Everlaw

Everlaw ESI Protocol Template

[This template is a form document containing technical recommendations only. This template is meant only to be a starting point for the technical mechanics suitable for making and receiving productions and for the creation and use of the productions in modern ediscovery platforms.

This template entirely excludes many subjects that parties may want to negotiate as part of their discovery obligations. For example, there are no sections on scope of preservation, negotiating custodians, requirements for privilege clawback or FRE 502(d), on confidentiality designations or protective orders, on schedule for exchanges of production, of ongoing requirements for meet-and-confer, or of quality control mechanisms for search terms or the use of predictive coding or other technology-assisted review. Re-using identical ESI protocols for unrelated matters is not recommended.

In order to comply with relevant rules and case law and to ensure discovery compliance proportional to the needs of any particular case, clients and counsel should consult with experienced ediscovery attorneys practicing in the jurisdiction of the court where this template may be used.]

Introduction

This Stipulation Regarding Production Of Electronically Stored Information And Paper Documents ("ESI Protocol") shall govern the parties in the above-captioned case and all actions that are later consolidated with that case (collectively, the "Litigation").

1. **Definitions and Scope.** The following protocol and definitions shall control the production of discoverable documents and electronically stored information when production commences. The following terms shall be defined:

   a. "Document(s)" means electronically stored information (ESI) existing in any medium from which information can be obtained or translated into reasonably usable form and shall have the same meaning as used in the Federal Rules of Civil Procedure and case law construing the same.

   b. "Native File(s)" or "Native Format" means ESI that has an associated file structure defined by the creating or viewing application in the file type for (or of) the application in which such ESI is normally created, viewed, and/or modified.

   c. "Metadata" means: (i) information associated with or embedded in a Native File that does not constitute the primary content region of the file; and (ii) information generated automatically by the operation of a computer or other information technology system when a Native File is created, modified, transmitted, deleted, or otherwise manipulated by a user of such system.

d. "Load File" means an electronic data file containing information identifying documents containing (i) an indication of which individual pages or files constitute each Document and relevant data relevant to each individual Document, including extracted metadata.

e. "OCR" means optical character recognition, generating a text from an image of text using software.

f. "Extracted Text" means all text content extracted from a Native File.

g. "Receiving Party" shall mean the party receiving production of Documents in response to any request for production of document(s) pursuant to Fed. R. Civ. P. 34(a) or pursuant to initial production of documents identified in the party's Rule 26(a) disclosures.

h. "Producing Party" shall mean the party producing Documents in response to any request for production of documents pursuant to Fed. R. Civ. P. 34(a) or pursuant to initial production of documents identified in the party's Rule 26(a) disclosures.

i. "Bates Number" means an identifier consists of a short two to eight letter prefix, associated with the Producing Party's name, followed by 6 numbers (e.g. ABCD000001). The prefix should include only letters, dashes, or underscores. The prefix and number should not be separated by a space. Each page in the production is assigned a unique, incremental Bates number. The prefix must be the same for all pages produced from the same Producing Party.

2. **General Format of Production.** Documents that are produced in these proceedings, whether originally stored in paper or electronic form, shall be produced in electronic image form and / or in native format in the manner as described below. Notwithstanding the foregoing provisions of this paragraph, the Parties reserve the right to request that an alternative format or method of production be used for certain Documents, if such Document is not susceptible to production in the format methods of production addressed herein. In that event, the Receiving Party and the Producing Party will meet and confer to discuss alternative production requirements, concerns, formats, or methods.

3. **Production Format.** Documents shall be produced according to the following formats:

a. *Electronic Production of Paper Documents.* Documents that are maintained in paper format shall be scanned images at 300 DPI resolution, in text searchable PDF format that represents the full and complete information contained in the original Document. Paper Documents that contain fixed notes shall be scanned with the notes affixed, if it can be done so in a manner so as not to obstruct other content on the document. If the content of the Document is obscured by the affixed notes, the Document and note shall be scanned separately. Documents shall also be produced with the associated OCR text, and with a load file. No Producing Party shall be required to ensure that the OCR is an exact duplicate of the contents of the image.

b. *Electronically Stored Information.* Document images shall be generated from electronic Documents in a set of color 300 DPI text searchable PDFs, one PDF file per document, that reflects the full and complete information contained on the original document, together with a load file containing required metadata. In the event a Document is redacted, the Producing Party shall withhold the redacted text for that Document.

c. *File Structure.* The Producing Party shall produce the following sets of files for all produced documents:

Load File:

/ Each production includes a .dat metadata load file, which is a delimited text file format. The first row of the file contains a list of metadata columns. Each subsequent row contains the metadata for a single document. Each column of each row contains one metadata value, with values encapsulated by a special "quote" character and columns separated by a special "separator" character throughout.

/ The load file should use a thorn (þ, ASCII character 231) as a quote character and the special, non-printing character DC4 (ASCII character 20) as a separator.

/ First line must contain the column/field names.

