



STEP 3

DISCOVERY NEGOTIATIONS

GOAL:

In this step, the legal team takes a proactive role in guiding the terms of negotiation

KEY TASKS:

- Understand Client's ESI
- Draft of ESI Protocol document
- Draft discovery requests that are reasonable & proportional
- Successful Meet & Confer

USEFUL DOCUMENTS:

-  ESI Protocol Templates
-  Clawback Agreements
-  Standard Production Guidelines

Legal teams must be provided with proper guidance and resources to negotiate terms of discovery.

Under Rule 26(f) of the Federal Rules of Civil Procedure parties in a legal case are required to meet, discuss, and make a discovery plan before discovery begins. Informally this meeting is known as the "Meet & Confer"—you might be surprised how often this meeting is skipped, with one of the parties just accepting whatever ESI protocol the other side forwards to them.

We strongly recommend that lawyers take a proactive role in discovery negotiations. Effective negotiation in the Meet & Confer meeting can greatly streamline the E-Discovery process, reduce costs, and improve the chances of a favorable outcome for the client.

In preparation for the Meet & Confer, attorneys need to come armed with a comprehensive understanding of the client's potentially responsive ESI and the effort required to obtain that data. Often times there are technical constraints that can greatly affect the cost to obtain data from certain systems.

Furthermore, lawyers should be prepared to discuss and negotiate an ESI Protocol. An ESI Protocol document typically outlines how the parties will handle E-Discovery to ensure fairness, efficiency, and cost-effectiveness. This may include topics like the format for ESI production, methods for identifying and preserving ESI, measures to protect privileged information, and procedures for handling inadvertent disclosure of privileged information. Lawyers must understand the implications of these factors and the impact they may have on the subsequent stages of the litigation.

NEXT STEP
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