Litigation Support Manager – Key to a Successful Case

We've all heard about the imminent changes to the ABA rules. Specifically Rule 1.1 as it relates to Competence. The proposed change states "To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology…"

With the overwhelming amount of electronically stored information (ESI) in modern litigation, there is now a preponderance of Litigation Support applications to address this specific issue. As such, it is unrealistic to expect all attorneys to learn about and be knowledgeable with the myriad list of programs developed that are intended to assist them in their litigation practice. However, a requisite understanding of what is available is required, and having a strong reference source available (often at a moment's notice) can make the difference by providing "competent representation" knowing the "benefits and risks associated with relevant technology" and being sanctioned or losing your case for lack of that knowledge. Ultimately, each attorney must sign-off on any and all work performed so having a trusted person(s) with the technical wizardry and know-how is paramount to success.

Enter, the Litigation Support Manager (aka Litigation Support Analyst). This super-human individual, whether as a consultant, employed by a vendor, or part of your internal team, is invaluable in keeping you abreast of the tools best practices available in the litigation arena and how they can most effectively be utilized.

Let's be clear about one thing, no one person can know everything about everything. You know the law, but who has the required technical knowledge to access the case data? A proficient Litigation Support Manager on your team can make the difference between locating and utilizing data critical to your case, and wasting countless hours spinning your wheels because you simply don't have the right tools for the job at hand. Or, perhaps the tools are available, but no one has the proficiency to train you or put those tools to proper use.

In the realm of Litigation Support, it is imperative that not only do you have the tools necessary to get the job done, but that you have a resource that can propose the most effective tools and train the team on how to utilize them effectively. This requires an inordinate amount of research and experience that only a dedicated individual can supply. While you focus on the law and your client's needs, the Litigation Support Manager will focus on providing you with the tools necessary for handling ESI.

To make this point, let's look at just some of the areas of knowledge, expertise, and application proficiency of a seasoned Litigation Support Manager.

- Discovery and Early Case Assessment
  locating and making available all data (as soon as possible) pertinent to your case to allow you to determine what approach to take based on the merits of the case and the potential outcome.
    - Data Reporting
    - De-duplication and Near Dupes

- o   Mime Type exclusions/inclusions
- o   NIST and/or other exclusionary lists
- o   Data quantity/volume (records vs. pages)
- o   Search terms, Date and other Filters
- **Review**

  The ability to effectively access the various forms of data to be read/reviewed for the purpose of determining which documents may be privileged, relevant, etc.
  - o   Metadata and Coded Information
  - o   Files vs. Images
  - o   Parent and Child documents – Attachment Ranges
  - o   Local or Remote Hosted Documents
  - o   Manual Review or Predictive Coding
- **Case Analysis and Strategy**

  Analyzing the facts and available relevant data to determine the best course of action to produce a favorable outcome for your client.
  - o   Persons of Interest Reports
  - o   Privilege Reports
  - o   Key documents and/or multi-media
  - o   Various Reports and Data Analysis
- **Production**

  Ability to produce appropriate documents and data for internal use, expert witnesses, opposing counsel, etc.
  - o   Rule 26(f)(3)(C) discovery and form(s) of production for ESI
  - o   Rule 34(b)(2)(D) Responding to a request for ESI
  - o   Native and/or Image exports
  - o   Metadata
  - o   OCR and/or Extracted Text
- **Presentation**

  Choosing the best method for displaying documents and other potential media to your intended audience in a manner that has the greatest impact based on your specific case requirements.
  - o   Exhibit Creation
  - o   Presenting Hard Copy Documents
  - o   Presenting Electronic Files

In addition, your Litigation Support team must also be aware of which applications are best suited to your particular case/style/technical ability.

- What do you wish to accomplish with regard to the ESI
- How effective is the product – ease of use – time to get up to speed
- Is the product geared toward a specific task or an All-in-One application
- How simple is it to perform the functions needed

- Speed – We all have deadlines – Can this product perform under pressure
- Potential downtime (hosted products vs. local installations)
- Data accessibility (loading and producing)

Have I missed something in the above lists? Absolutely. This is a sampling of the competency required by your Litigation Support team. Whether you choose to utilize a consultant, an industry leading vendor, or your own internal staff, it behooves all of us to make sure that we choose the individual(s) that will be capable of providing the knowledge and experience necessary to handle ESI now, and in the future.

Although it can be a daunting task to keep up with the ever-changing population of applications geared toward making ESI more manageable, the Litigation Support Manager (aka Super-Hero) can assist you by keeping you informed and up-to-date on the methods and products available, allowing you to stay focused on what truly matters – The "competent representation" of your client and, ultimately, winning your case.

Dennis Martin
Litigation Support Analyst
Office of the Attorney General, Arizona