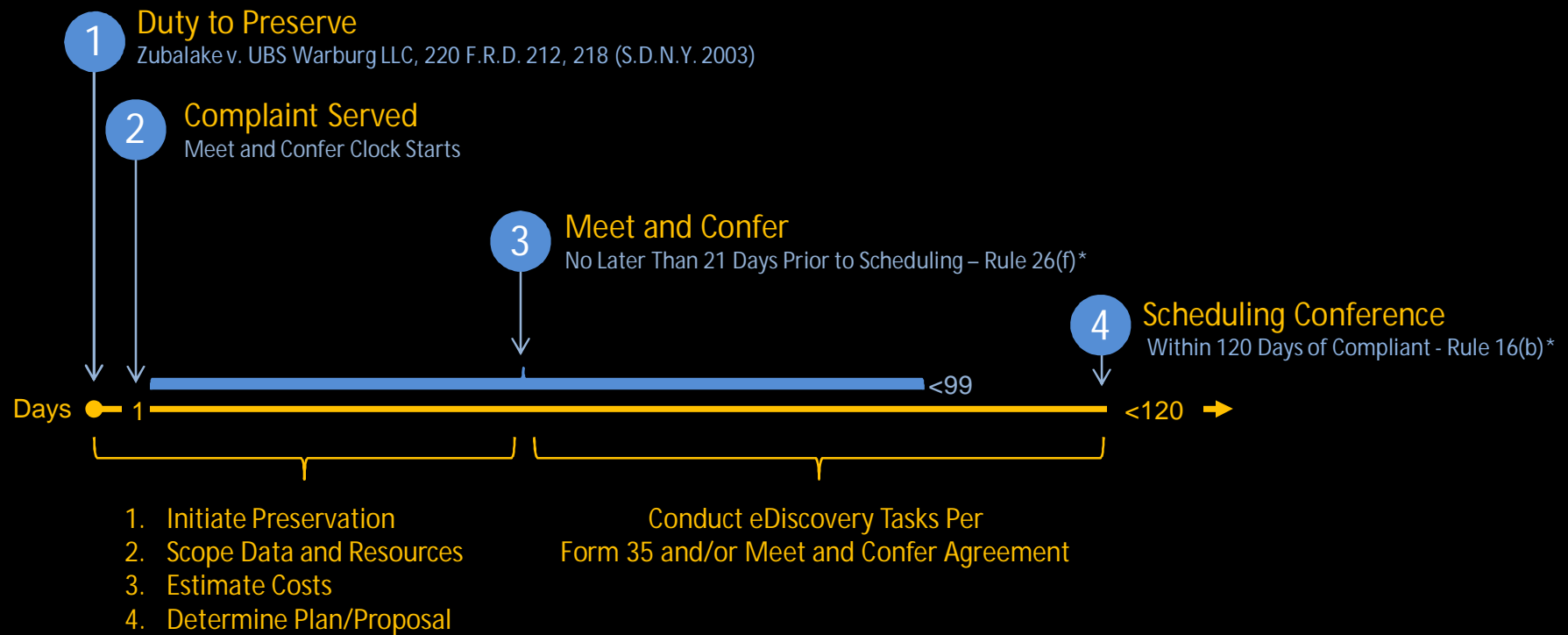


Considering Meet and Confer?

The Sequence and Chronology of Meet and Confer



* Unless Otherwise Directed By The Court

Pre Meet and Confer Preparation

Initiating Preservation

Trigger: Reasonable Anticipation of Litigation

Zubalake v. UBS Warburg LLC, 220 F.R.D. 212, 218 (S.D.N.Y. 2003) (Zubulake IV)

“Once a party reasonably anticipates litigation, it must suspend its routine document retention/destruction policy and put in place a ‘litigation hold’ to ensure the preservation of relevant documents.”

Tasks: Logical Preservation Considerations

1. Document Data/Time/Reason for Trigger Event
2. Temporarily Suspend Document Destruction Policies
3. Meet with Litigation Hold Planning Team* to Establish Litigation Hold Strategy
4. Review Document Retention Plan and Procedures
5. Review Litigation Hold Procedures
6. Identify Potentially Relevant Custodians (By Name and By Role)
7. Identify Legal And Technology Leads for Specific Litigation Hold Effort
8. Prepare and Disseminate Litigation Hold Letters to Relevant Custodians** (Name/Role)
9. Adjust/Amend Document Destruction Policies as Appropriate
10. Follow Up with Potentially Relevant Custodians (Name/Role) to Confirm Understanding of Hold Letter

* Minimum of Potential Matter Lead (Legal), eDiscovery Team Lead, IT Team Lead, Records Management Team Lead.

