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# HOW TO MAXIMIZE THE BENEFITS OF YOUR OUTSOURCED DOCUMENT REVIEW

*Author: Michael Duffy, Vice President, Legal Services, Mindcrest Inc.  
Contact Information: Michael.Duffy@mindcrest.com, 312 467 9744*

Anyone even remotely involved in the world of discovery and trial preparation knows about last minute panic attacks and the fire drills that are the norm rather than the exception. Why should document review be any different? Many of those pressure-filled scenarios, however, are self-inflicted and most are avoidable, and that goes for document reviews as well. While impossible to completely avoid the uncertainty and anxiety associated with trial work and its preparation, there are a few simple steps that lawyers can take to avoid an unending string of stressful deadlines when dealing with document review.

## • See Around the Corner.

A little advanced notice will go a long way in taking the ups and downs out of your next document review project. Yes, there are many reasons why no one knows anything until the last minute. "We are still collecting documents and have no idea what the final count will be"; "We have filed a motion to continue the discovery cutoff date and the Judge has not yet ruled" (particularly scary when the original cutoff date is coming closer and closer and nothing is being done); or my favorite, because it is so common, "My client does not want to spend one nickel on discovery as long as the case might settle."

Even if the lawyer in charge of discovery does not know the document count with certainty, your friendly document review vendor will not be offended by a little over communication in this instance and it will result in huge benefits to the legal team in terms of a less stressful review. A phone call in advance letting your vendor know that while the case might settle, if it does not, then in 2 weeks, we will probably need to start reviewing around a million documents, will go a long way to a smooth start and satisfactory conclusion to the document review. No document reviewer I know of will charge for that phone call (although the lawyer might). Even if the lawyer cannot charge for the call think how much better she will sleep at night knowing that, if she has to go to war, the document review pieces are in place.

An even better idea, if you have a strong relationship with your document review provider, is to advise them as soon as a case that is a likely candidate for document review comes in the door. It is easy to track cases electronically these days and the vendor can follow the case themselves and anticipate when the motion practice is about to end and document collection and processing will begin. At the very least they can put your case on a list and periodically check in with the lawyers to see where the case is at and give themselves time to gear up for the review.

## • Plan, Plan, Plan.

"Well begun is half done" is not just a cute saying by your grandmother. It is the secret to a long life in successfully managing document reviews. What business, other than the law, tolerates the fact that no one has a clear idea if they will be able to finish a job with the materials and manpower they have when they begin. ("No worries, if we need more associates we can just get them from the real estate department. They are never busy.") Very few document reviewers have unlimited bench strength and even if they did, scrambling to find people, train them and get the review up and running with no amount of mindful planning is a horrible way to do business and should make the professional liability insurers cringe. A document review that starts in that manner is guaranteed to be lumpy at best and require substantial do-overs. Having even approximate information of document counts, deadlines and some information as to document complexity, allows the review vendor to calculate the number of first line reviewers, quality control reviewers, space requirements, days to deadline and all the other planning variables that make for a smooth and satisfactory review. Take advantage of the planning tools that are available.

## • Expect the unexpected.

There will always be last minute surprises, so plan for them. It is almost a certainty that someone will find 20,000 more documents 2 days before the production deadline; or the deadline for production will unexpectedly be advanced by a week in the first week of a four week project; or the document review will turn up a new custodian whose documents also need to be reviewed. It happens. As part of your planning, build in a cushion for those expected unexpectancies. Every construction budget has a 10 to 20% contingency cushion for a reason. Even if your client complains about your extravagance on the front end, stay strong. You will look like a hero when the roof falls in and the only thing that saves the review is your foresight in allowing a little more time, or manpower or oversight than what was thought needed in the beginning.

## • Pick a good partner.

As the saying goes, "As a U.S. lawyer, you can outsource everything except your responsibility." (I would attribute this statement if I could but I have seen it so many times in various slide decks and presentations that I have no idea who said it first.)

The two ethical and professional obligations most directly implicated in outsourcing a document review are the Duty to Represent a Client Competently (ABA Model Rule 1.1) and the Duty to Maintain Client Confidences (ABA Model Rule 1.6). Compliance with those professional obligations requires a serious due diligence effort on the part of the U.S. legal team when choosing any e-discovery partner but most particularly when hiring a document review vendor. There are any number of steps that can be taken to insure that your partner in this process meets the high quality standards that you set for yourself and your law firm.

Measures that can be taken to ensure that the outsourced entity is competent to perform legal tasks include obtaining background information about the outsourcing vendor, checking references, requesting resumes of individual document reviewers, familiarizing yourself with the legal education system in the country in which the reviewers are located, assessing their ability to speak and write grammatically, syntactically and idiomatically correct English, reviewing samples of prior work, investigating the hiring practices, training program and retention levels of the vendor, and, when feasible conducting a site inspection.

Compliance with the lawyer's professional obligation to maintain client confidences may entail some or all of the following: a check of the physical security on the vendor's premises, verification that the facility has a secure access control system such as key card access, that it does not permit data storage on individual hard drives, that access to removable drives has been disabled and memory sticks and USB connected storage devices are prohibited in the work space. Additional security measures that can be implemented by a document review vendor include a policy that prohibits access to data or applications from outside of the facility, insuring that access to all client information is password controlled, maintaining logs for all systems, databases and user accessible data, conducting regular internal audits to validate security systems and obtaining and maintaining ISO certification. Additionally all employees should be required to sign confidentiality agreements.

While it may be impossible to eliminate all anxiety provoking, adrenaline producing moments from trial work, (after all, the excitement is why litigators do what they do in the first place, isn't it?) with a little foresight, planning and due diligence trial support teams should be able to keep at least the document review portion of the exercise stress free.