

Capping e-discovery costs in smaller cases requires creativity

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Electronic discovery shouldn't cost more than a case is worth.

Uncovering relevant electronic evidence has become critical in a wide range of civil litigation, from divorce cases to business disputes. But keeping a lid on e-discovery costs can be challenging, especially in smaller cases.

To curb e-discovery costs, Conrad Jacoby, an attorney and litigation technology consultant in the Washington, D.C. area, recommends "thinking creatively."

Target searches, split costs with the opposing side and shop for the most cost-effective document retrieval, storage and review options, he suggested.

And don't panic.

"You just have to get over the fear of [electronic discovery]," Jacoby said. "You're still using your lawyer/investigator skills to figure out the relevant evidence. We just are looking in different places."

Jacoby said the most important step for controlling e-discovery costs is scheduling a "meet and confer" with the attorneys for the other side.

"The number one thing is to talk to your opposing counsel," he said.

Even where it's not required, it's a great way of limiting the scope of a legal hold, he said, by agreeing on date restrictions, for example.

Michele Lange, director of legal technologies at Kroll OnTrack, an Eden Prairie, Minn. computer forensics company, agreed.

"The federal rules of civil procedure and various states mandate that you have a meet-and-confer conference early in the discovery process and that you discuss discovery. Don't let that be a formality. Use it to your advantage," said Lange. "If you can narrow the scope - by person, by time frame - you're going to limit the cost."

Paula Weseman Theisen, a partner and chair of the electronic litigation group at Meager & Geer in Minneapolis, encourages attorneys to conduct an e-discovery interview of their own client.

If you can determine that your client put everything that had to do with a contract dispute, for example, in one specifically identified folder, it will make collecting the data much faster and more cost-effective.

Getting the data

Another way to control discovery costs is by determining whether a party's requests can be satisfied with active electronic data - files currently stored and seen on a computer hard drive, according to Jacoby.

Sometimes, obtaining relevant data can be as simple as having the client create a Microsoft Personal Storage Table (.pst) file, which can be done by an outside vendor for \$100 to \$200 per computer user, or by the in-house IT person, he noted.

“You can collect that information without changing metadata and do it at a modest cost to a client,” Jacoby commented. “For some materials, like e-mail messages, you don’t have to bring in an exotic forensic specialist. You can work out a much lower-cost way of collecting [evidence].”

Or, you can hire a forensic expert just to extract key evidence, he suggested. For example, in a contract dispute with a former employee, a forensic expert could be brought in to examine the former employee’s laptop, rather than every computer in the office.

Low-cost document review tools

Several experts said that there are an increasing number of tools aimed at reducing costs and speeding up the review process.

Theisen suggested keyword software review tools, such as Summation or Clearwell.

Jacoby suggested a web-hosted site, such as Catalyst CR, which allows attorneys to search documents using field, text, range, proximity and dates.

Lange recommends using early case assessment tools that for a small, upfront fee can show “who was talking to whom, what they were talking about, and through a series of charts and graphics really help you get a handle on your case.”

Early case assessment tools include Ontrack’s Advanceview and Equivio’s Relevance, a document review product that uses “learning technology” for early case assessment and culling relevant documents.

Based on initial input from an attorney, the software assesses document relevance, which means the data set can be reduced to a much lower volume.

Share the costs

It’s always a good idea to try to split the final tab for e-discovery with the other parties.

“Cost-sharing is really critical,” Theisen said. “You can enter into cost-sharing agreements that can cut costs in half with two parties. Or, in multi-party cases, the party involved only pays a fraction.”

She emphasized that controlling costs should be an ongoing effort throughout the entire process of electronic discovery.

“The cost-effective part of e-discovery isn’t just one particular point in the process,” she said. “It goes all the way from how you ask for or respond to a request, to review and production.”

Also, don’t be afraid to get help, Jacoby said.

“If you’re in a small firm and this is overwhelming, you can bring in a consultant for a half day or day for a fixed price,” he said.

Consultants’ fees run about \$1,500 for a half-day.