

## Top 10 Things You Need to Know About ED

1. **Read The Rules:** The Federal Rules of Civil Procedure lay out the framework for your obligations in handling e-discovery and differ in several aspects from traditional discovery rules. In addition, your state may have it's own ED rules which differ from the FRCP. You need to understand the procedural requirements for the various jurisdictions where you may have litigation arise so start here.
2. **Read the Decisions:** Federal judges, notably Facciola, Grimm and Waxse, have spent considerable time issuing opinions which give details on interpreting and implementing the Federal rules. Reading these decisions is essential to understanding how to handle e-discovery so start with a good book on ED basics ( I suggest *Electronic Discovery and Evidence* by Michael Arkfeld and *Electronic Discovery and Records Management Guide* by Grenig, Marean and Potet) then read a good case update blog, preferably one which has an RSS feed.
3. **Know The Terms:** E-discovery isn't rocket science but it is technical in nature. But you learned the Rule against Perpetuities in law school so believe me you can handle this. Judges do not want to waste time settling arguments between attorneys who don't know the difference between a PST and an MSG file so get a good ED glossary (the Sedona Conference has one) and make sure you know all the terms.
4. **Know Where Your Data Is:** You can't find it to identify, collect and preserve if you don't know where it is. So get with your clients IT folks and make a map of their network with locations, custodians, OS and applications lists and descriptions of data amounts. Why? Because a map shows us how to go places we haven't been before without getting lost. Plus they are incredibly useful in court to show a judge the complexity of your data collection problem.
5. **Talk to The IT department:** They know how to make the map. You're Lewis and Clark, they're Sacajawea. You cannot ...absolutely cannot ... navigate without them.
6. **Talk to The Records Management people:** Records Management is the flip side of the e-discovery coin and your clients RM staff can help avoid the need to waste time and money restoring backup tapes that don't contain relevant data. Wait, your client DOES have a Records Management Policy right?
7. **Make a Records Management Policy:** Good records management will save time and money when clients have to collect data and will help avoid sanctions when you have to explain to a judge why some documents are no longer available because they were deleted in the ordinary course of business by the records retention policy.
8. **Make A Litigation Hold Policy:** Every client needs to have a clear and concise litigation hold policy to deal with procedures for data retention when the litigation hold letter arrives. And it will.
9. **Enforce the Litigation Hold Policy.** Repeat after me: "repeatable, defensible process". Don't put the lit hold policy in a manual that just goes on the shelf. This is the biggest mistake you can make and more cases are lost here than in any other phase of electronic discovery. Your opponent marks up a motion for sanctions, you say "but Your Honor, we have a lit hold policy" and the judge says "show me how you implemented it in this case." And you can't.

10. Meet with inside counsel: Why? To discuss all of the above. They will need to understand, and be able to explain, all of it in order to work with you. And you need to be sure they can do exactly that.