

Attorney Seventh Circuit Electronic Discovery Pilot Program

This is a survey about the Seventh Circuit's Electronic Discovery Pilot Program ("Pilot Program"). You are invited to participate because you are an attorney of record in a Pilot Program case applying the Seventh Circuit's Principles Relating to Discovery of Electronically Stored Information ("Principles"). By answering this survey, you can provide valuable feedback on those procedures. Please complete the survey by Monday, March 1, 2010.

In this survey, we have taken care not to collect any information that could personally identify you or your Pilot Program case. In addition, your individual answers will be kept strictly confidential. The results of the survey will be presented only in summary form (e.g., group averages). Participation is voluntary, but we encourage you to assist us in the Pilot Program. It is estimated that this survey will take less than 10 minutes to complete.

Your Pilot Program case was identified to you in the email containing the survey link. To protect your identity, we will not ask you to specify this case in the survey. However, your answers should reflect what has happened in that particular case. If you are not familiar with the specifics of litigating that case, please forward the email containing the survey link to the most knowledgeable attorney on your legal team.

By clicking "Next Page", you agree to participate in the survey.

1) Number of years you have practiced law, rounded to the nearest year:

_____years

2) Your main area of practice:

- m Bankruptcy
- m Civil Rights
- m Commercial Litigation -- class action
- m Commercial Litigation -- not primarily class action
- m Employment/Labor/Employee Benefits
- m Environmental
- m Estate planning
- m General Practice
- m Government
- m Intellectual Property
- m Personal Injury
- m Real Estate
- m Tax
- m Other (please specify)

If you selected other, please specify

In this survey, any discovery seeking information in electronic format will be referred to as

"e-discovery". Electronically stored information will be referred to as "ESI".

3) NOT INCLUDING your Pilot Program case, how many of your cases in the last five years involved e-discovery?

- m 0 cases
- m 1-2 cases
- m 3-5 cases
- m 6-10 cases
- m 11-20 cases
- m More than 20 cases

4) The Seventh Circuit's Principles for e-discovery were developed by a committee and are being tested in selected Pilot Program cases, including your Pilot Program case.

Please rate your familiarity with the substance of the Principles.

- m 0 Not At All Familiar
- m 1
- m 2
- m 3
- m 4
- m 5 Very Familiar

The following questions refer to your Pilot Program case. "FRCP" refers to the Federal Rules of Civil Procedure.

5) Case type:

- m Bankruptcy
- m Civil Rights
- m Contract
- m Federal Tax
- m Forfeiture/Penalty
- m Employment/Labor/Employee Benefits
- m Prisoner Petition
- m Property Rights (copyright, patent, trademark)
- m Real Property
- m Social Security
- m Torts (personal injury)
- m Torts (personal property)
- m Other (please specify)

If you selected other, please specify

6) Party/parties you represent(ed):

- Single plaintiff
- Multiple plaintiffs
- Single defendant
- Multiple defendants

7) Type of party you represent(ed): (If multiple parties, please check all that apply.)

- Private individual
- Unit of government/government official
- Publicly-held company
- Privately-held company
- Nonprofit organization
- Other (please specify)

If you selected other, please specify

8) Please indicate the stage of the case at the time it was selected for the Pilot Program, and as it stands today.

	When Selected for the Pilot Program	Today
FRCP 26(f) Meet and Confer	<input type="checkbox"/>	<input type="checkbox"/>
Initial Status Conference (FRCP 16(b) Conference)	<input type="checkbox"/>	<input type="checkbox"/>
Discovery	<input type="checkbox"/>	<input type="checkbox"/>
Mediation	<input type="checkbox"/>	<input type="checkbox"/>
Trial	<input type="checkbox"/>	<input type="checkbox"/>
Settlement or Judgment	<input type="checkbox"/>	<input type="checkbox"/>

Please continue to refer to your Pilot Program case.

9) How much of the information exchanged between the parties, in response to requests for documents and information, was (or likely will be) in electronic format?

- m Less than 25%
- m Between 26% and 50%
- m Between 51% and 75%
- m More than 75%

10) Did (or do you anticipate that) any REQUESTING party (will) bear a material portion of the costs to produce requested ESI?

- m Yes
- m No

For simplicity, this survey refers to your "client" in the singular. However, this survey is case-specific, not party-specific. Thus, if you represented multiple parties, please consider the experiences of all your clients collectively, rather than the experience of only one client.

11) For the e-discovery in this case, please indicate the role your client did (or likely will) play:

- m Primarily a requesting party
- m Primarily a producing party
- m Equally a requesting and a producing party
- m Neither a requesting nor a producing party

12) Please indicate whether your client's ESI connected with this case could be described as: (please check all that apply.)

- q High volume of data (more than 100 gigabytes or 40 custodians)
- q Legacy data (contained in an archive or obsolete system)
- q Disaster recovery data (contained in a backup system)
- q Segregated data (subject to a special process, e.g., "confidential" information)
- q Automatically updated data (e.g., metadata or online access data)
- q Structured data (e.g., databases, applications)
- q Foreign data (e.g., foreign character sets, data subject to international privacy laws)

Please continue to refer to your Pilot Program case.

