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Assigning Non-Attorneys to First-Line Document Reviews Requires Safeguards

by *Alejandra P. Perez*

The dramatic increase of electronically stored information understandably proves challenging for corporate counsel, as discovery costs for document collection, review and production can range from thousands to millions of dollars each year. A large portion of that expense is attributable to the review of custodial and central source documents for relevance, privilege and redaction.

One way to reduce e-discovery costs is to shift document review work from full-time associates to contract attorneys who have lower billable rates. Another option that provides even greater costs savings is transitioning portions of document review work to non-attorneys, such as college graduates or paralegals, who have even lower billable rates. This strategy allows companies to realize additional savings in their discovery budgets, while maintaining quality and defensibility.

While taking advantage of this option, it is important to ensure attorney oversight and establish privilege review safeguards. Below are four tips and strategies that, when used together, allow companies to confidently use non-attorneys to conduct document reviews and take advantage of this cost-saving option.

Training and Certification

Before a document review begins, conduct a training presentation for the non-attorney review team, describing the litigation process and focusing on the review team's role. Use a hypothetical fact pattern that mirrors the underlying cause of action for the review to provide context for the review team and familiarize team members with common terms used in litigation and the discovery process. Focus on legal privilege concepts, including attorney-client, work product, joint defense and the consequences of privilege waiver. Provide document examples for

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Meet DSP

Ben DeWitt Pursues Passion for e-Discovery Technology

Ben DeWitt is a valuable member of LeClairRyan's Discovery Solutions Practice (DSP). Ben joined DSP as a discovery paralegal in 2007 and expanded his role in 2010. Currently working as a litigation technology specialist, Ben is able to pursue his passion for e-discovery technology, an area that he believes offers him many professional opportunities. In fact, Ben was faced with a difficult decision last year when he was accepted to multiple law schools. All along, he had thought he wanted to take a more traditional legal career path by becoming an attorney; however, after his experience working at DSP, his focus shifted to the growing field

context, integrating the privilege concepts with the document review process.

After the presentation is complete, certify the non-attorney reviewers by administering an exam that measures their understanding of the work product and attorney-client privilege protections. Repeat the certification during the course of the review. Provide real-time feedback to the group as a whole and to individual reviewers to ensure consistency and accuracy in coding.

Leveraging Technology

Leverage technology, such as database search features and keyword highlighting, to promote coding consistency and prevent inadvertent production of privileged material. Searches based on attorney names, law firms and other terms that may lead to privileged content -- such as "patent" and "infringement" -- can be conducted across an entire database or potential production populations.

Documents that contain potentially privileged terms can be segregated for review by contract attorneys; non-attorneys should review the remaining documents. This step ensures that non-attorneys review as few potentially privileged documents as possible. These searches can also be performed before the document production as a quality control measure to ensure that similar documents are coded consistently and that privileged documents are being withheld from production.

Making the Review Objective

Instruct the non-attorney reviewers to use a broad definition of privilege in case they encounter potentially privileged material. This broader analysis eliminates the nuances in identifying privilege. Examples include documents that contain an attorney's name or a term identified as leading to privileged protection (e.g., "attorney-client"). The documents flagged by this objective privilege determination can then undergo a second-level review by attorneys who are more familiar with the exceptions and rules regarding attorney-client privilege and the work product doctrine.

Blended Review Teams

When non-attorneys participate in a document review, attorney oversight helps to maintain quality and consistency and prevent the inadvertent production of privileged material. Dividing the review team into groups in which an attorney is responsible for non-attorneys allows non-attorneys instant access to the attorney's experience as well as real-time feedback on privilege, work product and substantive document coding questions.

As corporate counsel continue to push for cost savings, firms

of legal technology. Fortunately for DSP and the Firm's clients, he decided to stay.

Ben is truly a jack-of-all-trades at DSP, and he has assumed a key role in the DSP document and data collection process. He travels to client facilities, interviews custodians, and collects electronically stored information (ESI) and paper documents. In addition, Ben also executes remote ESI collections for clients across the country. Using early case assessment tools, Ben and the litigation technology group process the collected data and filter documents by search terms, dates and other relevant criteria. This process of culling the collected data creates more efficient and smarter document reviews.

In the review phase, Ben communicates with e-discovery vendors regarding set up of the review database and assists with managing the technical infrastructure of DSP's document review center. Finally, in the production phase, Ben creates document productions in-house and conducts quality control reviews for document productions prepared by third-party vendors.

