cases.)

### FJC Publications

Barbara J. Rothstein, Ronald J. Hedges & Elizabeth C. Wiggins, Managing Discovery of Electronic Information: A Pocket Guide for Judges, 2007 (26 pages) This pocket guide helps federal judges manage the discovery of electronically stored information (ESI). It covers issues unique to the discovery of ESI, including its scope, the allocation of costs, the form of production, the waiver of privilege and work product protection, and the preservation of data and spoliation.

### Proposed Amendments to the Federal Rules of Civil Procedure

On September 20, 2005, the Judicial Conference of the United States approved the following E-Discovery amendments to the Federal Rules of Civil Procedure addressing a number of electronic discovery issues: E-Discovery Amendments and Committee Notes. The amendments were effective December 1, 2006.

### Workshop and Seminar Materials

Surviving E-Discovery, by Judges James C. Francis IV, U.S. Magistrate Judge, Southern District of New York and Sidney I. Schenkier, U.S. Magistrate Judge, Northern District of Illinois, from the 2006 Magistrate Workshop (Powerpoint presentation).

Electronic Discovery, presented at the National Workshop for U.S. Magistrate Judges, June 12, 2002: Presentation outline with illustrations of slides; Slides only in PDF format; Slides only in PowerPoint format

### Annotated Bibliography

Kenneth J. Withers, Federal Court Decisions Involving Electronic Discovery, December 1, 2006 – July 31, 2009 (PDF, 96 pp.)

### FJC Research

Molly Treadway Johnson, Kenneth J. Withers & Meghan A. Dunn, A Qualitative Study of Issues Raised by the Discovery of Computer-Based Information in Civil Litigation, September 13, 2002 September 13, 2002 (research report submitted to the Judicial Conference Advisory Committee on Civil Rules for its October 2002 meeting)

### Selected Outside Resources (copyright restrictions on republication may apply)

The Sedona Conference® Cooperation Proclamation: Resources for the Judiciary (August 2011, Public Comment Version) (PDF, 40 pp.)
This public comment version of The Sedona Conference's Resources for the Judiciary is also posted at http://www.thesedonaconference.org/content/miscFiles/Judicial_Resources.pdf.

> This document is a template for a web page that Sedona the Sedona Conference® will build in the fall and is intended to be a resource for federal and State judges on "electronic" discovery and evidence.

You may note that there are various places where the Senior Co-Editors (Kenneth J. Withers and Ronald J. Hedges) are looking for sample orders and links to other publications. Thus, the Resources should be considered a continuing work in progress. And comments, links or sample orders would be appreciated and can be sent to kjw@sedonaconference.org and r_hedges@live.com.

Shira A. Scheindlin, FAQ's of E-Discovery - The Ten Most FAQ's in the Post-December 1, 2006 World of E-Discovery, from *In Camera*, Federal Judges Association Newsletter, November 29, 2006 (posted here with the author's permission)

Kenneth J. Withers, Electronically Stored Information: The December 2006 Amendments to the Federal Rules of Civil Procedure, 4 Nw. J. of Tech. & Intell. Prop. 171 (Spring 2006)

American Bar Association Electronic Discovery Task Force, Civil Discovery Standards (August 2004 update)

The Sedona Conference®, The Sedona Principles: Best Practices, Recommendations & Principles for Addressing Electronic Document Production (2004)

Kenneth J. Withers, Computer-Based Discovery in Federal Civil Litigation, 2000 Fed. Cts. L. Rev. 2

**State and Local Rules**

Mississippi Court Order 13 (May 29, 2003) amending Mississippi Rule of Civil Procedure 26

Texas Rule of Civil Procedure 193.3(d) (privilege not waived by production) and Rule 196.4 (electronic or magnetic data)

District of Arkansas, Eastern and Western, Local Rule 26.1

District of Delaware, Default Standards for Discovery of Electronic Documents

District of Kansas, Guidelines for Discovery of Electronically Stored Information

District of New Jersey, Local Rule 26.1

District of Wyoming, Local Rule 26.1

**Sample Forms and Orders**

Some of the following sample forms and orders are in RTF format and can be opened and edited in any standard word-processing format. They have been assembled from a variety of sources, and no endorsement of any particular form or order is implied. If you have a sample form or order you would like to contribute to this collection, please contact Richard Dargan, Sr. Judicial Education Attorney at rdargan@fjc.gov or 202-502-4057.

Order Concerning Electronic Discovery, from Prempro Products Liability MDL, 03-CV-1507 (E.D. Ark. Nov. 17, 2003)

Order for Preservation of Records, from Baycol Products Litigation, MDL 1431(D. Minn. March 4, 2002)

Preservation of Documents, Data, and Tangible Things, from the Manual for Complex Litigation, Fourth

Joint Stipulation and Order Regarding Meet and Confer Discussions, contributed by Ken Withers, Federal Judicial Center