

## Things to Think About for Your Rule 26(f) Meeting...

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In a case management hearing, the parties were directed to consider the following electronically stored information (ESI) issues at their Rule 26(f) conference for drafting their proposed Rule 16(b) order:



*With regard to any discoverable electronically stored information (ESI) the parties may have, the Court further requests that the joint discovery plan also include any issues and concerns related to the following:*

- a. What ESI is available and where it resides;*
- b. Ease/difficulty and cost of producing information;*
- c. Schedule and format of production;*
- d. Preservation of information; and*
- e. Agreements about privilege or work-product protection.*

*Wallace v. Tindall, 2009 U.S. Dist. LEXIS 89669, \*2-3 (W.D. Mo. Sept. 29, 2009).*

It is good to see Courts ordering parties to consider issues such as whether ESI is reasonably accessible, the form of production, preservation and privilege concerns in case management orders. While the above order is actually brief on the e-Discovery issues, consider the new California Rules of Court section 3.724(8), which require the following topics to be discussed at the "Meet & Confer:"

Any issues relating to the discovery of electronically stored information, including:

- (A) Issues relating to the preservation of discoverable electronically stored information;
- (B) The form or forms in which information will be produced;
- (C) The time within which the information will be produced;
- (D) The scope of discovery of the information;
- (E) The method for asserting or preserving claims of privilege or attorney work product, including whether such claims may be asserted after production;
- (F) The method for asserting or preserving the confidentiality, privacy, trade secrets, or proprietary status of information relating to a party or person not a party to the civil proceedings;

(G) How the cost of production of electronically stored information is to be allocated among the parties;

(H) Any other issues relating to the discovery of electronically stored information, including developing a proposed plan relating to the discovery of the information;

Case management orders such as the above and the new California Rules of Court acknowledge the reality that every case will have electronically stored information of some kind. Lawyers must deal with these realities early and not wait for them to become problems.