Ben's involvement and enthusiasm go above and beyond his daily responsibilities. He is active in LeClairRyan's volunteer program, most recently having participated in the Firm's Habitat for Humanity effort.

Prior to joining LeClairRyan, Ben worked for Nike in Portland, Oregon, as a member of the company's retail and visual display team. When he is not working, Ben enjoys hiking, kayaking, skiing and other outdoor activities.

managing document review projects must adapt and evolve by proposing cost-effective options. One way to provide cost savings to clients includes using non-attorneys to perform the first-line document review. However, when doing so, it is important to implement necessary safeguards to preserve the defensibility of the document review while providing maximum cost savings to the client.

[Learn more about DSP](#)

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What's New at DSP

Graham Rollins, Daryl Shetterly Promoted to Partner

Hard work pays off. Just ask Graham Rollins and Daryl Shetterly, who were both promoted to partner this month. Through their hard work and dedication, Graham and Daryl have made tremendous contributions to the Firm and its Discovery Solutions Practice (DSP). They both have worked diligently to protect clients' interests by providing stronger and more comprehensive e-discovery services and offering invaluable advice.

You may have read Graham's article on native file redactions in the [November issue](#). Graham's innovative thinking and his understanding of technology improve the ways DSP works to solve clients' problems. Native file redaction is but one example of the many ways in which DSP offers clients a better, faster and more cost-effective solution for discovery projects of all sizes.

Daryl's can-do attitude and strong work ethic translate into success for DSP's clients. Daryl and his team never focus on reasons a project can't be completed or a deadline can't be met. Instead, they find ways to succeed, pushing themselves to develop creative ways to accomplish clients' goals. As a result, Daryl and his team have successfully managed some of DSP's largest projects -- on time and within budget.

Graham and Daryl understand the need for continuous improvements that leverage technology and process to achieve clients' goals at the lowest possible cost. As two new leaders who are well respected for their knowledge of the technology and practice of electronic discovery, Graham and Daryl strengthen DSP's already impressive bench. Furthermore, by growing leadership from within, DSP ensures that the values and work ethic that have proven successful to date will continue to benefit clients in the future.

**CASE RESULTS DEPEND UPON A VARIETY OF FACTORS
UNIQUE TO EACH CASE AND DO NOT GUARANTEE OR
PREDICT A SIMILAR RESULT IN ANY FUTURE CASE**

**Skillful Negotiation of Keyword Search Terms Keeps Client's
Review on Schedule, Slashes Volume of Data**

LeClairRyan's Discovery Solutions Practice (DSP) recently tackled a challenging project for a pharmaceutical client suing on a breach of contract claim. In serving pharmaceutical clients, DSP has typically been involved in large-scale discovery work, often related to intellectual property, manufacturing and product liability claims. In this particular case, DSP successfully responded to the unique needs of a smaller litigation and delivered exceptional results. Working with a smaller budget and data volumes equal to a significantly larger case, DSP attorneys were able to defensibly reduce discovery costs while maintaining a strategic advantage in the litigation.

The team's success was due in part to DSP attorneys' willingness to thoughtfully cooperate with opposing counsel throughout the meet and confer process. Knowledgeable of e-discovery rules, case law and strategic considerations, DSP attorneys skillfully negotiated an advantageous agreement on keyword search terms. The meet and confer process was highly effective because DSP attorneys fought only on select issues that impacted the position of the client and agreed to more inconsequential requests from opposing counsel. Opposing counsel agreed to the search term list proposed by DSP attorneys despite ongoing negotiation on their proposed search term list. Thus, the client was able to begin document review and turn over the first production within the originally agreed upon discovery timeline, while the defendants were still struggling to revise their keyword list. Three days before the case settled favorably for the client, DSP attorneys effectuated a big win when the opposing side conceded on their long-fought attempt to unreasonably narrow the terms to be applied to their client's data set. DSP attorneys were also able to successfully limit the scope of discovery to a reduced number of custodian sources for document collection.

In addition to gaining a strategic advantage in the litigation, these negotiations resulted in a significant cost saving for the client. The

agreed-upon keyword search term list was effectively used in early case assessment to limit the volume of documents for review. The initial volume of data was reduced from 900,000 documents to approximately 16,000 documents -- an almost 90 percent cull rate. The reduction in discovery costs combined with the favorable settlement amount post-discovery equated to positive results for the client all the way around.

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