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Understanding the Processing Phase of eDiscovery
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The *Processing* stage of the Electronic Discovery Reference Model (EDRM) has three distinct perspectives when approaching the manipulation of data: the Litigation Support Professional, the Litigation Paralegal, and the Litigation Attorney's perspective. All of these perspectives fuse into one common goal of leading to admissible evidence that will win court cases at trial. Although they must work in concert with one another, they each possess unique responsibilities and challenges to overcome. There are certain "best practices" that each litigation professional should have at their disposal to access from their respective "tool box" when necessary and this document will assist them in this endeavor.

<u>Litigation Support Professional (LSP):</u>

The LSP is the "technical" first line of defense in any legal organization. Based on the legal team's structure and organization, the LSP typically oversees the *processing* phase of a litigation matter. Many companies and law firms are savvy enough to *process* small volumes of data in-house, however, many matters require using a third-party vendor to facilitate these services. LSP's are typically responsible for or should be responsible for the following:

1. Recommending a solution to handle the electronic evidence in the case, i.e. selecting to keep the data in-house or to use a third-party vendor;
2. Managing the request for proposal (RFP) process from at least 3 vendors to make a strong recommendation to the legal team of which vendor to use and why;
3. Reviewing and approving the statement of work (SOW);
4. Communicating the technical specifications/requirements to the attorneys in general and specifically the billing partner;
5. Preserving the metadata that existed before *processing;*
6. Maintaining the defensibility of the reduction of data;
7. Monitoring the production/delivery schedule and exception reporting;
8. Quality control checking (QC'ing) data to make sure that it was properly de-duped, de-nisted, etc.;
9. Determining which data proceeds to the next phase of the litigation cycle; and
10. Reporting results to the litigation team.

Although this list is not exhaustive, these functions will greatly assist the legal team in spending the bulk of its billable time conducting a substantive review of the relevant documents as opposed to spending non-billable time trouble shooting duplicative and/or irrelevant documents.

Litigation Paralegal:

The Paralegal's role during the *processing* stage should initially be supportive to the LSP. The major contribution that paralegals can make during this phase is helping with early case assessment (ECA). Paralegals tend to have a firm grasps initially on cases because they review and organize the files and documents. Their intrinsic knowledge can be incredibly useful when coming up with appropriate search terms to reduce the data review set. Moreover, paralegals know and work with the attorneys more closely than the LSPs, thus they understand their personalities and working style. They can add input and make suggestions to LSPs to make sure the right vendors are selected to conduct this phase of the litigation. Paralegals should do the following during this phase:

1. Play an active role in the vetting process of third-party vendors, including the RFP and SOW portions;
2. Make sure that the appropriate file types proceed through the cycle;
3. Translate the technical jargon the LSP communicates to them in ways that attorneys can understand in order to make the appropriate decisions; and
4. Act as the "project manager" of the process to insure that deadlines are set and met according to the team's schedule.

Paralegals inherently should be included during the entire *processing* phase because they are the keepers of the documents (electronic and otherwise) and will ultimately be responsible for reviewing and producing same during the litigation.

Litigation Attorneys:

In this phase, many attorneys attempt to allow the LSPs and paralegals to handle this phase because it is highly technical. However, more and more attorneys are fascinated with eDiscovery and want to master its complexities. Attorneys should be involved with *processing* and here are a few ways how:

1. Determine which files are likely to lead to issues of material fact and admissible evidence;
2. Decide which custodians to "de-dupe" and how to reduce the data set;
3. Either have the client or execute themselves the contracts, SOWs, etc.;
4. Insure that the chain of custody has been preserved; and
5. Certify that the methods used by the LSPs are defensible.

Ultimately, it is the attorneys' responsibility to make sure that the methods used during the *processing* stage is legally sound and defensible. Thus, although attorneys may not be very technologically savvy, they have a duty of care and responsibility in order to avoid any malpractice claims or issues.

The *processing* stage is a vital phase of the eDiscovery life cycle. It is imperative to have solid team of litigation support professionals that are knowledgeable and experienced with both the technical aspects of litigation, as well as the tactical ones. Reducing data sets are essential in conducting manageable reviews in order to lead to admissible evidence. Admissible evidence, if it acts in your favor, wins cases. And winning cases is ultimately why we litigate.

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