Mastering the Review Phase of the EDRM
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There are different roles and responsibilities for litigation professionals during the *review* stage of the Electronic Discovery Reference Model (EDRM). Litigation Support Professionals, Litigation Paralegals, and Litigation Attorneys each have a certain level of expertise that lends to successfully completing a document review. Teamwork is vital in determining the appropriate non-privileged documents to produce to opposing counsel. 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.

Litigation Support Professional (LSP):

Because of their hybrid of extensive knowledge of information technology (IT) and of the litigation process, the LSP is the intermediary between the law firm and the vendor during the *review* process. Ideally, the same vendor who *processed* the data, would host it for *review,* however, there are number of factors that can effect why that may not be the case. Regardless, a review platform will need to be vetted and selected that meets the overall strategy and specifications of this particular project. Some things to consider would be: 1.) How many people will be reviewing? 2.) Where will they review? 3.) Does the review platform allow you to redact, add confidentiality provisions, and produce the documents within it? 4.) How secure are the access points to the data? 5.) How much project management and customer support will you get from the vendor should something go wrong (and is that discussed in your contract)? Once the data has been *processed*, QC'd, analyzed, and ready for review, here are some "best practices" for the LSP:

1. As mush as possible, remain involved with document review planning meetings. Often the LSP is seen as an IT person, not an LSP, thus decisions are made without their knowledge that can negatively impact the review logistically;
2. Set deadlines to have data hosted and ready for *review* with the vendor's project manager ahead of LSP's own deadlines to allow room for unforeseeable delays (there will be some);
3. Make sure that if this will be a multi-office review or take place outside the firm, that the review platform allows encrypted access and the connection speeds will be high enough to conduct the review in a timely fashion;

4. Work in concert with the Litigation Paralegal to identify and segregate review subsets ("buckets") for the document reviewers; and
5. Log and keep track of all of the problems that the reviewers are experiencing and make sure that the vendor sufficiently executes the contents of the Statement of Work.

Although this list is not exhaustive, it is extremely important to have someone who manages the IT aspects of the document review and the issues reviewers have as well. The best person to communicate with the vendor and the review team is the LSP and is the appropriate person to keep the vendor honest with the assurances it made before any work was performed.

Litigation Paralegal:

The *review* stage is where the Paralegal thrives. Legal teams often rely on paralegals to conduct the first level review of documents. Moreover, paralegals typically take the "key words" or "search terms" created by the attorneys and manage the substantive document review for responsive documents by disseminating review buckets for reviewers to cull through. In addition, paralegals are typically responsible for maintaining a privilege log of all of the attorney/client communications and documents protected under the "Attorney Work-Product Doctrine." Paralegals should be an integral part of document review team and oversees the production of documents to the other side. Some "best practices" paralegals can use during the *review* phase are:

1. Consult with the review team to obtain an "Issues List" of relevant themes, topics, and issues that can be coded and captured throughout the review;
2. Inquire about what format the documents will be produced in, i.e. native, Tiff, or a combination of both, including if any metadata will be exchanged, and coordinate with the LSP to deliver same;
3. Review any protective orders and consult with the supervising attorney to insure that all relevant documents contain any confidential designations;
4. Coordinate with LSP to establish review buckets for the review team;
5. Maintain a privilege log and make sure that all appropriate documents have been redacted properly; and
6. QC any pending document productions before they are exchanged.

Paralegals play an integral role in the *review* phase. Law firms utilize them more because they usually have a stronger grasp on the LSP side than many of the attorneys, they are often less expensive than using an associate, and they typically have more experience on the litigation side than the LSP. This is a great combination for this phase.

Litigation Attorneys:

While the LSP and paralegals are handling both the technical aspects of the review and setting up the review buckets, the attorneys can now conduct a substantive review of the documents, shore up and support their factual theories of the case; and prepare the evidence that they will eventually use to win this case in court. To get there takes a lot of time and considerable effort. For some document reviews, it may require hiring contract reviewers, utilizing predictive coding, or exhausting the firm's own internal resources to conduct them. This decision lies with the individuals whose licenses and

malpractice insurance are on the line…the attorneys. There are a number of responsibilities and "best practices" attorney should implore during the *review* phase and here are some suggestions:

1. Based on the volume of data, scope of the number of custodians, and the amount of exposure at stake for the case, determine the most cost effective review strategy, i.e. hiring contractors, predictive coding, in-house resources, etc.;
2. Determine if seeking a protective order is necessary to protect your client's products/services' trade secrets or confidential/non-public information;
3. Develop an "Issues List" of all relevant issues, themes, and topics so that reviewers can capture them for a second and third level (if necessary) review before production;
4. Verify that all documents flagged for privilege are in fact privileged, including redacted documents; and
5. QC the production set before it goes out the door (a step that is not overwhelmingly taken because of the technological advancements of Discovery/eDiscovery).

Although eDiscovery may be somewhat new, confusing, and difficult to keep up with, attorneys have to develop a comfortability of remaining involved throughout the *review* process. They cannot rely of LSPs and paralegals alone. Attorneys need to verify and QC documents before production and be able to testify that the methods used to obtain and produce these documents are defensible.

The *review* stage is arguably the most labor intensive phase of the entire EDRM. It can involve countless hours of LSPs, paralegals, attorneys, contract reviewers' time. If you look at the EDRM up to this phase, you see a funnel of enormous amounts of data and information whittling down to subset of documents that will ultimate lead to only a couple hundred trial exhibits of key facts. It is equally as important to produce documents that demonstrate your advantage in the dispute, as well as identify the documents internally that will cause the most significant problems in your defense. It is wise to invest the appropriate man/woman power to conduct document reviews and it helps to have a vendor in the trenches with you that want you to succeed and ultimately win your case.

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