

*Practice tip***Harnessing the discovery flood: a small firm's approach****By Laurence Jackson, Esq.\***

You're excited about your new case. But you're also expecting a flood of paper: hundreds of sets of interrogatories, countless document requests, hundreds of boxes of produced documents, and hundreds of depositions. How can you efficiently make use of it?

With five attorneys and a staff of legal assistants, our firm faced both the challenge and necessity of developing techniques to manage discovery efficiently. While attorneys rightfully focus first on the thoroughness of their discovery requests in ferreting out all possible information, in our experience, a greater and less frequently addressed challenge is making efficient use of the resulting flood of testimony and paper. We have gone through certain steps in designing discovery, conducting it, and using it for trial preparation. As a result, we have been able to access critical information on dozens of parties in moments from our desktops.

**Designing and conducting discovery**

In addition to ensuring coverage of all case issues, we designed discovery to standardize as much as possible, to allow necessary customization, and to plan for future use of the information through litigation support software.

Although we initially viewed standardization as a means to improve efficiency, we quickly came to appreciate that it was essential in reducing errors and improving the quality of representation. For example, drafting document request number 23 so that it is essentially identical for all defendants or all plaintiffs is not only less expensive, it is also of invaluable assistance to the attorneys in insuring that the request and response is thorough and useful down the road.

To achieve necessary customization of discovery documents, document assembly software was both essential and advantageous compared to manually hand-crafting each document from scratch, even though a portion of the resulting documents inevitably required unique, further editing. Setting up the information unique to each individual party in a database program, such as Access, or even a spreadsheet, such as Excel, allowed us to check for errors, analyze and group the information we needed for customizing discovery documents. It also facilitated subsequent exporting of that information into litigation support software. We could not have achieved these objectives by simply doing a cut and paste manually or by using a one-at-a-time document assembly program, such as Hotdocs.

Designing discovery to use team-wide standard terminology proved helpful, but only if limited to key entities and terms that we anticipated we would want to be

able to use in future word searches through our litigation support software. We limited the use of abbreviations and acronyms to terms we would never employ in word searching, such as words too common to be useful for searching, e.g. "plaintiff." While wider use of standardized terminology and abbreviations appeared at first to be a good idea, it led to inaccuracies as personnel could not maintain 100 percent accuracy when faced with use of a list that had dozens of standard terms and abbreviations.

Of immeasurable assistance to us in one case was the magistrate's agreement to field discovery disputes by telephone on an on-call basis and to insist on an oral pre-motion conference before any motion practice. In theory this might appear burdensome for a magistrate, but it appears from his comments to have saved judicial resources as the telephone conferences were generally brief and almost eliminated the filing of letters or formal motions. Time savings were enormous and the quick availability of resolutions to discovery disputes greatly simplified the discovery process.

**Making use of it all**

The volume of discovery materials led us to two organizational steps: Putting as much information as possible in a single repository, and attaching dates to as much information as possible, including portions of deposition transcripts, so that the volume of information could be organized chronologically.

Although litigation support databases such as Concordance and Summation are generally used to organize and keep track of documents and depositions, we expanded what we included in these databases to include everything factual. We included memos to file, privilege logs, pre-trial declarations, letters to counsel or the court with factual content, and discovery pleadings. By doing so, a single database search on a witness brought up everything we had in our files that related to that witness. Our fact chronologies were accordingly much more detailed and helpful in generating trial testimony checklists.

As the volume of discovery grew, chronological sorting became increasingly necessary. To bring as much information as possible into our chronologies, we annotated important portions of deposition transcripts with date information so that our trial preparation chronologies would pick up deposition testimony that we wanted to anticipate, defuse, or use in the testimony of a witness.

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