The 3 Things You MUST Do Before Starting Your ESI Review

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Even the seemingly simplest document reviews can get derailed without proper preparation. It is important to keep in mind that although e-Discovery can be intimidating, it still has a basis in the standard practices of the discovery itself. The potential difficulties that can arise when adding ESI to the mix can be prevented through the application of a systematic process.

In the absence of proper planning many e-Discovery projects are likely to fail, or at the very least be disorganized and unnecessarily lengthy and expensive. Below are three tips to help get your document review off the ground and headed for successful completion.

1. Establish your outcome

The general answer of course is it win your case, but you can't do that without knowing the facts of the case as told by your discovery documents. If you haven't done so yet, this is the time to document your current knowledge and expectations of the case data. From this foundation you should also identify issues you hope to identify during the process.

The production phase must also be considered in this stage. If you are starting with 100,000 documents do you anticipate producing 10% of that? Or could it be more, or less? You won't know for sure, but making estimations now may possibly save some sticker shock when you get to the end.

It is also important to determine the format of the production you will be producing as well as productions you wish to receive. Does native or image format make more sense? What metadata do you plan to produce?

These are all important factors, so take the time during this exercise to flesh-out what it is you hope to achieve and, of course, document all of it.

2. Plan your process

Now that you have thought out what to achieve you need to plan on how you will achieve it. Many times we see teams dive head first into a full review of all documents without having a plan of steps to follow. This is important so you can be sure that your process is defensible should its validity be called into question. Documenting your steps in the process can also be used as a defense against "bad faith" sanction requests by opposing counsel as well.

Specific items to implement into your review steps may include:

- Keyword testing
- Apply data analytics for fact finding and initial data assessment
- Prioritizing documents (potentially relevant, potentially privileged, by issue, by date, by custodian)
- 1st pass review
- 2nd pass review (QC of the 1st pass)
- Privilege Review (review of potentially privilege docs found in previous steps)
- Production QC
- Produce

3. Assign responsibilities

If you are the only one that will be working on this case, then this step is easy as you will be performing all of the steps. If you have others on your team that will be assisting then it is important to identify here what areas each member will be contributing to. If you notice a lot of overlaps in responsibilities don't be alarmed. This is often the case even on larger teams. Just make sure that communication between individuals is kept at a high level to reduce the amount of redundant effort and ensure everyone is on the same page.

A couple of the more important roles to consider are whom to identify as responsible when an issue or question needs to be escalated and who will be responsible for relevancy, privilege and production QC.

Once this plan has been established it will then need to be executed. Even though some of your initial assumptions and strategies may evolve throughout the course of discovery, having a well-considered plan in place is sure to make for a more organized process and garner more successful outcome.