13) Please indicate whether the following events occurred. In the context of this question, "you" means either you personally or another member of your legal team. If the event does not apply due to the particulars or the timing of the case, please check "Not Applicable".

	Yes	No	Not Applicable
At the outset of the case, you discussed the	m	m	m

preservation of ESI with opposing counsel.			
Prior to meeting with opposing counsel, you became familiar with your client's electronic data and data system(s).	m	m	m
At or soon after the FRCP 26(f) conference, the parties discussed potential methods for identifying ESI for production.	m	m	m
Prior to the initial status conference (FRCP 16 conference), you met with opposing counsel to discuss the discovery process and ESI.	m	m	m
At the initial status conference (FRCP 16 conference), unresolved e-discovery disputes were presented to the court.	m	m	m
E-discovery disputes arising after the initial status conference (FRCP 16 conference) were raised promptly with the court.	m	m	m

14) Please indicate the e-discovery topics discussed with opposing counsel prior to commencing discovery. If discovery has not commenced, please indicate the topics that have been discussed to this point. Please check all that apply.

- Scope of ESI to be preserved by parties
- Procedure for preservation of ESI
- Scope of relevant and discoverable ESI
- Search methodologies to identify ESI for production
- Format(s) of production for ESI
- Conducting e-discovery in phases or stages
- Data requiring extraordinary affirmative measures to collect (such as: hard drive data that is "deleted", "slack", "fragmented", or "unallocated"; online access data; frequently and automatically updated metadata, backup tapes, etc.)
- Procedures for handling production of privileged information or work product in electronic form
- Timeframe for completing e-discovery
- Any need for special procedures to manage ESI
- Other (please specify)

If you selected other, please specify

Please continue to refer to your Pilot Program case.

FRCP 26(b)(2)(C) calls for consideration of the following factors in determining whether the burden or expense of proposed discovery outweighs its likely benefit: 1) the needs of the case; 2) the amount in controversy; 3) the parties' resources; 4) the importance of the issues at stake in the action; and 5) the importance of the discovery in resolving the issues.

15) Did the proportionality factors set forth in FRCP 26(b)(2)(C) play a significant role in the development of the discovery plan?

- Yes
- No
- No discovery plan for this case

16) Please assess the level of cooperation among opposing counsel in:

	Poor	Adequate	Excellent	Not Applicable
Facilitating understanding of the ESI related to the case	m	m	m	m
Facilitating understanding	m	m	m	m

of the data systems involved				
Formulating a discovery plan	m	m	m	m
Reasonably limiting discovery requests and responses	m	m	m	m
Ensuring proportional e-discovery consistent with the factors listed in FRCP 26(b)(2)(C)	m	m	m	m

Please continue to refer to your Pilot Program case.

17) Please assess how application of the Pilot Program Principles has affected (or likely will affect) the following:

	Greatly Increased	Increased	No Effect	Decreased	Greatly Decreased
The level of cooperation exhibited by counsel to efficiently resolve the case	m	m	m	m	m
Your ability to zealously represent your client	m	m	m	m	m
The parties' ability to resolve e-discovery disputes without court involvement	m	m	m	m	m
The fairness of the e-discovery process	m	m	m	m	m
Your ability to obtain relevant	m	m	m	m	m

documents					
Allegations of spoliation or other sanctionable misconduct regarding the preservation or collection of ESI	m	m	m	m	m
Discovery with respect to another party's efforts to preserve or collect ESI	m	m	m	m	m

18) Please assess how application of the Pilot Program Principles has affected (or is likely to affect) the following:

	Greatly Increased	Increased	No Effect	Decreased	Greatly Decreased
Discovery costs	m	m	m	m	m
Total litigation costs	m	m	m	m	m
Length of the discovery period	m	m	m	m	m
Length of the litigation	m	m	m	m	m
Number of discovery disputes	m	m	m	m	m

19) Type of individual serving as your client's e-discovery liaison: (If you represent(ed) multiple parties, please check all that apply.)

- In-house counsel
- Outside counsel
- Third party consultant
- Employee of the party
- No e-discovery liaison designated

20) Please indicate your level of agreement with the following statements.

	Strongly Agree	Agree	Disagree	Strongly Disagree	Not Applicable
The	m	m	m	m	m

involvement of my client's e-discovery liaison has contributed to a more efficient discovery process.					
The involvement of the e-discovery liaison for the other party/parties has contributed to a more efficient discovery process.	m	m	m	m	m

21) How did application of the Principles affect preservation letters?

- m Discouraged my client from sending preservation letter(s)
- m Resulted in my client sending more targeted preservation letter(s)
- m No effect on the issue of preservation letters

22) Which aspects of the Pilot Program Principles are the most useful?

23) How could the Pilot Program Principles be improved?

Thank you for completing the survey.