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Discovery Solutions Practice



Legal Strategies. Business Solutions.

Turning the e-Discovery 'Monster' into an Ally and Opportunity

by Janet L. Conigliaro

While the 2006 amendments to the Federal Rules of Civil Procedure governing electronically stored information (ESI) have been in place for a little more than four years, navigating the unknown technology and worst-case scenario court rulings can still be unsettling. What are defense attorneys to do? They should do what they have always done -- know their client, know their case, and be prepared.

Prior to 2006, the lack of clear requirements made negotiating sessions on ESI notably more difficult. Today, by contrast, legal counsel on both sides are required by the federal rules to meet and confer in the beginning stages of the litigation about (1) what relevant ESI is available and accessible; (2) how ESI will be collected and produced; and (3) the format in which ESI will be produced.

It is not surprising that many still think of e-discovery as an unwelcome consequence of the digital age -- a big, bad monster that should be driven back to its cave. However, while it might sound counterintuitive, attorneys who are willing to focus on the opportunity to define certain aspects of their case and establish open lines of communication with opposing counsel early on should view e-discovery as a net positive. The federal rules pertaining to ESI, while imperfect, can be wielded as an effective weapon against over-reaching plaintiffs. If prepared, attorneys are able to strategize in the early stages of the litigation, develop a well-rounded discovery plan, and force plaintiff's counsel to focus on the merits and context of the case at hand.

Preparation is Key

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**Alejandra Perez Finds
Diversity of Discovery Work
Gratifying**

Alejandra Perez truly is a team player. In fact, she was originally drawn to the e-discovery field because of the large amount of collaboration involved, as well as the nontraditional work that it entails.

While Alejandra officially joined LeClairRyan's Discovery Solutions Practice (DSP) in 2008 as an associate, she originally began working for DSP as a review attorney in 2007 after she earned her Juris Doctor from The George Washington University Law School.

the contrary, specifics about the litigation, such as what is at issue, the relevant time frame, and limitations of the client's IT infrastructure, determine what is reasonable and relevant to the case. Cognizant of this, the defense can respond to plaintiff requests accordingly. Understanding the client's ESI environment and infrastructure will allow for a smooth navigation through the meet and confer process, the creation of a meaningful discovery plan, and an effectively managed project through all phases of discovery, even in highly complex cases.

Reasonable and Relevant

I recently received an e-discovery form letter specifying that my client preserve and catalog all computers accessible by the client's board of directors and seize the home computers of employees who telecommute. Similarly, plaintiffs in another case requested search parameters from every conceivable database that might be used in a modern corporation. While these types of requests can easily evoke emotions of fear and loathing, keep in mind that they generally amount to nothing more than clumsy attempts to divert the issues.

When presented with these types of demands, allow the structure now provided by the rules to guide a measured response. Those who thoroughly understand both their client and the specifics of the case can force plaintiffs to agree to clear parameters on ESI. Why? Because the rules themselves stipulate that e-discovery should be dictated by what is "reasonable" and "relevant" to the case. To a prepared attorney, form letters demanding irrelevant information suddenly appear to be what they really are -- empty threats. Upon receiving such a request, simply respond by stating that the request fails to pertain to the facts of the case.

This approach, which amounts to turning the unknown into a strategic ally and opportunity to set parameters and avoid diversions, illustrates the advantages of embracing e-discovery rather than resisting it. After all, ESI is clearly here to stay and will continue to evolve as quickly as technology.

By ceasing to regard ESI as an anomaly and instead focusing on how it fits into the context of the cases we defend and clients' overall strategies, lawyers become more effective and provide a higher level of service.

counsel on best practices, cost-effective solutions, document collection and case strategy. She also regularly manages discovery teams composed of contract attorneys, paralegals and litigation support professionals, effectively manages workflow to ensure deadlines are met, and provides support to trial counsel. The best part about her job, she says, is the opportunity to troubleshoot and provide innovative solutions to the myriad of issues that arise in e-discovery.

