

# Tip of the Month



## Effectively Managing a Large-Scale Document Review

### Scenario

A multinational company is in litigation with multiple parties regarding a patent dispute. Due to the breadth of the claims and the complexity of the issues involved, the parties expect to produce millions of documents in discovery. With merits depositions scheduled to take place in the upcoming months, the multinational company must engage in a comprehensive document review to produce documents, prepare its witnesses and refine its litigation strategy.

### Goals of the Document Review

Every document review has unique components that reflect the issues involved in the case. However, the document review team typically strives to achieve accuracy, efficiency and diligence.

**First**, the review team strives for an accurate review by locating and itemizing documents responsive to the discovery requests and the parties' theories of the case.

**Second**, using the appropriate tools together with an organizational review structure, the review team seeks to winnow the production in an intelligent, efficient and cost-effective manner.

**Finally**, the review team works diligently to attempt to minimize the risk of errors in the review process that could result in a waiver of privilege, the dissemination of proprietary information without the proper confidentiality designation or missing important documents.

### Preliminary Assessment

Although a document review is often time-sensitive, it is important to have the ultimate review goals in mind before beginning the review process. This can be achieved by conducting a preliminary assessment that considers the following items:

- The nature of the case and the objectives of the review;
- The volume of documents, including electronically stored information, to be reviewed;
- The form the review will take (electronic or hard copy);
- The form in which documents will be or have been produced;
- The establishment and implementation of quality-control procedures; and
- The anticipated production and/or discovery schedule.

Keeping these components in mind, as well as other case-specific issues, will help the review

team to achieve an accurate, efficient and diligent review.

The preliminary assessment stage is a good time to consider the review platform and which vendor to use for the review. It is also an appropriate time to consider whether contract lawyers, a party's internal or external lawyers, or some combination, will be doing the actual review. This is also a good time to learn about any technological issues or quirks of how a party keeps or collects its documents that may affect the review or the choice of review tool.

The final step in the preliminary assessment is to consider the available review options, taking into account the prevalence of electronically stored information. For example, the document review may consist of: (i) native files, (ii) hard copy documents, (iii) a litigation support database such as Concordance, (iv) an online repository that is either vendor-provided or client-proprietary or (v) a combination of the foregoing. In deciding which option(s) to choose, it is helpful to keep in mind the goals discussed above and take into account the size and experience of the review team. Additionally, consideration of the internal resources available, including network storage space, bandwidth and case room availability, can be made.

### **Review Phase**

Before the review team can begin its review, it is recommended that each team member be informed of the review plan. Elements of the review plan can include:

- A statement of the issues and anticipated review deadline;
- A description of the rules for the review and how the review should be administered (i.e., subsets of documents, tagging procedures, document families, privilege and confidentiality issues);
- A description as to how progress will be tracked for each attorney and for the review as a whole (i.e., "reviewed" tag, subsets of documents);
- A list of criteria for the reviewers to use in categorizing a document into files (i.e., "relevant" tag, specific issue tags, "privilege" tag, "hot" or "key" documents); and
- A specific statement of the estimated time and staffing requirements for completing the review in an efficient manner. If possible, additional time can be built into the time estimate to allow for unforeseen problems and more complicated documents.

### **Quality Control Procedures**

Even with an experienced review team, it is important to ensure that quality-control processes are also implemented. The use of quality-control processes can provide information to help determine early on how best to organize the review to maximize quality and efficiency. Additionally, quality-control processes also assist in the identification of potential ambiguities and/or gaps in the review plan which might result in errors or other issues. Some quality control processing includes:

- A second-tier review on some, or all, of the documents reviewed;
- A statistical analysis on the documents reviewed to check consistency and a second-tier review on the categories of documents that show unexplained statistical variations; and/or
- A targeted second-tier review on specific documents addressing issues most central to the case.

### **Conclusion**

Although every document review involves its own set of challenges, it is a crucial aspect in the discovery process and in developing a litigation strategy. As such, the document review team

should strive for an accurate, efficient and diligent review. By performing a preliminary assessment, and implementing quality-control processes, the review team can minimize unexpected problems and provide a high-quality, efficient, cost-effective document review.

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