

Chapter 7 - Managing Litigation Information Using Technology

IT Management of Specific Case Materials

The goal in the development of an IT management system is to control all the case information in your case. In order to achieve that goal, you need to integrate a variety of different programs to your specific needs. Pretrial information control requires the application and integration of the computer concepts that were discussed in Chapter 6.

As we discuss the different ways to control this information in a digital manner, remember that you will spend more time trying to control these materials using the traditional means of paper, file folders, etc. For example, if you do not use a full text program to locate and reference information in your deposition, do you continue to use colored stickers to issue code your paper deposition? The point is that there still is the necessity to manually control the information in your case if electronic methods are not implemented.

The following sections will focus on the different electronic methods of controlling the factual and legal information in your case. The critical issue is how to organize and control actual case information from whatever source it is derived. The following discovery information has to be organized and controlled for your case:

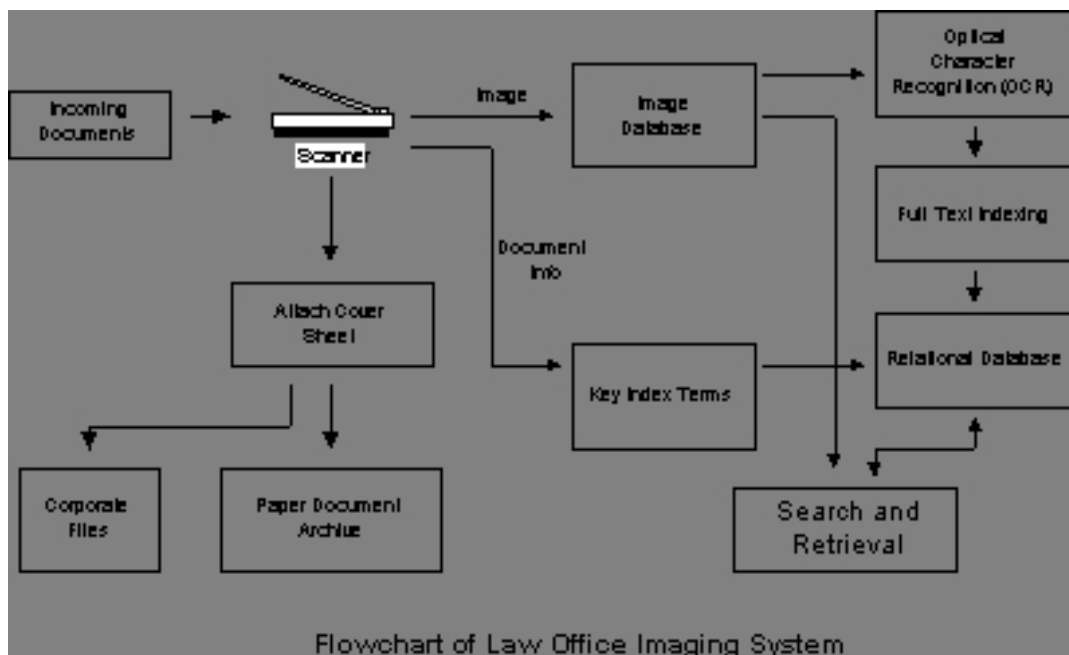
1. Interrogatories - answers;
2. Request for admissions - answers;
3. Expert reports disclosed;
4. Request for production - documents produced;
5. Depositions;
6. Informal interviews;
7. Investigative information;

8. Legal research;
9. Client materials;
10. Other materials.

The purpose of converting your documents into an electronic format is to be able to access, organize and provide reports for analysis. The goal of converting and enhancing the discovery material is to provide the following reports and compilations.

1. Witness kits;
2. Issue binders;
3. Chronological reports;
4. Deposition exhibit reports;
5. Trial exhibit;
6. Subject files;
7. Correspondence;
8. Follow-up;
9. Opening statements;
10. Direct and cross examination outlines;
11. Closing arguments.

Documents



The process of producing or receiving documents poses several legal and factual electronic information issues. There are specific steps and decisions that have to be made to ensure that the digital organization of this material is completed in a low cost but effective manner. The primary electronic tool for capturing the majority of information off of these documents will be entering data into a database. Secondary tools to be used will be creating images of the documents to link to the database record and the use of OCR to convert the paper into digital searchable full text. The flowchart below depicts the flow of documents through your office and the use of database indexing, full text, and imaging. For a review of databases, full text and imaging see Chapter 6.

Screen Documents. At the outset, it is important to screen all pertinent documents as to their relevance to the case. Whether documents are relevant to a case will be determined by the applicable causes of action and legal and factual propositions that you need to prove. The relevancy of documents should become apparent after discussions with the litigation team.

At the outset, it is important for you to determine which documents will be key, marginal, or irrelevant to your case. Obviously, you do not want to abstract or input data into your computer on irrelevant documents, since it would be a waste of time and your client's money.

Documents that are highly relevant should be abstracted. Those documents that also need to go to a specialist or expert should be flagged for forwarding to the appropriate person.

It costs a few cents to screen a document, but one to several dollars to code a document. Also, weed out unnecessary duplicates prior to inputting.