Apart from her more traditional responsibilities, Alejandra has recently had the opportunity to coordinate French and Spanish document reviews for two DSP clients. She has used this experience as an opportunity for innovation by determining how to best utilize review attorneys' foreign language skills to enhance the accuracy of coded documents. She also ensured that the foreign language sub-teams possessed the knowledge necessary to make accurate coding decisions.

Outside of her work at DSP, Alejandra has kept busy by planning for her wedding next month. She also enjoys weekend trips to attractions throughout Virginia and gardening in her spare time.

[Learn more about DSP](#)

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Discovery Solutions Practice (DSP) has experienced with the recent addition of two new litigation technology specialists to its team. Elwood Clark and Cheryl Livingston have brought fresh perspectives and admirable talent to DSP, taking its client service capabilities to a new height.

Elwood Clark, a native of central New York, joins DSP from another Richmond-based information technology services company where he previously provided LeClairRyan with local and overseas ESI collections support. His degree in network administration from Alfred State University, on-the-ground experience, and customer service spirit combine to make Elwood an immediate resource for DSP clients. Elwood increases DSP's technology depth while it continues to grow and modify its work space to better accommodate clients' document review and production needs.

Cheryl Livingston joins DSP from Orrick, Herrington & Sutcliffe with more than 23 years of experience in the legal industry. She holds a degree in computer information technology from Mt. Sierra and degrees in criminal justice and social work from Purdue University. She also has 19 years of experience as a certified paralegal and is a Concordance[®] Certified Software Trainer, Software Administrator, and FYI Administrator. Cheryl's unique combination of legal and technology experience further strengthens DSP's already impressive capabilities.

DSP's focus, while technology-driven in many ways, remains service-oriented, and Elwood and Cheryl will help DSP continue to provide exceptional support to LeClairRyan's clients in the face of challenging litigation and discovery demands.

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**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**

**DSP Employs Web-based Technology, Achieves Mighty
Results on "Smaller" Project**

While LeClairRyan's Discovery Solutions Practice (DSP) regularly executes enterprise-wide electronic discovery projects in a cost-

centralized data sources, all of which were located on the West Coast. Even though DSP is located in Richmond, Virginia, it performed this entire project without incurring travel time or expenses. Rather, DSP conducted the discovery phase of this project remotely.

Remote collections are not recommended for every project. The project size or the sensitivity of the subject matter often requires an in-person presence for document collection. For example, when collecting data from 30 custodians located in one building, it may be more efficient to complete the collections in person.

Quest for Information

To better understand the company's information architecture and identify potential locations of relevant documents, DSP collection specialists held a series of conference calls with the client's legal and information technology stakeholders. Through this process, DSP identified nine employees as potential custodians of relevant documents and subsequently conducted telephone interviews with each of these individuals to collect additional intelligence.

DSP then shipped a hardware encrypted hard drive to the client's facility and scheduled WebEx sessions with each custodian. Using WebEx allowed DSP's collection specialists to view each custodian's desktop remotely and watch as the custodian pointed out where potentially relevant electronic documents were located.

After the custodian identified all the potentially relevant sources of information in his or her operating environment, the collection specialist took control of the custodian's computer through WebEx and copied the documents to the encrypted hard drive. The collection specialists complied with strict collection procedures and used software that preserved important document attributes such as metadata. The hard drive automatically encrypted when the custodian unplugged it from his or her computer. The encryption ensured that the documents were secure during the return trip to DSP's Richmond office. DSP's discovery team then analyzed the retrieved documents for relevant information.

By performing the collection remotely, DSP avoided the airline travel, hotel and billable time cost of sending personnel across the country. Further, the data was collected sooner because the start of document collection was not dependant on all the custodians being available on the same day, as would be required for an in-person visit.

The manner in which DSP conducted the discovery phase of this project remotely is but one example of how this team consistently delivers unsurpassable service at a cost savings to the client. Once

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