

Discovery for a Modern Age: E-Discovery, Metadata, and Cost Savings

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Electronic discovery ('e-discovery') isn't the most popular legal topic out there.

Even so, as the law becomes more technology-driven, e-discovery is quickly becoming a key tool in the sophisticated litigator's belt. This article provides a quick primer on e-discovery. Hopefully, it will help you utilize this important technique in your practice.

Modern Civil Practice and the Focus on Cost Savings

In case you weren't aware, the civil practice has changed.

Clients expect their lawyer to take real, tangible steps to save costs—and to pass those savings along. That's why many law firms are using programs like Legal Lean Sigma, a process adopted from Six Sigma that improves the efficiencies of the practice of law.

It's not just clients. Bodies that regulate the practice of law, like the North Carolina State Bar (the "State Bar"), also are taking note. Recently, the State Bar adopted a proposal that requires all lawyers to take at least one hour of CLE credit that focuses on technology. North Carolina joined Florida on the cutting edge, becoming the second state to adopt such a requirement. That puts technology training on near equal footing with ethics, as the second course mandated on a yearly basis.

Using Technology to Save Costs

Speaking of technology and cost-savings, one tool stands out above the rest: e-discovery. Effectively utilizing e-discovery will save you a significant amount of time and, hopefully, will save your clients a significant amount of money.

E-discovery isn't a new concept. The Federal Rules Advisory Committee started receiving reports of problems with computer-based discovery in 1996. And the Advisory Committee began to consider rules for electronic discovery as early in 2000.

That effort culminated in the 2006 amendments to the Federal Rules of Civil Procedure. The 2006 Rules were the first iteration of the Federal Rules to contemplate explicitly the discovery of "electronically stored information."

Even though it's been around for more than a decade, e-discovery isn't universally understood. Too often, lawyers consider their obligation to preserve and produce "electronically stored information" satisfied merely by producing, for example, emails. But the documents that you can see are only half the story.

Metadata: The Key to Effective E-Discovery

The other half of the story comes not from documents, but their relationship. The way that an email chain fits together, or the way attachments fit within that email chain, those things have meaning too. And it is that meaning—those relationships—that will help you to better, and to more quickly, understand the documents that you receive from opposing counsel. The hope is that the efficiencies you gain from that understanding will help you cut costs and gain a competitive *business* advantage.

Metadata are the information that tells that story—the information behind the information. So what are metadata?

In the case of email, a production with metadata has four constituent parts:

- TIFF format images of each file;
- a text file, containing the text of each email;
- an OPT, LFP, DII, or LST load file; and
- a metadata (.DAT) file.

Each one of these files, or groups of files, performs a different function. For instance, TIFF files simply are images of each email. The text files allow a text search of those images. In that way, the TIFF and text files together are much like a text-searchable PDF. The load and metadata files provide the enhanced functionality. More specifically, the load files and metadata file will preserve parent-child relationships between emails and attachments. By so doing, those files will allow you to know where chains of emails start and stop and will allow you to connect an emailed attachment to its email.

The .DAT file—the one with the metadata—can contain a wide array of information. At a minimum, you'll want the following: (1) BegDoc, (2) EndDoc, (3) BegAttach, (4) EndAttach, (5) Custodian, and (6) TextLink. Each one of these fields performs a different function. For instance, "BegDoc," "EndDoc," "BegAttach," and "EndAttach" describe where each document and attachment begins and ends. The "Custodian" field simply describes who had control over the document. And the "TextLink" field links the tiff format documents to their related text document. This information will give you the power that you need to slice and dice the other side's production and to really understand your case.

Despite all its benefits, metadata-intensive e-discovery does have its drawbacks. For example, using the data isn't intuitive. You may be thinking, "This is great, but how do I use all these files?" That concern ties into a second, perhaps more substantial concern: If we're being honest, reviewing documents produced in this format usually isn't something you can do on your own. Typically, you must hire a third-party contractor to upload and host the documents for you (though some firms are fortunate in that they own the software and have enough servers to process data in-house, rather than relying on a contractor or vendor). Using the host's software, you'll be able to review documents in a quick, efficient manner. And, using the metadata tags, such as those that identify attachments, you'll be able to really drill down on what matters.

Conclusion

Given the recent push toward streamlining legal practice, e-discovery, especially in complex or document-intensive matters, is an increasingly important tool. It will save you time, which, in the long run, will save your client's money.

If you still feel lost, don't worry! If you're not currently in the middle of a document intensive project, I'd encourage you to take a CLE course on using metadata. But if you're not so lucky, I'd encourage you to associate technologically savvy co-counsel. They should be able to assist you with your e-discovery, and you might just learn a thing or two in the process.

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