The In-house Litigation Team – Introducing the E-Discovery Coordinator

By Gayle Absi

It is rare today to have a piece of litigation that does not involve electronic data. Just as our business tools become increasingly sophisticated and technologically advanced, our ability to retrieve the data stored and managed with these tools must also keep pace with these advances. The size and type of case will have some impact on the collection needed. However, there is a common denominator: despite the case size, most cases will involve something electronic. You know this and the legal community knows this. We've been bombarded with new rules, service providers, blogs, and organizations telling us how best to address the collection and production of electronic data. What can you do, as an in-house lawyer to ensure proper cost effective collection of your company's electronic data? Developing a scalable team that is ready before litigation hits, who is educated and prepared to respond, will help you manage the case more effectively and save the company money.

1. Litigation Attorney

Some in-house attorneys play a case management role while others are more active in litigating cases. In either case, your responsibility is to ensure that the company is being properly represented.

2. Litigation Paralegal

The in-house litigation paralegal can have a management role or an active role with cases, too. The in-house paralegal has an essential role in the collection of all types of information from within the company.

3. E-Discovery Coordinator

Do you have the time to take on yet another role as the E-Discovery expert for your company? The company may need to create a new position within the department, whose primary responsibility is being a member of the litigation team and coordinating with the company's IS personnel and company clients to provide counsel with a resource to ensure compliance and to assist with e-data collection.

This person should be involved with the company's records retention[1], managing litigation hold processes, the collection of information to prepare for the case's meetings and conference sessions, and the negotiations on what can be collected from the electronic data population. This point person will work closely with counsel, advising them on the existence of data, its locations and collection.

In addition to being a member of the legal department and working closely with the attorney and paralegal, the coordinator will work closely with the IS personnel on developing collection plans that are compliant.

4. IS Representative(s)

Depending on the amount of electronic data that is required and the size of the company involved, collecting electronic data may involve working with several different people within a company's IS organization. Email may be managed by one group, while department specific database and document management by yet another.

[1] Depending on case size and complexity, some include the Records Retention Coordinator on the team. Not all cases require that person to be on the team; a current member may already be actively involved with the Records Retention efforts.

5. Client Representative(s)

Every company should have policies on where and how long data is stored. That does not mean that every employee follows them. Therefore, it's critical to include the client representative, the actual creator of this data, to know where it is stored. It may be exactly where the policies and the IS personnel have designated, but, it may not.

6. Outside Resources

Outsourcing certain roles including the use of outside legal counsel, litigation support, document reviewers (including electronic documents), e-discovery consultants and vendors may also be brought in to your team, depending on the cases needs.

Communication

The members of the legal team should be in regular communication with the IS team, practicing a proactive approach to the management of data. For example, if new servers or software are being installed, and as a regular practice, the litigation team is aware of this, it will help you to represent the company better when disputes arise. Audits to ensure compliance of retention or holds should be the responsibility of the law department. Open communication between the two groups will provide access to needed information at crunch time.

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