

Dispute Over Linked Google Drive Documents Highlights Discovery Challenges with Information Systems

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The rising growth of cloud-based storage and communication tools has led users to increasingly share messages with hyperlinks to documents stored in online repositories. The corresponding impact of this trend is that these communications, together with the linked documents, are increasingly sought as evidence in litigation. However, there are complexities with collecting and producing linked documents that may lead to motion practice and delays if parties do not establish a process for handling this information at the outset of discovery.

This is precisely what transpired in the recent case of [Nichols v. Noom](#).¹ In *Nichols*, the inability to proactively address the production of hyperlinked Google Drive documents referenced in relevant emails led to a protracted discovery dispute. *Nichols* teaches that both responding and requesting parties need to obtain key details regarding client information systems for discovery to proceed efficiently and cost-effectively. *Nichols* also highlights the need for counsel and the courts to adopt flexible approaches to discovery issues as new information is revealed during litigation.

Discovery Challenges with Linked Documents

Linked documents in the context of discovery generally refer to documents stored in cloud-based repositories like Google Drive, OneDrive, SharePoint, and Dropbox. Senders using email or workplace collaboration tools can hyperlink to a document in the communication rather than attach the document to the message. In so doing, the communication will display a hyperlink on which recipients can click to access the document. The communication will not include the document in the body of the message nor as a corresponding attachment. The advantage of sending a link to a single version of the file is that recipients can collaboratively work on that document without having to exchange redline drafts or track which recipients have the latest document version.

At first glance, linked documents may seem analogous to any other message attachments. Nevertheless, linked documents can present unique collection, review, and production challenges that make them different from message attachments. For example, a responding party may not be able to collect the precise linked document referenced in a message if the document has been modified or deleted. In some cases, users have made linked documents inaccessible by revoking access to files, thus disabling the responding party's ability to collect that information.² In other instances, the online repository that is the source of the linked

¹ *Nichols v. Noom*, 20-cv-3677, 2021 WL 948646 (S.D.N.Y. Mar. 11, 2021).

² See *Shumway v. Wright*, No. 4:19-cv-00058-DN-PK, 2020 WL 1037773, *2 (D. Utah Jan. 13, 2020) (“there was a small number of Google Drive linked documents that either no longer exist or are located in the ‘trash’ folder of

document may be unknown. Linked documents can also create review challenges and inefficiencies given the complexity of connecting those documents to the messages in which they are referenced.

Nichols v. Noom

In *Nichols*, the parties presented the court with a combination of these complexities. In particular, Magistrate Judge Katharine Parker was asked to determine whether hyperlinked documents from defendant Noom's Google Drive repository should be considered attachments within the context of the parties' ESI protocol. The plaintiffs argued the linked Google Drive documents were message attachments and that Noom should accordingly produce all linked documents in their respective family relationships with the relevant emails in which they are referenced. Noom disagreed with this view of the ESI protocol while maintaining it would be cost-prohibitive and disproportionate to create a family relationship for every relevant email that referenced a linked Google Drive document.

The ESI protocol, while detailed and meticulous, did not specifically consider whether hyperlinked documents within emails are attachments that must be produced as a "family." As a result, Judge Parker examined the merits of the plaintiffs' requested discovery against proportionality limitations and the ESI discovery guidance memorialized in [The Sedona Principles](#). Drawing on these standards, the court held that the plaintiffs' request was disproportionate to the needs of the case under Federal Rule of Civil Procedure 26(b)(1) and Rule 1.

To satisfy the plaintiffs' demand would require Noom to design a customized computer program that would connect emails with all Google Drive linked documents and then re-collect those same documents it previously collected and (in some instances) produced to ensure a family-complete production. Because the plaintiffs had not shown a need for *all* linked Google Drive documents in family relationships, the court refused to order Noom to replicate its collection and production of linked documents. If the plaintiffs determined there were emails "containing hyperlinks for which the corresponding hyperlinked document could not be located or identified," they could demand that Noom produce those documents in families with the corresponding messages.

Getting The Details on Client Information Systems and Practices

Nichols spotlights the importance of responding parties obtaining as much information as possible, as early as possible, about their clients' information systems, including how custodians typically use those systems. *Nichols* likewise underscores the need for requesting parties to obtain understanding and transparency regarding those systems and related practices. Without

the user who shared the linked document . . . By placing a Google Drive linked document in the 'trash' folder, the user made that document inaccessible.").

that information, litigants may find themselves in the same position as the parties did in *Nichols*, scrambling on the fly to find a solution to a complex discovery issue.

And yet, *Nichols* also demonstrates the need for flexibility in dealing with new information or issues that arise in discovery. Despite the best efforts of counsel, not every discovery issue, client information system, or source of relevant information will be identified at the Rule 26(f) conference or addressed in an ESI protocol. Just like the approach Judge Parker fashioned in *Nichols*, courts and counsel should be willing to consider elastic solutions—free from reflexive threats of cost-shifting or sanctions—to address complex issues during litigation.