

Conferring Communicating Cooperating

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A Portrait of the Lawyer as a Universal Interface



Communication Breakdowns



Lessons from the cases on
talking about E-discovery

Qualcomm v. Broadcom

2008 U.S. Dist. Lexis 911 (S.D. Cal. Jan. 7, 2008)

“The fundamental problem in this case was an incredible breakdown in communication.”

U.S. Magistrate Judge Barbara Major

Pension Com'ee of Univ. of Montreal v. B.O.A.

2010 U.S. Dist. Lexis 4546 (S.D. N.Y. Jan. 15, 2010)

Look at your litigation hold policy

Identify key players

Check and recheck answers to doc requests

Delegate - but verify

Cooperation



Sedona® Conference Cooperation Proclamation*

You can be a zealous advocate and
cooperate with your opponent in discovery

You are required to cooperate in discovery
under the Federal Rules

*www.thesedonaconference.org/content/tsc_cooperation_proclamation

Some Sedona® methods*

ESI point person

Joint/early ID of sources of ESI

Joint development of search/retrieval
methods

Joint/early ID of form of production

Develop budgets based on proportionality

Set up dispute resolution

*Adapted from The Sedona Conference Cooperation Proclamation

Proportionality



The Sedona® Conference Commentary on Proportionality in Electronic Discovery*

11 Sedona Conference Journal 289 (2010)

Sedona® Core Principles*-I

1. The **burdens** and costs of preservation of potentially relevant information should be **weighed against** the potential **value** and uniqueness of the information when determining the appropriate scope of discovery.
2. Discovery should generally be obtained from the **most convenient, least burdensome, and least expensive** sources.

Sedona® Core Principles*-II

3. Undue **burden, expense, or delay** resulting from a party's action or inaction should be **weighed against that party**.
4. Extrinsic **information and sampling** may assist in the analysis of **whether** requested discovery is **sufficiently important** to warrant the potential burden or expense of its production.

Sedona® Core Principles*-III

5. **Nonmonetary factors** should be **considered** when evaluating the burdens and benefits of discovery.
6. **Technologies** to reduce cost and burden **should be considered** in the proportionality analysis.

The Rule 26(f) Conference



Getting non-medieval on your Assumptions about R. 26 conferences

Take it seriously-no drive bys

Take your tech person-not just JDs

Plan in advance and agree on an agenda

Get ready to disclose sources of ESI

Get ready to horse trade-give to get

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