



Top Ten Tips for Successful eDiscovery Efforts

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Given that the amount of electronic data involved in litigation is not diminishing or showing any signs of slowing down, it behooves corporations to put a well-thought out eDiscovery plan together as part of their effort to successfully manage their litigation. From the recently published [GC Value Insights, What Multinational General Counsel Value Most](#), GCs were asked to name practices that provided the greatest value to them and “Ediscovery practices and value-based fee approaches using fixed or flat fees top the list of most valuable practices.”

Other eDiscovery related savings highlighted in the GC Value Insights include: savings of “about 80-90% on some matters due to ediscovery practices,” “reduced outside counsel spend as a function of revenue by 25% over past 10+ years,” and document review practices using staffing agencies instead of outside counsel, and litigation support practices, resulted in more that 50% savings during the first six months.”

How were these types and levels of savings achieved? This list of tips creates a plan for you and your legal department to achieve the same types of savings when it comes to managing your eDiscovery.

1. Develop a Case Strategy

The most important thing you can do to reduce eDiscovery and litigation costs is to decide, up front, what your case strategy is. What is your end game? Is it a quick settlement? Are you trying to protect your intellectual property and enforce your IP? Or are you trying to make a statement and uphold a public policy? Is your main concern to try to minimize or control your litigation spend? The clearer you can make your strategy and then communicate it out to all involved, the more in-line their actions will be with your end goal. I guarantee you that right now for any case that you have in document review, the document reviewers don’t know what the case strategy is. You might say that you don’t want your case strategy known that far and wide, but the end goal is about finding ways to support that case strategy all along the litigation path, including those reviewing documents and finding evidence to support your case strategy. Be clear about what your case strategy and communicate it out and you will get better results.

The remaining tips fall into three main categories: people, processes/workflow, and technology. These three categories work hand in hand to make any eDiscovery effort successful. Think of successful eDiscovery like a three-legged stool. If any one of these categories is missing, the stool will fall over. No one wants that to happen to their eDiscovery efforts!





People

2. Define In-house Counsel's Role

Know what role you want your own in-house counsel to fill. Companies who have enough litigation to support its own eDiscovery function can really save on managing litigation costs in-house. They support a case from inside the corporation and function as a conduit to all of the departments needed in a particular case. For instance, companies like Google and [Exxon Mobile](#) are building their own eDiscovery practice in-house so that they can manage litigation consistently across matters.

3. Establish National eDiscovery Counsel

If you don't have enough litigation to support bringing specialized eDiscovery counsel in-house permanently, selecting a national eDiscovery counsel who will manage all of your eDiscovery will bring consistency across your matters. Short of that, using a preferred list of outside counsel, or even consolidating outside counsel by type of litigation or geographic location, can reduce the time and effort, not to mention money spent on litigation efforts.

4. Establish a Preferred List of Vendors

Paring down your service providers to a short list of vetted service providers will help save money and time. Once litigation hits, you will have already established whom you want to work with and thus, will save time getting that matter up and running. The consolidated feedback from GCs in the [GC Value Insights](#) highlighted one way to save money on staffing practices, which is to use "project managers from contract vendors to help provide efficient management of discovery process(es) and to help ensure prioritization of process and system." Costs can be controlled when you are going to the same set of vendors over and over and not negotiating a new deal every time a case begins.

Processes & Workflows

5. Formulate a Search Strategy Upfront

Establishing a search strategy up front to find your most relevant or sensitive data can save millions on document review fees. Formulating a search strategy will involve several steps: scoping by date range or custodian; filtering by file type of media type, culling out junk data, or permissive spam, and then categorizing your data so it can be reviewed, as needed, by the right person with the right expertise. All of these steps are important and involve a considered approach—not just running a keyword list for hits and then starting a linear review of those hits.

6. Developing an Effective Review Workflow

Developing a preferred corporate (or default) workflow for document review and the required levels of review helps keep document review costs in check. Having a document review coding panel that requires extra scrolling or additional clicks to code documents for review can cost thousands of dollars in extra review time. Devising an effective workflow without extra scrolling or clicking or without multiple layers of document review for your matter can help to efficiently manage your document review team resources, again saving time and money.

7. Create a Privilege Review Process & Workflow

Most of the money spent in document review is spent in the privilege review phase. No one wants to produce a privileged document by mistake, so they deploy a linear review process that lays eyes on each document. Not only is that process unnecessary, it is ill advised and an overuse of expensive resources. There are many strategies for searching for potentially privileged information. Sample strategies include searching for documents from particular in-house lawyers or outside counsel as well as conducting particular word or concept based searches for privileged or confidential. Most email has a footer on it that would cause it to be marked potentially privileged. Employing text block exclusion searches can also reduce your likelihood of pulling in those types of false positives (data that is marked potentially privileged merely because it contains a footer or disclaimer in the text that contains the words privileged or confidential). Creating a privilege workflow fits what is at stake in your particular case will be much more cost effective and be an efficient use of your people as document review resources.

Technology

8. Consider a Specific Purpose Technology

If you have a process that is repeated over and over, consider a specific purpose technology, such as data collection or litigation hold software. Consolidating your oft-repeated functions into a best-in-class solution can save money and time. Your litigation team won't be reinventing the wheel each time a litigation hold needs to be put in place. See Resources below for more information.

9. Rethink Your Data Management Strategy

Managing the data lifecycle for litigation is expensive and if you have multiple or repeat litigation that use the same data or similar data, consider using a data repository solution. These data management solutions can keep your data use consistent across matters, no matter which vendors or outside counsel you use in that case or group of cases.

10. Use Technology Assisted Review

Technology Assisted Review (or "TAR") is a spectrum of software solutions that can accelerate your review or eliminate most of your document review through a considered process with quality controls built in, along with the use of data sampling. These methods require more input and feedback upfront from someone who is very knowledgeable about the case. Current eDiscovery strategies bifurcate the document review and the case management functions, which can lead to uninformed decision making. Using a technology assisted review method immediately and effectively puts the brainpower to work in your case, saving thousands or millions of dollars on document review.

In the words of [Edward O'Keefe, General Counsel of Bank of America Corp.](#), savings can be "very significant, about 80–90% on some matters by implementing the ediscovery practices noted above." He deployed tips 2, 3, 4, 6 and 9 in his law department. Any one of these tips, if deployed, can build in consistency and efficiency in your eDiscovery process. A well thought-out strategy for whatever you are doing in the eDiscovery process can make a huge difference.

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