

Surviving the Perfect e-Discovery

STORM


As the challenges of electronic data discovery continue to increase, legal administrators increasingly are being asked to “steer the ship” by managing the complex process and cutting related costs throughout their organizations.

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A perfect storm is brewing in the sea of e-discovery. The e-discovery process can be overwhelming for law firm partners, associates and litigation support managers (the “discovery team”) to effectively manage, as there are vast quantities of electronically stored information (ESI) to review. As the electronic tides rise, law firms, corporate legal departments and governmental agencies are looking to their legal administrators to navigate the e-discovery process by controlling costs and orchestrating an overall course of action.

Traditionally, e-discovery and document reviews were considered the domain of large law firms. In today’s legal profession, however, e-discovery is an issue for firms of all sizes, and e-discovery vendors are providing scalable solutions for law firms of every size. Now, more than ever before, legal administrators in small, midsize *and* large firms are assigned the duties of project management and cost control with respect to e-discovery matters. Administrators must take an increasingly proactive role in the management of e-discovery and document review projects due to the rising costs of document review and the pressures felt by law firms to reduce costs during the current recession.

The complexity and expense of e-discovery document review demands that law firm administrators carefully manage the process by vetting the right vendors to increase cost savings for clients. By implementing best practices with regard to locating, winnowing and reviewing the relevant data, legal administrators can realize massive reductions in review costs. Careful planning at each step of the



e-discovery process ensures that legal administrators avoid the pitfalls which occur with inefficient document reviews.

The following 10-step approach to e-discovery for legal administrators provides a detailed look at what's required to manage the process, including potential pitfalls to avoid.

1. Meet & Confer: Communicating with the Captain of the Opposing Fleet

From inception, legal administrators must collaborate with their discovery teams to review the claims, defenses, and subject matter of the discovery requests. Moving forward, key individuals in the review process should include experienced attorneys and paralegals, IT professionals and/or other systems personnel, as well as e-discovery vendors.

Identifying document production deadlines is critical. Document production deadlines change rapidly, so legal administrators should keep abreast of changes as they happen. They must appoint deadlines for each phase of the review process and assign a team member responsible for adherence to the appropriate deadlines.

Careful bilateral negotiation during the "Meet & Confer" period prior to the review process can prevent unnecessary costs and needless disputes with your adversary. No review, no matter how efficient and accurate, can be a success if the parties are constantly arguing before a judge.

2. Getting the Data Sources: Assembling Your Officers for Battle

The e-discovery process commences with a discovery request for information. The responsive party's discovery team then locates the demanded information. Skilled technology consultants must find and extract potentially responsive data without disrupting the client's ongoing business in the process.

Throughout the data collection stage, the client should utilize a discovery vendor to ensure data preservation during the collection process as well as after the initial collection. Post-collection, the data must be sent to the assigned vendor for processing. In order to avoid treacherous pitfalls, the legal administrator must appoint proper personnel to handle the legal hold notification (either internally or to the client) and ensure that metadata are preserved and turned over methodically.

Tracking the data collection is one of the most important steps to ensuring deadlines are met. Legal administrators and the discovery team should confirm that all responsive data are collected and instruct the key people and appropriate IT and records management personnel to continually preserve data during the collection process.

3. Winnowing the Data Sources: Mapping Your Course

Overly broad searches equal high-cost document reviews. Carefully constructed searches (ex. keyword, Boolean, concept) translate into manageable data usable for litigation. Legal administrators must carefully plan when creating keyword search terms to cull accurate data for each request.

The administrator should also appoint a member of the discovery team to ensure all collected data are received by the selected vendor. Your e-discovery vendor should be viewed as a vital part of your team.

4. Employing the Appropriate Review Protocol: Choosing Your Vessel

At the onset, counsel and the discovery team should also develop and implement a training program for the review team, educating team

members on the subject matter of the litigation and the selected review tool. Legal administrators and the review team should be given information about the case, key people involved, trial strategy and discovery objectives in order to properly tag documents being reviewed.

5. Hiring the Right Review Attorneys: Enlisting Your Crew

Each review project is unique and requires a different skill set. Employing review attorneys without the appropriate legal, technical and linguistic skills all but ensures costly re-reviews and the potential release of privileged documents, notwithstanding improper coding of responsive and non-responsive documents. Legal administrators take heed – document review attorneys can make or break your client's case.

6. Using a Rigorous Review Platform: Arming Your Battleship

Legal administrators must have the appropriate tools to create an efficient and accurate review. Without efficient review software, no document review team can meet its true potential. Hardware is just as crucial; antiquated computers make for slow reviewers.

A plethora of review platforms is available. A quality review tool is invaluable for automating the review and document tagging decisions. The proper review tool will eliminate mistakes before they happen and be customizable in coding and reporting functions, minimizing inconsistent tagging and ultimately saving time and money.

7. Deploying Diligent Quality Control Measurements: Training the Crew

Even highly qualified document review attorneys make mistakes. Employing sharp quality control staff from the onset can keep documents from slipping through the cracks.

Although some inaccuracy is inevitable, legal administrators and discovery teams can limit mistakes by implementing quality control protocols after first-level reviews are completed. Group communication is of the utmost importance in minimizing mistakes. Moreover, it is important to analyze, document and implement quality control procedures before each level of review is

conducted. This will ultimately show a 10 percent to 15 percent cost savings for the review.

8. Using Technology to Control the Budget: Defining the Ship's Bearings

When legal administrators follow the steps above and give quality control managers accurate statistical analyses and metrics data, productivity is increased. Using a metrics tracking tool to surveil cost, productivity and accuracy of the review and reviewers is the most effective way to lower costs during the document review process.

The administrator should define a budget at the beginning of each project; however, unless he or she has actual metrics on a project, it will be impossible to know whether the review is on track.

If legal administrators find their estimated metrics are far different than their actual numbers, they should quickly determine why. For example, if a document review takes much longer to complete than anticipated, the administrator and the discovery team must determine the number of documents each reviewer is averaging per hour using a metrics tool and request that the discovery team find ways to increase a resolution to any problems that might exist.

9. Information Security: Keeping the Pirates at Bay

Unprofessional and untrained reviewers can quickly destroy a document review project. Protecting your client's sensitive data requires a digital fortress. Legal administrators work with the discovery team to limit access to all computer networks through the use of one or more of the following:

- user names and passwords,
- access control lists, and
- regularly updated anti-virus software.

Moreover, legal administrators may want to implement policies that prohibit the unauthorized disclosure of, among other things, client information.

10. Creating a Defensible Process: Careful Planning Makes for a Safe Voyage

Given the size, complexity and deadlines of many review projects, inadvertent disclosure of

privileged documents may occur. By keeping the above steps in check and complying with U.S. Federal Rule of Evidence 502, legal administrators can prevent adversaries from using such inadvertent disclosures against clients in court.

The New Era of E-Discovery and Document Review: Surviving the Perfect Storm

Every successful document review requires an integrated approach by all participants that is visible, transparent and encompasses all stages of the e-discovery process, including preservation, collection, data processing and hosting, review and production.

In order to achieve the intended review goal and cut client costs, the legal administrator tasked with managing e-discovery should be ready to implement a project plan before a client receives notice of litigation or an investigation, so that a proactive approach can be taken when notice comes.

The most important message to take from the steps outlined above is as follows: limiting the amount of data collected, reviewed and produced equals reduced e-discovery costs. Legal administrators can measure progress by constantly tracking document review metrics.

By following the steps identified above, legal administrators can substantially improve document review efficiency and pass savings along to demanding clients. ✱

about the authors



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