

Insights: Publications

WARNING: Follow Your ESI Protocol Because the Court Will – PART ONE

LitSmart E-Discovery Blog

February 17, 2022

Written by **Nicole D. Allen**

A lawsuit has been filed. Both parties have met and negotiated an ESI Protocol that has been formalized as a court order. Your review team has started the initial review and notices there are numerous duplicates. When this is brought to your attention, you discuss with your litigation support team and they suggest de-duplication and email threading as options. Which of the following would steps would be appropriate?

- A. Run email threading and de-duplication and continue the review.
- B. Consult your ESI protocol. If the ESI protocol lists de-duplication and email threading, run email threading and de-duplication and continue the review.
- C. Consult your ESI protocol. If the ESI protocol does not list de-duplication and email threading, confer with opposing counsel before running any email threading and de-duplication.

If you answered A, you need to be prepared for a discovery dispute, a court ruling against you as well as running the risk of FRCP 37(b) sanctions.[1] If you answered B and C, you are following the court's lead. As the latest ESI Protocol rulings show, ESI Protocols are controlling.

Related People



Nicole D. Allen

t 404.815.6086

niallen@ktslaw.com