

New Jersey Law Journal

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Digital or Paper?

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New Jersey Law Journal
04-04-2005

Attorneys with busy litigation practices know that discovery can be the most difficult and expensive aspect of contentious cases. In fact, statistics show that more time is spent on legal discovery than on any other legal task, and discovery represents 50 percent of litigation costs and up to 90 percent of litigation costs in cases in which it is actively used. Today, with the volume of discovery increasing due to the explosion of digital communication, discovery is becoming even more burdensome and time consuming for modern practitioners. Can technology help solve some of the problems it is creating?

In the pretechnology age, attorneys reviewed discovery documents in paper form, page-by-page and box-by-box. However, electronic document review presents new solutions for attorneys today. Groundbreaking filtering technology and electronic review tools now offer attorneys innovative ways to save their clients time and money — especially in discovery. Simply stated, tremendous time and cost savings (not to mention much-improved document review accuracy) can be achieved by keeping electronic documents electronic and often by converting paper documents into electronic form as well. Using a case example, this article compares the advantages and disadvantages of paper document review with electronic document review and outlines potential cost savings generated by using electronic filtering and review to expedite the discovery process.

For purposes of this case example, assume that there are approximately 100,000 documents (700,000 pages) that need to be collected from five key players involved in a litigation matter. The document set will be reviewed for privilege and responsiveness, and a smaller resulting set will be produced to the plaintiff. The review will be conducted using contract attorneys at a cost of \$50 per hour. Contract attorneys typically review approximately 35 electronic documents per hour, or 20 paper documents per hour, as indicated by several legal personnel staffing firms.

If the litigation team chooses a paper review, the electronic documents from the five key players are printed. Once printed, the documents are shipped to the team of reviewers who divide up the boxes and review them document-by-document. All 100,000 documents must be reviewed at a cost of approximately \$250,000.

In addition to the direct costs of the document review, the time and materials required for physically printing, shipping and handling these documents must be calculated and added to the final cost for paper document review. These costs will vary on a case-by-case basis.

While this method seems straightforward and "tried and true," there are several disadvantages to a paper-based review of electronically sourced documents. First, an electronic document's metadata - data about the data, such as created dates, last accessed dates, "to," "from," "cc," "bcc" - could potentially be lost since this information may not print out on the face of the document when the "print" button is pushed. Second, when electronic documents are printed, the ability to electronically search these documents is lost without later using scanning, coding and

optical character recognition technology. If the opposing party demands production in an electronic format, printing electronic documents adds expense, time-delay and the chance of data loss. Finally, it is difficult to perform even a basic quality control check of a paper document review process. Any quality control effort would require re-reviewing the documents to verify the accuracy of the review.

In an electronic review, an electronic discovery expert is engaged to filter the documents and provide electronic images of the potentially relevant documents in an online review tool. Reviewers open a secure Internet browser; navigate to the online repository Web site; enter case-specific logins and passwords; and begin viewing, categorizing, redacting and annotating the documents in the online database. After the electronic review is completed, the litigation team can choose to produce the responsive documents in any format, including paper, litigation support database, native format or online repository.

Because not every electronic document created by the five key players is responsive to a discovery request, filtering the data before the electronic review process begins is the best course of action in most cases. Automated data filtering technology - eliminating duplicates and/or filtering by custodian (key players), date, file size, file type or keyword - provides revolutionary advantages counsel should consider when preparing for an electronic discovery document review. Effective use of the filtering techniques listed below typically reduces the number of documents that must be reviewed by up to 75 percent.

- Custodian filtering - segregating key custodians who may be relevant to the case and isolating the files associated with those specific individuals
- De-duplication - identifying and eliminating duplicate documents from the review and production set of documents
- File Type filtering - identifying targeted file types for review, excluding patently nonresponsive file types
- File Size filtering - previewing exorbitantly large files to determine relevance before further review and costs are incurred
- Keyword searching - applying a set of keywords and terms to segregate potentially responsive information for further review and scrutiny
- Time and date filtering - targeting discrete periods of time, particularly relevant to a case or required for production in accordance with a pending court order

After filtering, the documents can be loaded into the online review tool for review. Robust online review tools typically allow the document review team to improve its document review efficiency - sometimes to as much as 55-60 documents per hour - based on the following factors:

- Powerful Searching. Reviewers can segregate documents more quickly by running queries on the document database and then seeing the search hits highlighted throughout the document.
- Concept Searching. Review time is reduced by using sophisticated technology to define the meaning behind the search terms and to identify word patterns and relationships, allowing reviewers to find documents with similar conceptual terms even if they do not contain the exact search terms.
- Duplicate Handling. If data is stored electronically, relationships between duplicate documents can be identified and maintained in the database. Reviewers have the ability to handle related documents together and to categorize them all at once, reducing time spent reviewing the same documents several times.
- Mass Categorization. With mass categorization, reviewers can categorize several documents at once based on search results. This feature gives reviewers the power to quickly identify and review clearly responsive, nonresponsive, potentially hot, or privileged documents in the document set.
- Redactions, Notes, and Highlights. As the team reviews for responsiveness and privilege in an online repository, they can also redact documents, place comments on documents, and highlight important parts of documents.

In our case example, e-discovery expenses plus the cost of reviewing 25,000 documents in an online review tool would cost approximately \$69,514 - less than one-third the cost of a traditional paper review.

In today's high-tech corporate world, litigators, courts and organizations understand the reality that technology plays a significant role in litigation. Neither attorneys nor litigation support managers can continue to instruct clients to "just print out all the individuals' documents and send them over to us." Instead, counselors have duties

to know and employ the best technology for reviewing and producing documents in litigation or regulatory proceedings. Using cutting edge filtering technology and then searching, categorizing and reviewing the potentially responsive set of documents in an electronic format will likely allow for a more efficient, accurate and cost-effective document review.

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