

### Chapter 7 - Managing Litigation Information Using Technology

#### Steps - Document Imaging.

There are several important steps to ensure a successful and cost effective imaging project.

- *Document Collection & Selection.* Determine the document population. What types of documents are going to be imaged - maps, blueprints, medical records, corporate documents, etc? Which documents should I image and why? Should the clients, opposing party, or third parties documents be imaged? Who is doing the initial indexing? What logging information, such as document boxes and folders, needs to be done? As a crude rule of thumb, generally only 20 to 30% of documents are imaged. When doing the initial search, pay close attention to what was reviewed, what was selected, and the reason for not selecting certain materials. These decisions may be significant later on during disclosure of database discovery arguments. Should deposition and trial exhibits be imaged?

- *User Hardware and Software Requirements.* What type of software will I be using? Do I need additional hardware equipment? Who will be using the system? Will the firm be doing its own scanning? Can you choose the dpi rate at which the documents will be scanned? Is it a TIFF format or a proprietary format? Does it provide for redaction? Does it allow you to tag and group items for particular witnesses or issues? Does it allow you to rotate and zoom into the document? Will the imaging software link with popular database programs, such as Microsoft Access or Paradox? Does it compress image files, and to what extent will it support batch printing? Can you sort documents chronologically and by witness or issue?

- *Document Preparation Time.* Imaging documents means more than just feeding documents into a scanner. There is upfront time required to prepare your documents for scanning. The amount of time will depend upon the number and complexity of the documents. The function includes accepting and logging documents to be scanned, transportation, preparation of documents by category, delivering documents to a scanning station, removing them from scanning, and returning them. Blue pages and documents can separate attachments by yellow papers in your paper population.

- *Production Instructions.* Specific instructions should be provided to the scanning operators for various reasons.

For example, during your initial review of the documents, you may determine that certain documents need to be sent to your consultant. Those documents can be electronically flagged and then routed to your expert after being imaged for his review.

- Are there any time limitations?
- At what dots per inch (DPI) will the documents be imaged? The greater the dots per inch, the greater the clarity of the document. Each page is approximately 30 kilobytes to 80 kilobytes with an average of 50 K per image. Images are normally scanned at 200 dpi, but 300 dpi is sharper and better for subsequent OCR or trial presentation purposes.
- Proprietary Image Format. Will proprietary image format software be used? This may cause compatibility problems later on.
- Tagging. Will the images be tagged for beginning and the end of the document?
- Attachments. Should attachments to documents be imaged as individual documents?
- OCR'ed. Will imaged documents selected for OCR be converted during initial scanning?

Do I want these OCR documents cleaned up?

- Project Dates. Set the beginning and ending date of the imaging project.
- *Bar Code Labels and Automatic Image Numbering and Database Coding.* Detachable bar code labels can be manually placed on your documents for coding and retrieval purposes. The bar code can contain a filename code that is read by the scanning software and becomes the filename for the document. These filenames can then be automatically imported into your database, saving keystroke costs. The bar code can also include instructions to the computer to as to where the image is stored and what to do when the image is retrieved. Then, any time you want to retrieve the document, just use a bar code reader to pass over the bar code, and the document will appear on your computer screen. Some firms create special bar codes for when and who produced the document and other information to further reduce keystroke activity.
- If bar codes are not used, some scanning software will automatically assign a filename to a document that is being imaged. For example, the name might be DEF1\_001, which could stand for DEFendants production of documents, group - 1, document number 001. This coded filename will be automatically imported into a database and this number will become the document number, which eliminates a coding step. However, the number must also be placed on the paper document if you wish to retrieve it later using a manual system.
- *Indexing time per document.* If you decide to index the documents, some factors to consider include keystrokes per document, keystroke rate (depending on image quality), number of fields per document, location of fields, location of information in documents to put into field, etc. Some language to include in an outsourcing agreement would be:
  - The documents will be coded over a \_\_\_\_ period of time.
  - Document coding will begin on \_\_\_\_ and end on \_\_\_\_.
  - The cost per document to code the agreed upon fields will be \$\_\_\_\_\_.
  - The average number of characters per document will be \_\_\_\_\_.
  - \_\_\_\_ number of fields will be coded.
  - Documents Per Batch - There is no magic number of how many documents are in a batch. This number refers to the number of documents that are prepared for scanning at any one time.
- Imaging Quality Control Checklist:
  - Bar code Indexing. If bar codes are used and are not properly read by the scanner, does it have built-in safeguards, such as a beep to warn the operator?
  - Page Number Order. Are page numbers in correct order?
  - Information Edge to Edge. Is all the information contained within the image or does it run off the side?
  - Image Contrast. Is the image too light, dark, etc.?
  - Bates Numbering. Are the Bates numbers on the page and legible?
  - Two-sided Originals. Has the image of both sides of a two-sided original been imaged?
  - Checking Against Paper Copy. Will images be checked page by page?
  - Skewed Images. Are the images properly in position?
  - OCR. If used, will operators verify the accuracy and quality of the characters converted?
  - Image Condition. Do dirty marks, dark lines, smudges, etc. appear on the image?

