MOBILE DATA IN E-DISCOVERY
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New Data Sources Driven by Mobile Technology

- **New data sources**
  - Mobile devices
  - Internet of Things
  - Cloud

- **New data types**
EDRM MODEL

Electronic Discovery Reference Model
MOBILE DISCOVERY IS STILL DISCOVERY

MEET AND CONFER

➢ Cooperation
➢ Controlling Scope
➢ Custodians / Other Sources
➢ Time Frame
➢ Technology
MEET AND CONFER (CONT.)

➢ *Form of Production*
   - Seek agreement up front
   - Format may dictate process
   - Ensure form of production is something you are comfortable receiving and creating

➢ *Clawback / 502(d) orders*
FEDERAL VS. STATE (PA) REQUIREMENTS

- **PA eDiscovery rules – Order No. 564 (Pa. 2012)**
  - Discovery of ESI should be guided by proportionality and cooperation
  - Similar in spirit to Federal Rules, but explicitly not identical to Federal Rules

- **Amended PA Rule 4009, 4011 - Limitations as to time and scope**
  - Make ESI requests as specific as possible
  - Nature and scope of the litigation
  - Relevance of the ESI
  - Cost and time burdens
  - Relative ease of producing the ESI
No Rule 26(f) analog - meeting prior to discovery not required

No Rule 37(e) analog – no Safe Harbor provision, but commentary states good faith should protect against sanctions
NEW DATA SOURCES

- Traditional electronic sources
  - Hard Drives
  - Email
  - Servers/Databases
  - Flash Drives

- New Sources
  - Cloud Based
  - Mobile Devices
  - Messaging
  - Social Media
NEW DATA TYPES IN THE WORKPLACE

- Enterprise applications
  - Office365
  - Skype
  - Slack

- User-installed – everything else
  - File sharing/hosting services
  - Mobile-based
COLLECTION CONSIDERATIONS

- Relevance
- Proportionality
- Privilege
- Unique
- Within your possession, custody or control
MOBILE DATA STORED ON DEVICE

- Text Messages
- Voicemails
- Call Logs
- Contacts
- Location / GPS
- Photos/Videos
- App Data
TEXT MESSAGE DISCOVERY

- Custody, possession or control
  - Company issued?
  - Used for work-related purposes?

- Methods of collection
  - Forensic extraction
  - Local archives
  - Cloud archives
  - Screenshots
Mobile Data Stored in Cloud

- **Preservation**
  - Data stored in your organization’s cloud is generally within your possession, custody or control
  - Need to notify cloud provider of duty to preserve?
  - “User” clouds (personal Dropbox accounts)

- **Collection**
  - Ability to collect from cloud services can vary
  - Check contract terms, provider capabilities
SOCIAL MEDIA DISCOVERY

- Varies by type of matter
  - Personal Injury
  - Disability
  - Copyright / IP
  - Trade Secret
  - Employment

- Public posts vs DMs
  - Messaging related to work?

- Ethical considerations
Questions?

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