/ The fields Begin Bates, End Bates, and NativePath must be present

/ Each subsequent row must contain the metadata for one document

/ Every row must have the same number of columns/fields (empty values are acceptable)

/ Text must be encoded in either ASCII, UTF-8, or UTF-16

/ Load File should be placed in the Data folder of the production in the root directory

Extracted Text and OCR Files (.txt files):

/ A single text file for each document containing all the document's pages, in text.

/ Pages separated by form feed character (decimal 12, hex 0x0C)

/ Filenames should be of the form: <Bates num>.txt, where <Bates num> is the Bates number of the first page of the document

/ Text and filenames must be encoded in UTF-8

/ Files should be placed in the *text*/ subdirectory

Image Files:

/ A single 300 DPI, color, text searchable PDF file per document

/ Filenames should be of the form: <Bates num>.pdf, where <Bates num> is the BATES number of the first page of the document.

/ Files should be placed in the *images*/ subdirectory

/ PDFs shall include searchable text embedded in the document.

/ No other information should be provided in image filenames, including confidentiality status.

/ Filenames must be encoded in UTF-8

Native Files:

/ Filenames must be unique in the production, unless the content is identical. We recommend naming files by the Bates number of the first page of the associated document

/ The filename must retain the file extension corresponding to the original native format; for example, an Excel 2003 spreadsheet's extension must be .xls

/ Each filename, including extension, must correspond to the NativePathmetadata field in its corresponding document's row in the load file

/ Filenames must be encoded in UTF-8

/ Files should be placed in the *natives/* subdirectory

d. *Resolution of Production Issues.* Documents that cannot be read because of imaging or formatting problems shall be promptly identified by the Receiving Party.

The Producing Party and the Receiving Party shall meet and confer to attempt to resolve problem(s), to the extent the problem(s) are within the Parties' control.

e. *Native Format Documents.* Notwithstanding the foregoing provisions of this paragraph, the parties recognize that it may be appropriate for certain Documents to be produced in Native Format. Therefore, the Producing Party shall produce [all spreadsheets and audio/video files in native format] [list other types of files desired in Native Form only] unless there is an agreement to the contrary.] The Receiving Party may also request that the Producing Party produce additional file types of electronic Documents in Native Format where the converted image format distorts or causes the information to be improperly displayed, or for which there is no visual representation.

4. **Production Method.** Production media shall always be encrypted and will be sent via FTP or SFTP link provided via email at the time a production letter is emailed, unless the parties agree otherwise. On the occasion in which a particular production is of a size that would make sending it via FTP link impractical, the parties may agree to send encrypted physical media such as a Hard Drive or USB. Production letters will always accompany productions including the name of the matter in which it was produced, the production date, the Bates number range of the material contained in the production, and a short description of its contents. Passwords for encrypted media will be sent separately from the media itself.

5. **Document Unitization.** When scanning paper documents into Document Images, they shall be unitized in a manner so as to maintain the document(s) and any attachments, as they existed in their original state.

6. **Attachment Families.**

   a. For electronic documents, the relationship of documents in a document collection (e.g., cover letter and enclosures, e-mail and attachments, binder containing multiple documents, or other documents where a parent-child relationship exists between the documents) shall be maintained using the Begin Family and End Family fields of the load file, provided however that the Parties shall only be required to present one level of parent-child relationship. Document Images generated from attachments to emails stored in Native Format shall be produced contemporaneously and sequentially immediately after the parent email in their Bates numbering.

   b. Documents that contain hyperlinks that point to other documents in the possession, custody and control of the producing party agree to produce the hyperlinked content as above. The Parties agree that in the cases of hyperlinked content, the treatment of attachment families as described herein may not be practical. The parties shall meet and confer to determine the appropriate scope of collection and form of production for hyperlinked content.

7. **Duplicates.** A Producing Party who has more than one identical copy of an electronic document (i.e., the documents are actual duplicates) need only produce a single copy of that document. A Producing Party need not produce the same electronically stored information in more than one form. Deduplication will be based on the MD5 or SHA1 hash values of native versions of documents, respecting differences in families (i.e. two duplicates attached to different emails will both be provided). The hash value will take into account the document's text and intrinsic metadata (e.g., author, date created, etc.), but not extrinsic metadata values (e.g., custodian, file path). Emails should be systematically and consistently deduplicated. A Producing Party shall deliver in its Load File a populated All Custodians and All File Paths fields that includes the identity of each Custodian whose file(s) was removed as a duplicate of a produced document and the file path location of that duplicate.

8. **Bates Numbering.** Each Producing Party shall Bates number its production(s) as follows:

   a. *Document Images.* Each page of a produced Document shall have a legible, unique page identifier ("Bates Number") electronically "burned" onto the image at a location that does not unreasonably obliterate, conceal, or interfere with any information from the source document. The Bates Numbers shall be enumerated as defined above in Definitions. The Producing Party will use a consistent prefix throughout the matter. Thus, once a party chooses a two-to-five letter prefix, e.g. ABCD, it shall not later produce a Document using a different prefix, e.g. EFGH. No other legend or stamp will be placed on the Document Image other than a confidentiality legend (where applicable), redactions, the Bates Number identified above. The confidentiality legend shall be "burned" onto each document's image at a location that does not unreasonably obliterate or obscure any information from the source document.

   b. *Native Format Documents.* In the event Native Format Documents are produced, in order to preserve the integrity of those Native Format Documents, no Bates Number, confidentiality legend or internal tracking number should be added to the content of the Native Document.

c. *Sort Order*. For Bates numbering, documents will be sorted by their original file path in ascending order, preserving family ordering.

