

VIII.E | PROCEDURE

Counsel should have sufficient technical knowledge to propound educated and reasonable requests for ESI. Opposing counsel should have sufficient technical knowledge to provide educated and reasonable responses to requests for ESI. Blanket, overbroad, burdensome requests for production invite blanket objections and lead to motions to compel and for protective orders. To avoid this process and reduce the volume and expense of discovering ESI, requests for production should, to the extent possible, clearly specify what is being sought including by topic and reference to persons involved. Responses to requests for ESI should state clearly and specifically what is being objected to and why. They should also clearly state the extent to which discovery of ESI will be permitted, the sources from which ESI has been obtained and potential sources of ESI that were not searched.

Rule 34(a) establishes that unless requested in another form, the producing party must produce electronically stored information in a form or forms in which it is usually maintained or in a form or forms that are reasonably usable. The Rule permits testing and sampling as well as the inspection and copying of ESI.

Inspection of an opponent's computer system is the exception, not the rule and the creation of forensic image backups of computers should only be sought in exceptional circumstances which warrant the burden and cost. A request to image an opponent's computer should include a proposal for the protection of privacy rights, protection of privileged information, and the need to separate out and ignore non-relevant information.

As an alternative to Bates numbers, consider using Hash tags or Hash values to identify ESI.

Ordinarily, information should only be produced once, i.e., electronically or by paper copies, not both.