** Send Copy To Opposing Counsel if Opposing Counsel Activated “Trigger”.

Pre Meet and Confer Preparation

Scoping Data and Resources

Target: What data is to be preserved?

Zubulake IV, 220 F.R.D. at 217 - a party need not "preserve every shred of paper, every e-mail or electronic document, and every backup tape" before or during actual or threatened litigation.

Trevino, supra, 969 S.W.2d at 957 – a party must preserve "what it knows, or reasonably should know is relevant in the action, is reasonably calculated to lead to the discovery of admissible evidence, is reasonably likely to be requested during discovery, [or] is the subject of pending discovery sanction."

Tasks: Logical Data Scoping and Resource Considerations

- Determine where the data to be preserved is located.
- Determine the size of the accessible volume of data to be preserved.
- Determine what resources may be needed to collect accessible data.
- Determine the need for access to inaccessible data.
- Estimate the potential resources that may be needed to collect inaccessible data.
- Determine who might be able to serve as a potential expert (– 30(b)(6) –) witness for the electronic discovery effort.

Pre Meet and Confer Preparation

Estimating Costs

Target: Understanding of Potential eDiscovery Costs in Terms of Time, Risk, and Money

Tasks: Logical eDiscovery Cost Planning Considerations

Time Considerations

- Does it appear that opposing counsel has an evidential basis for pursuing the case?
- What type of electronic discovery resources will be needed to conduct a complete document review?
- Based on FRCP 26(f), what are the timeline requirements for "Meet and Confer" preparation?
- Based on potential evidence and resource requirements, will it be more cost effective to settle or pursue?

Risk Considerations

- Will the electronic discovery approach reduce the risk of missing potentially responsive documents?
- Will the electronic discovery technologies used minimize risks associated with the transfer of data between organizations and platforms?
- Will the electronic discovery effort be conducted in a legally defensible manner?

Cost Considerations

- Based on time requirements and acceptable risk, what is the best electronic discovery approach congruent with firm and client financial resources and cost management objectives?
- Do we have the electronic discovery systems and expertise in place to conduct the electronic discovery tasks using the best electronic discovery approach congruent with client financial and cost management objectives?

Pre Meet and Confer Preparation

Determining Plan/Proposal

Target: Develop a Recommended Discovery Plan for presentation to opposing counsel at the Meet and Confer Meeting.

Tasks: Logical Discovery Plan Preparation (Requirements and Time/Risk/Cost Estimates)

Timing Considerations

- Verify date/time of FRCP Rule 16(b) Scheduling Conference
- Coordinate with Opposing Counsel on date/time for Meet and Confer Conference*

Plan/Proposal Considerations

- Determine best case Discovery Plan (What would you like to do?)
- Determine most objective Discovery Plan (What would you expect to do?)
- Determine worst case Discovery Plan (What are your limits of plan acceptance?)

Document Considerations

- Develop Form 35 "Drafts" for each Plan (Guidelines for Form 35 Completion/Negotiation)
- Prepare and Submit Disclosures as required by FRCP 26(a)

* Required as soon as possible, NLT 21 days prior to Scheduling Conference (FRCP Rule 26 (f)(1)).

Understanding Meet and Confer Tasks

Meet and Confer Meeting

Preservation Considerations

- Define/Determine Data Scope
- Define Accessible and Unreasonably Accessible Data
- Define/Determine Handling of Unreasonably Accessible Data

Electronic Discovery Issues

- Determine Handling of Duplicates, Masters, and Attachments
- Determine Keyword Search Terms and Search Methodologies
- Determine Cost Shifting Approach

Production Considerations

- Determine Production Formats
- Determine Production Priorities
- Determine Approach for Special Markings (Privacy Act, Confidential/Data Secret, Bates Schema)

Privilege Considerations

- Determine Handling of Sensitive Data (Privacy Act, Confidential/Secret Data)
- Determine Need for Clawback Agreement
- Determine Need for Quick Peek Agreement

Understanding Meet and Confer Tasks

Post Meet and Confer Follow Up

Verify

- Litigation Hold Compliance (Update and Audit)
- Keyword Searches (Test)

Document

- Litigation Hold Efforts
- Complete Form 35
- Complete Proposed Scheduling Order (As Required By Court)

Report

- Submit Form 35 To Court (Typically within 14 Days of Meet and Confer Conference)
- Submit Proposed Scheduling Order (As Required By Court)



Good for you.
Great for your clients.



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