Documents which have marginal value may develop a higher priority as a case progresses. Though you may decide initially not to enter data from these records into the computer, you may want to enter a record that summarizes all of these marginal documents so that you know that they're available at a later time. Also, it will give the attorney who is reviewing your written report information that there are other documents that maybe relevant to their case and which they may utilize as they are developing their theories and strategies. Also, the attorney will have instant access to these marginal documents, if they have been imaged in.

During the initial review of your client's documents, you will need to determine the type of storage and the number of "copies" to make. The type of possible storage would include:

- Paper
- Imaging.

Usually, a control and working set of the documents will be reproduced. The sets can either be in a paper format or imaged. A control set would be an exact duplicate of the set provided by the client and would be set aside after being bates coded. A working set would be another duplicate copy, but a set that would be used for witness review, preparation for summary judgment, and so forth. Depending upon your choice, the documents can be disclosed to the

opposing party either in a paper or digital format. Originals should be stored in a safe location; copies should be used for coding.



Client's Documents and Request for Production. This initial review of your client's documents will determine whether they are responsive, whether they are useful (to whom?), and whether they are privileged. This will lead to four possible categories for your documents:

1. Not responsive and not useful;
2. Not responsive but useful;
3. Responsive and privileged;
4. Responsive and not privileged.

- *Not responsive and not useful.* A control copy of these documents should be maintained, but not a working copy since they are neither useful nor responsive.

- *Not Responsive but Useful.* A review of the documents may disclose documents that are useful to opposing counsel or to your client. There may or may not be a requirement to disclose, but a lawyer will have to have a control set and a working set. These documents should be indexed.

- *Responsive and Privileged.* It is very important to label immediately documents that are privileged. It should be noted on the document as well as in the database. Some firms are so careful regarding the inadvertent disclosure of these documents that a second database is created for the sole purpose of identifying and controlling privileged documents. During the indexing, the basis of the privilege should be noted. A control set and working set should be created for the litigation. Some imaging programs enable one to redact privileged material on the image before the image is disclosed to the opposing party.

- *Responsive and not privileged.* Once the responsive and non-privileged documents are located, these should be disclosed to the opposing party. If it is a large production, then the opposing party should review and tag the ones he wants to copy. Arrangements would have to be made for opposing counsel to inspect and copy or image the documents. Either numbering or renumbering the documents should note the documents selected by opposing counsel. Both a working and control copy of these documents should be created. These should be fully objectively and subjectively indexed.

Document Review Process. Some basic database information should be entered into your database while determining the relevance of the documents. The information should include the following:

- Person's ID (who reviewed the documents);
- Date Reviewed;
- Whether they were produced to the other party;
- If not produced, the reason.

Flag especially important (helpful or harmful) documents. All members of your litigation team should continually flag important documents for the following reasons:

- Disclosure to outside experts;
- Full Text conversion;
- Helpful;
- Harmful;
- Whether they will be disclosed to opposing counsel.



This is a sample database screen capturing some of the information discussed above.

Other Party's Documents. When the other party discloses a copy of the documents to you, a

control set and working set should be immediately created. Depending upon their importance to the issues of your case, these documents should be both imaged and objectively and subjectively indexed. Number all the documents that come through the door. This is done by using a sequential number stamp machine, computer generated labels or having a copying service copy them and have a number imprinted as part of the process. They should be easily retrievable by number. It is strongly suggested to number each page and not just each document.

Document Databases - Designing and Building. After screening the documents, the design and building of the database are important steps. The final results of what data is entered are reflected in the reports that are generated. Control over the design and entry of information for your final reports is critical to a successful database application. For the design of a database to be successful, one should be able to locate key document data, documents that pertain to particular issues and witnesses, and any other data important to the theories of your case.

Creating customized database fields and forms will permit you to control the facts of your individual case, whether it is a medical malpractice, automobile, contract, wrongful termination, criminal case, or any other legal matter. Also, you can create fields and forms for law office management functions, such as a phone directory, brief bank, and so forth.

Sometimes, your information needs may change as the case progresses. This is often unavoidable because the issues of a case may change. In the event that you need to collect additional information about a case after you have started your application, some software database programs permit you to add or delete fields to a form. After adding additional fields to collect information, you can then generate new reports that include the new fields.

The lawyering process is required in designing your database. There is no software program that determines what data needs to be collected from a breach of contract case. The legal theory and factual propositions that need to be proved is the work product of the lawyer. Once these elements are identified, then the software can be "programmed" as to what information will be entered. Once entered, the computer can retrieve and sort this information according to the legal theories that have been programmed by the designation of database fields, legal issue codes, and so on.

Below is an example of a Summation™ database design:

Summation Windows - Database SDCDB

File Case Summary Field Options Window Help

OSHA

Form Column Query

Form STDFORM Display: Summary 10 of 323

SUMMATION DEMONSTRATION CASE

BegDoc# EM03270 #Pgs DocDate 06/02/90 Image
 EndDoc# Box# DocType LETTER HotDoc

Sources DINWIDDIE, D. Authors HATHAWADE, D. Names
 Issues OSHA Health Dep. Mentions WATTERMAN, K. MILLER, G. Privileged

Summary Requests prompt action on behalf of Health Dept. to complete required inspections following fire.

Attorney To-Do: obtain results from inspections. When was final approval given for habitability? When did normal business operations resume at JJC?

Notes

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