9. **Search Terms and Scope of Review.** The Receiving Party and the Producing Party shall meet and confer before agreeing on any use of search terms to identify or exclude electronic documents collected that will be reviewed for possible production. During the course of the litigation, the Receiving Party and the Producing Party may modify the search terms by agreement. At its own discretion, a Producing Party may use Predictive Coding or other form of Technology-Assisted review to minimize the cost and burden of reviewing non-responsive documents, subject to Rules and case law.

10. **Databases.** To the extent discovery requires production of discoverable electronic information contained in a database, in lieu of producing the database, the parties shall meet and confer to, with an understanding of which fields are relevant, agree upon a set of queries to be made for discoverable information. The Producing Party shall produce exemplar reports from the database in a reasonably usable and exportable electronic file (spreadsheet if possible). Upon review of the reports, the Receiving Party may make reasonable requests for additional information to explain the database schema, codes, abbreviations, and different report formats or to request specific data from identified fields.

11. **Short Messages and Collaboration Tools:** The parties agree that Documents to be produced may reside in short message applications such as text messages, chat, Slack, MS-Teams or other similar platforms from personal computing devices, cloud-based systems, or business enterprise systems. The parties shall meet and confer with respect to the scope of production from these applications, the context to be produced in the case of short messages, and the metadata to be produced if different from the section on Metadata, below.

12. **Privilege Logs.** The Producing Parties will produce privilege logs in spreadsheet or .csv format. A Producing Party will produce a separate privilege log for each production within 20 days after the production of documents for which a privilege is asserted. The production of a privilege log for a custodian or his/her department shall be not less than 20 days prior to that custodian's deposition. The Producing Party and the Receiving Party may modify the deadlines for production of privilege logs by agreement.

13. **Discovery and Admissibility.** Nothing herein shall be construed to affect the discoverability or admissibility of any document or data. All objections to the discoverability or admissibility of any document or data are preserved and may be asserted at any time.

14. **Metadata.** The Producing Party shall produce the metadata information described below with each production and in the format described above. For each Document, the Producing Party shall produce a line in the index file with the following fields, where available. The field naming conventions shall be the following. Datetime metadata will be provided in UTC in a consistent, reasonable, and clearly delimited format. For example, M/d/y H:m. To the extent timezone information is provided for context, it will be provided in a separate loadfile field.

Field Name	Description	Data	Example
Begin Bates	Beginning Bates number of first page of a document	Type	ABCD000004
End Bates	Ending Bates number of last page of a document	Text	ABCD000003
Begin Family	Begin Bates of parent document of family of attachments	Text	ABCD000001
End Family	End Bates of last attachment of family	Text	ABCD000004
pages	Number of Bates stamped pages for the PDF image each document	Text	3
Native Path	Relative file path of native record within production, including filename and extension of native file within the production. Only for documents produced in native format	Number	.\vol001\natives 001\ABCD00002.xlsx
TextPath	Relative file path of text record within production, including filename and extension of the text file within the production.	text	.\VOL001\text\001\ ABCD000001.txt
Placeholder	If Bates stamped document is produced with a placeholder image (values: Y or N)	Text	Y
Redacted	If this document has redactions (values: Y or N)	Text	Y
All Custodians	For deduplicated documents, list of all custodians the duplicate copy was collected from.	Text	
All Paths	For deduplicated documents, list of all file paths for duplicate copies.	Text	
Author	Creator of document	Text	Jones
Bcc	Additional blind recipients of an email (Blind Carbon Copy)	Text	bob@acme.com

Field Name	Description	Data	Example
Cc	Additional recipients of email (Carbon Copy)	Text	sue@acme.com
Custodian	Name of person from whom documents were collected	Text	Jones
Date Created	Datetime document was created	Datetime	07/21/1969 02:56:00
Date Modified	Datetime document was last modified	Datetime	07/21/1969 02:56:00
Date Received	Datetime document was received	Datetime	07/21/1969 02:56:00
Date Sent	Datetime an email was sent	Datetime	07/21/1969 02:56:00
File Extension	The suffix at the end of the end of a native filename indicating file type	Text	.docx .pdf .xlsx
Filename	Original filename of native document, including extension	Text	interesting_spread sheet.xlsx
File Path	Original source file path, including location,folder name, filename, and extension	Text	media.zip//jones.p st// sent mail/444.eml//inter esting_spreadshee t.xlsx
From	Sender	Text	jones@acme.com
In Reply To	Message id of email this email is in reply to	Text	
Message Id	Unique message id from internet headers	Text	
MD5 Hash	MD5 Hash value of Document	MD5 Hash	
SHA1 Hash	SHA1 Hash value of document	SHA1 Hash	
Subject	Subject line	Text	Check this out!
To	Recipient	Text	mary@acme.com