



A Proactive Approach to Document Management Reduces E-Discovery Costs

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Upfront investments of time and money for prevention of large expenditures are a hard sell, especially in a tough economy. We delay replacing old windows and a furnace in exchange for higher heating costs, even though we know that replacement will save over the long term. Listen to all the discussions our government leaders are debating over upfront investments - healthcare, infrastructure, renewable energy, the auto industry. For you, in-house counsel, the topic is electronic data and the inevitable cost of identifying, collecting, preserving, reviewing and producing it in future litigation.

Gone are the days when addressing document collection began after the complaint was served. Electronic data adds many new variables to the discovery process. Before computers and email, one would not think of filing family recipes, online ordering receipts, personal letters and other types of non-business related documentation with the company business files. However, we turn a blind eye to this practice that continues in every company and only react to it when we have to sort through it for litigation. Why are we behaving like this? Perhaps it is because computer storage devices are cheaper than the time and effort it will take to sort the data out. Does the company have an active records retention policy? Does every employee adhere to it? Who's checking? Does your department work with the IT department to conduct periodic audits? Are there enforcement procedures in place? Is it easy for users to implement records retention in their daily practice through the use of effective tools? Most employees don't concern themselves with this concept - until they see the budget line item for the processing and production of electronic discovery. At that point, it's too late to reduce your litigation costs. I know I'm preaching to the choir on this. By now, each one of you has had to face this challenge. Each company's burden is different, depending on the size and complexity of your organization.

The solution is a proactive approach to document management. This process must involve legal, records retention and IT personnel and it can be scalable. The smaller company may have personnel who wear many hats and a process that is less complex than larger companies with departments of personnel in these positions. The end goal is the same:

- Mitigate Risks
- Reduce Costs
- Remain compliant with government and legal requirements
- Prevent spoliation

Your proactive approach will require an upfront investment of time, money and personnel. However, just like any other long term investment, it is the best approach and it will save your company unnecessary excessive expenditures in the e-discovery process in future litigation. Your methodology should include:

1. A current, defensible written records retention policy that is proven to be in place, adhered to and regularly audited.

- Creation of this plan must include input from IT personnel, records retention personnel, legal personnel and the business units.
- The implementation of this plan needs to include a combination of personnel participation and technology.
- When records have reached the end of their required retention life, they should be eliminated, barring any pending litigation preventing the destruction.
- The audit and enforcement of this plan must be a regular company process and it also must be documented. Case law strongly supports this concept; a plan without implantation and enforcement is not a defensible plan.

2. Creation of data maps is necessary and must involve IT personnel working with the creators and owners of the data.

- A data map can take on several forms; put simply, it is the layout of where all documents and data are stored and a written explanation of the process flow.
- This step will save much time and reduce costs in the litigation document identification process and in preparation for the required meet and confer.
- This is a living document. If technology is upgraded, servers replaced, or storage locations changed, the data map must reflect this.

3. Assess the company's software and technology with records retention on the brain.

- Do the current applications in use allow users to manage their electronic records in the best interest of the company?
- This cannot be an IT only function. So often, because it involves computers and software, it becomes an IT project. IT's role should be to understand the company and employee needs and to implement technology to assist in meeting those goals.

Implementation of this plan will reduce litigation costs:

- By abolishing the storage of non-company records, the risk and costs associated with collecting and culling them out through e-discovery processes and reviewing such documents is eliminated
- Ease in implementing litigation holds
- Chain of custody is easily determined
- Reduction or elimination of inadvertent disclosure
- Puts you, in-house counsel, in control of the identification and collection process

In addition to reducing litigation costs, the company will reap additional benefits from this excellent plan:

- Proper safe and secure handling of company records.
- Disaster recovery will improve
- Reduction of overall costs to manage document flow and storage
- Elimination of unneeded or duplicate records and non-company records from the company's systems - saving storage and improving organization.

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She is a CT Summation Certified Trainer and has extensive experience in producing electronic records in litigation and designing and managing databases. Gayle has overseen complex software implementation including case management and multi-location software projects. She has managed large volume document review teams using both CT Summation and web based tools.

Gayle is the founder of the Northern Ohio Chapter of ALSP (Association of Litigation Support Professionals) and is currently serving as its President.

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