Tools of the Trade

"Top Ten Tips for Navigating E-Discovery"

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As a paralegal, your job is unique in the Electronic Discovery arena because you may be required to wear many hats. Depending on where you work (in-house at a corporation or outside counsel at a law firm), you will be called on to coordinate E-Discovery related tasks. The following tips will help you to not only manage this complicated area, but become an expert in your own right.

1. Know the Rules that Regulate E-Discovery

In December of 2006, the Federal Rules of Civil Procedure (FRCP) were modified to take into account the unique issues surrounding electronic documents and the process of discovery for such. Modifications were made to Rules 26, 34 and 37 to include requirements of a "meet and confer" between parties to determine the format for producing electronic data and claw-back provisions for inadvertently produced attorney-client privileged information. More recently, in September of 2008, Rule 502 was added to the Federal Rules of Evidence further protecting inadvertently produced privileged documents. See: http://www.uscourts.gov/rules. Also check the local jurisdictional rules; many courts have now adopted their own rules that mirror the FRCP amendments.

2. Use the Five (5) W's Approach to E-Discovery

Before you can hope to master new technologies, the concept of the 5 W's approach related to E-Discovery should be your foundation. The 5W"s are: 1. Who – who is in possession of the data (company executives, research departments, etc); 2. Where – where is the data located (e-mail, personal computers, blackberries); 3. What – what data are you looking for (issues related to a particular agreement, product, or service offering); 4. When – what is the time-frame that the data was created in; and 5. Why – why is this data relevant to the legal issues of the matter?

3. Understand the E-Discovery Process

The Electronic Discovery Reference Model (www.edrm.net) was developed to assist in defining this process:

- Identification — The 5 W's from 2 above;
- Preservation — Legal holds;
- Collection — Scientifically sound method of retrieving electronic data (Forensics);
- Processing — Converting the data to a unified format;
- Analysis/Review — Happen interchangeably; determine the content of the collection and review for relevance and privilege;
- Production — Share information with opposing counsel that is relevant and not privileged;
- Presentation — Trial.

4. Grasp the Language or "Tech-Ease" Associated with E-Discovery

Terms such as "Tiff", "Cull", "Burn or Render", "DeDup", "Gigabyte", "FTP", "ASP", and "Custodian" seem foreign to legal team members. Set yourself apart by understanding these terms and being able to translate back to your attorneys and fellow paralegals. Use dictionaries such as Clearwell's Glossary of E-Discovery Terms found at http://www.clearwellsystems.com/e-discovery-central/e-discovery-glossary.php

5. Build Relationships with Your E-Discovery Providers

Whether you work at an AmLaw 100 firm that has a large internal Litigation Support Department, for a government agency that has both internal staff and various outside service provider companies (vendors), or for a small law office, it is important for you to build key relationships. If you work with vendors, call your project manager(s) regularly for status updates. Contact the Litigation Support Department for generalized questions in addition to case-specific requests. The more exposure you have to this personnel, the easier it will be to work with them.

6. Learn Your Firm's Technology Used in the E-Discovery Process

Larger firms have in-house databases used for: a. Data Management and/or Document Review; b. Transcript Management; and c. Case Analysis. Other databases are Internet driven (ASPs) and serve for a. Early Case Assessment and b. Document Review. Whichever tools are used for your cases, learn them. If you have an internal Litigation Support Department, seek them out for training. The companies that make the program and/or provide the service also offer training (typically 1-hour is free) for end users. Visit the websites of the companies and/or programs and make use of any free webinars and training documentation. Use blogs like the E-Discovery Paralegals Network's training page to find additional training resources: http://ediscoverypara.wordpress.com/training/. Finally, practice using the technology!

7. Keep Up With Current Case Law

Subscribe to Law.com's Technology Section (www.law.com). You will receive daily updates with articles outlining recent case law and technology issues in the E-Discovery space. This is a great way to enhance your E-Discovery expertise. You can forward relevant articles to the case teams. Consider penning an internal blog that digests monthly rulings.

8. Stay Tuned to Industry Updates

Has your technology provider recently made enhancements to your current database program? Is there an add-on that could enhance your review process? Be the first to know and pass this information along. Consider subscriptions to Law Technology News (http://www.lawtechnews.com) and Litigation Support Today (www. Litigationsupporttoday.com). These periodicals (both in print and electronic format) regularly update the industry on product updates and recent trends.

9. Use E-Discovery Technology to Streamline Your Current Tasks

Instead of keeping an Excel spreadsheet for a production log, learn how to generate this information directly from your Document Review Database. Whether you are using an ASP or in-house database, the produced documents and their associated Bates Ranges (production numbers) are housed within the review tool. Learn to generate reports directly from these databases and/or extract the information into Excel. The days of manually typing this information are over.

10. Ask Questions

The face of E-Discovery changes regularly in the form of new case law and technologies. The industry comes from varying perspectives: Outside Counsel, General Counsel, Technology Executives, Regulatory Bodies, Litigation Support Personnel and you, the paralegal. There is no one person who is a complete authority in this area; we are all learning. This is the perfect space to feel comfortable asking what you don't know. Be proactive by following steps 1-9 above and then ask away!

Ms. Danielle Marbury is a Certified Litigation Support Professional with over 13 years of legal experience. In her current role as Litigation Support Trainer for WilmerHale's New York office, she focuses on teaching litigation support tools to the firm's lawyers and paralegals. She previously worked as a Litigation Support Analyst and Intellectual Property Litigation Legal Assistant for Sutherland in Atlanta before relocating to New York. Additionally, Ms. Marbury has held Director and Project Management positions at litigation support organizations and was Database Administrator for an internationally recognized non-profit think tank. Ms. Marbury has served as a presenter at The Gate City Bar Paralegal Section's 1st and 2nd Annual Skills Seminars, on the topics of E-Discovery and Litigation Support Technologies. Following her desire to educate paralegals on using technology to streamline their performance, Ms. Marbury has formed a relationship with Emory University's Paralegal Certificate Program where she conducts web training and weekend training workshops on E-Discovery. She is also the Training Chair of the E-Discovery Paralegals Network. You can find her educational resources at http://ediscoverypara.wordpress.com/training/.