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# **Meet and Confer Toolkit:**

*Practical Advice for Effective Discovery Conferences*

**June 27, 2007**  
**Presented by Litigation Committee**

**Association of Corporate Counsel**  
**[www.acc.com](http://www.acc.com)**

# Panel

- ❖ **Miriam M. Smolen, Associate General Counsel,  
Fannie Mae**
- ❖ **Barton S. Aronson, Partner, Hogan & Hartson**
- ❖ **Bill Detamore, CFO, IE Discovery**

# AGENDA

- ❖ **Defining the Meet & Confer**
- ❖ **In-house Counsel's Role**
- ❖ **The Goal of the Meet & Confer**
- ❖ **Who Should Attend?**
- ❖ **Common Challenges at the Meet & Confer**
- ❖ **Documenting the Meet & Confer**
- ❖ **Questions**

# Defining the Meet & Confer:

## Rule 26

- ❖ **Fed. R. Civ. P. 26(f) conference with opposing counsel**
  - ❖ **Nature and basis of their claims and defenses**
  - ❖ **Possibilities for a prompt settlement**
  - ❖ **Mandatory initial disclosures under 26(a)(1)**
  - ❖ **Issues relating to preserving discoverable information**
  - ❖ **Proposed discovery plan**

# Defining the Meet & Confer: The Discovery Plan

- ❖ **Scope of Discovery**
  - ❖ **Business Units / Departments / Individuals**
  - ❖ **Geographic**
  - ❖ **Temporal (looking back / looking forward)**
  - ❖ **Systems**
  - ❖ **Duplicate Data Definition**
  - ❖ **Terms for Automated Review**
  - ❖ **Projected Volumes**

# Defining the Meet & Confer: The Discovery Plan

- ❖ **Methods**
  - ❖ **Initial Disclosures**
  - ❖ **Written Discovery**
  - ❖ **Depositions**
  - ❖ **Expert**
- ❖ **Preservation**
- ❖ **Privilege Issues**
  - ❖ **Quick Peek / Clawback**
- ❖ **Form of Production for ESI**

# Defining the Meet & Confer: More Than A Single Conference

- ❖ **Series of communications, not just a single meeting**
  - ❖ **Telephone**
  - ❖ **Letters**
  - ❖ **E-mail**

# In-House Counsel Role

- ❖ **Ensure implementation of effective litigation hold**
- ❖ **Prepare trial counsel with information to strategically negotiate favorable agreements**
- ❖ **Coordination with knowledgeable staff regarding relevant IT resources**
- ❖ **Systems and data - reasonably accessible / inaccessible**

# GOAL

- ❖ **Offensive Discovery**
- ❖ **Defensive Discovery**
- ❖ **Meet & confer goals driven by overall discovery strategy**
  - ❖ **full and unfettered access**
  - ❖ **limited disclosures to specific requests**

# Who Should Attend?

- ❖ **Counsel are frequently bringing technologists to the meet & confer**
- ❖ **Common choices are:**
  - ❖ **Corporate IT representative**
  - ❖ **Legal / IT liaison**
  - ❖ **E-Discovery consulting provider**

# Common Challenges: Unprepared Opposing Counsel

- ❖ **Opposing counsel either does not know what specific discovery they want or what data their client has**
- ❖ **Result – unprepared to reach meaningful agreements**
- ❖ **Opportunity – to shape the discovery the adverse party receives**

# Common Challenges:

## Back-Up Systems

- ❖ **Commonly one party is adamant about the production of information from back-up/archival stores**
- ❖ **Response –**
  - ❖ **Insist that the party identify a rationale**
  - ❖ **Educate the party as to limits and costs**

## **Common Challenges: Unable to Reach Agreement on Scope**

- ❖ **Commonly when there is a great disparity in the amount of discoverable information, parties cannot reach agreements regarding scope:**
  - ❖ **Custodians**
  - ❖ **Time frames**
  - ❖ **Terms**
  - ❖ **Duplicates**

# Common Challenges:

## Assumptions Change After Meet & Confer

- ❖ **After Discovery Plan entered, some of the assumptions (regarding size of relevant data collection, types of files, etc.) prove inaccurate, making discovery agreements impossible to meet or otherwise meaningless**
- ❖ **Opportunity – the more an adverse party knows in advance, the less ground it has for complaint**

# After the Meet & Confer

## Document the Agreements

- ❖ **Prudent investment of time to volunteer to memorialize the meeting and document all agreements with opposing counsel**
- ❖ **May use Form 35 or other form**
- ❖ **Must file with Court**

**QUESTIONS?**



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