*Outsourcing.* Outsourcing is a term used to describe hiring an outside service bureau to scan, code or copy legal documents or perform other types of legal services. A whole service industry has been built up around the computerization of documents in the legal industry. Focus on the quality, reliability, service, experience, financial stability, and price factors when selecting a provider.

When faced with a document-intensive case, your firm may want to consider hiring a litigation support service company. They have the system and procedures, expertise and trained personnel to handle the work of converting documents to a digitized format. They should be signed to a confidentiality agreement and an agency relationship should be retained with the vendor to preserve work product immunities and the attorney-client privilege.

### **The decision to outsource as opposed to completing the work in-house depends on a number of factors:**

- What resources - money, staff, supplies, equipment, and expertise - are available in-house?
- Who is going to run the litigation support area?
- What is the size of the case?
- Are you willing to make the training commitment?
- Can the case be processed within the time limits?
- Can the resources internally be kept busy on other cases after this case is over?
- If co-counsel is present, what type of computer and support capabilities do they have?
- What is the comparison cost of doing it in-house as proposed by outside vendors?
- Can we divide the work between in-house and outside service bureau employees?
- Two factors to consider in hiring an outside firm are concern over possible conflict of interest and loss of direct control over all levels of the support group.
- Also, in certain legal cases where attorney's fees and a legal assistant's time are recoverable, a service vendor fees may not be.
- And most importantly, do they or we have the latest and most efficient hardware, software, and expertise to do the job?

*Selecting an Outside Service Bureau* - It is important to have a clear understanding from the service bureau what your expectations are when you retain them to assist you in litigation management. Some suggestions:

- What types of service do you need - objective and subjective coding, images, and full text?

- Prepare a Request for Proposal (RFP).
- Establish a timeline for the RFP proposal, publication, selection, negotiation, and date of bid award. Determine if a prebid award conference is necessary to further explain the project. Do they need to have more information about the computing environment?
  - The RFP should contain background information on the project, description of the case, description of existing computing environment, description of procurement process, a needs analysis and implementation, description of an evaluation process, requirements definition, pricing, bidders references, and format of responses.
  - Disclose to the service bureau the number of pages and documents that need to be scanned, numbered, coded, etc.
  - Does the vendor have any conflicts - are they helping the other side?
  - How long has the vendor been in business? How long have they provided each service, such as imaging, database, full text, etc.?
  - Other factors to consider. References, quality control procedures, staff resumes and experience, and how long have their employees been with the company? Is permanent staff maintained, or do they use temporary staff? Can they deliver remote site scanning services and can they image in a variety of formats and store the images on a variety of devices? Can the vendor meet the deadlines within the constraints of your case? What are their security measures at their facility?
  - Is the service a full service bureau? Can they handle imaging, coding, OCR conversion, etc?

See Chapter 5 for a further discussion on outsourcing.