



## Demystifying the Analysis Phase of the EDRM

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The *Analysis* stage of the Electronic Discovery Reference Model ([EDRM](#)) occurs throughout the entire model. Different times require actions, and there are different roles and responsibilities for three professionals involved throughout: the Litigation Support Professional, the Litigation Paralegal, and the Litigation Attorney. Together, they will insure that the data collected is culled properly, reviewed, and produced to the opposing side. Validation and quality controlling (QC'ing) are essential to produce the appropriate results which will ultimately lead to admissible evidence at trial. Because the *analysis* stage can span the entire model, this discussion will be limited to the data assessment phase regarding review. There are certain “best practices” that each litigation professional should have at their disposal to access when necessary and this document will assist them in this endeavor.

### Litigation Support Professional (LSP):

Since the LSPs oversee the data *processing* and *review* phases, analyzing and QC'ing data falls right in their laps as well. Removing unwanted and unneeded data increases the productivity of the document review team exponentially. Much of the *analysis* can be performed in conjunction with the vendor because it has a duty to QC the project before turning it over to the law firm. LSPs are typically responsible for or should be responsible for the following during this phase:

1. Working with the vendor to correct any errors and problems with the data that may impact the document review, for example, spreadsheets may be truncated, the time zone may be incorrect, or there may be incorrect images linked to native formatted documents, etc.;
2. Create and maintain relevant documentation such as data maps, custodian interviews, and a detailed gap analysis;
3. Insuring that all data fields containing metadata are accurate, have been de-duped appropriately, and that all parent/child relationships are in tact;
4. Maintaining a log of all errors and problems just in case these exceptions have to be disclosed to the other side and or to the court;
5. Acting as the liaison between the vendor and the document review team.

Although this list is not exhaustive, the role of the LSP is essential while allowing the document review team to focus on more substantive *analysis* of the data set for production and admissible evidence at trial.

### Litigation Paralegal:

Paralegals' role during the *analysis* stage picks up where the LSPs' role leaves off. The paralegal should be the gate keeper of the sheer volume of the data set and disseminating the review sets for the document review team. They should utilize the Early Case Assessment (ECA) and review platform software solutions to identify which documents are responsive and non-responsive and manage the production based upon same. Paralegals should do the following during this phase:

1. Analyze the data to make sure that all documents are searchable and can be organized appropriately in preparation for review;
2. Upload the issue code list provided by the attorneys to appropriately categorize and flag documents during a substantive review;
3. Prepare reports and generate relevant work product such as chronologies, summaries, etc. based on this analysis for attorney review; and
4. Make sure that the attorneys have the analytics that they need to accurately respond to document requests and to utilize the data that they have acquired to defend their client and win the case.

Paralegals are often “the glue” when it comes to the production and analysis of documents. They effectively manage the review team by providing them with what they need, when they need it, while working out technical problems with LSPs.

### Litigation Attorneys:

The *analysis* phase is where the 3 years of law school and work related experience comes in handy for attorneys. Deciphering what documents truly are privileged, what legal theories they are going to implore, and what documents/evidence they will need to substantiate them is the paramount focus and purpose of a document review and/or production. Here are some of the ways lawyers can use their expertise during this phase:

1. Determine what the appropriate legal theories that are required to win the case;
2. Develop relevant issue codes so that document reviewers can tag and flag appropriately for follow-up review;
3. Conduct a thorough 2<sup>nd</sup> and 3<sup>rd</sup> level review of key documents flagged pursuant to various issue codes prior to production;
4. QC a representative sample of privileged and/or redacted documents prior to production; and
5. Make sure that they have appropriate “claw back” provisions in place just in case they inadvertently produced privileged communications or attorney work product protected documents.

Attorneys have the most important task of providing the final say of what will and will not be produced and are the ones who will ultimately be held accountable for whatever goes array. While paralegals,

contract document reviewers, etc. may assist with document reviews, it is better for the attorneys who are going to tri a case to be extremely hands on with the data, analyze the issues, and designate the appropriate non-privileged/responsive documents.

The *analysis* stage is a broad phase of the EDRM model. Electronically stored information (ESI) is manipulated in various ways in order to analyze the documents that will eventually be produced to the other side. It is important to reduce the data size by conventional methods while checking the data to make sure the software being used is working properly. QC'ing and validating data is vital in making sure that the files are not corrupted and that maintaining the hash tags will keep the data organized properly. These steps make the document review more productive and allow the attorneys' litigation skills to shine.

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