DISCOVERY MANAGEMENT IN LITIGATION USING SPREADSHEETS AND DATABASES

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One of the most daunting tasks faced by every lawyer is the management of the mounds of paper generated by the modern practice of law. While this is true in every practice area, it reaches its extreme in the modern litigation practice, where responses to broadly drafted requests for production often lead to literally thousands and tens of thousands of documents. Keeping track of these documents is the bane of most litigators' existence. It is tiresome, tedious, boring work that most of us hate, but it is also one of those tasks that can make or break a case.

While the proliferation of the volumes of paper now produced in modern litigation are largely the result of the computer era, computers likewise provide a solution for management of all this paper. A good discovery management system is not just about locating and retaining those "smoking guns" or "hot-docs". That has always been, and will likely remain, a manual task of careful document review and segregation of such documents by hand. It is the ability to put your hands on any document at any given time that it becomes relevant to your case. A good document tracking system will enable you to pull the corporate minutes from a defendant's 1997 board meeting to determine who was in attendance at a moment's notice. It will allow the practitioner to locate not just some but all of his client's medical records and billing statements in support of his personal injury claim. And perhaps most importantly, it will provide a reliable record of exactly which documents were produced in discovery by both sides, and when.

This paper will examine two solutions to management of documents in litigation, on both ends of the spectrum– one a very low-tech solution, and the other utilizing state of the art litigation management software.

METHOD 1
SPREADSHEETS AND BATES-STAMPS

The Equipment

The first method of document management discussed herein involves the use of a $50 Bate-stamp and any spreadsheet program (or if you prefer a word processor), as its only prerequisites. I prefer the use of a spreadsheet, because it gives the litigator the ability to manipulate the data into more meaningful reports, sorted by column, if necessary. Microsoft's Excel or Corel's Quattro Pro serve this purpose equally well. An additional benefit of using spreadsheets is the ability to merge the data into a true database such as Access or FoxPro, or into Summation or Concordance, if it later becomes

necessary. Also necessary is either (a) a Bates-stamp or other automatic numbering machine or (b) if you prefer, the use of small address labels and software to create consecutively numbered labels. Avery's Design Pro 2000 software will produce such labels. Likewise, Wordperfect users can obtain a macro to create such labels at http://ourworld.compuserve.com/homepages/macdonnell/library/bates.html. Word users can obtain a similar macro at http://www.docauto.com/bateslabels.htm. One note of caution about using the labeling method – the use of such labels will bulge your original documents if they are consistently applied in the same area on a page. While this does not create a problem in cases involving only a few hundred documents, it does create some storage management problems in cases where the documents are more voluminous.

The Plan

The primary purpose of any discovery management system is to track documents produced by every party in discovery. With that in mind, every discovery document received from an opposing party, or from a similarly alined party, in litigation is numbered immediately upon receipt. If using a manual Bates-stamp, these numbers will likely be consecutive numbers such as "000001". One advantage of utilizing a peeled label method of numbering is the ability to prefix the numbers with letters such as "DEF-0001".

Once the documents are numbered by the litigator's predetermined numbering system of choice, they are ready for review by the person assigned the task of document review. Prior to document review, the litigator should determine exactly what information he or she wishes to track for each document, and create a spreadsheet containing columns for each field desired to be tracked. A common spreadsheet would be as follows:

Beginning Number	Ending Number	Document Description	Produced By	Date Produced

Other fields can easily be added in the litigator's discretion.

With the documents now labeled and ready for review, the document reviewer, whether it be a paralegal or a lawyer, can simply sit down with the documents and a dictation recorder, and dictate the relevant information about each document for later input into the spreadsheet. If the reviewer is proficient with the use of a computer, they may input the data themselves, however, I find this process to be too time consuming and detracting from my review of the documents.

Once the documents are reviewed, and relevant data about the documents has been entered

into the spreadsheet, the documents can be boxed for storage and later retrieval. The documents will be stored in numerical order, and therefore may be easily retrieved when necessary to do so. The search for the document, however, occurs not by manually digging through the boxes, but through a review of the spreadsheet, or better yet, through use of the "find" command in the spreadsheet program.

The same process is used in your own production of documents. Prior to sending the documents to opposing counsel, the documents are each stamped and labeled, and thereafter reviewed by the person responsible for such review, and entered into the same spreadsheet. One word of caution in this process– an initial review should probably be performed on the documents prior to stamping in order to remove documents which may be privileged, work product, or otherwise not produced in a production response, if you want to avoid gapping holes in your response numbers.

Once this process is complete, the litigator has a spreadsheet which contains a description of every document produced in discovery, and a manageable system for retrieving each such document. Additionally, should a question arise as to the previous disclosure of a particular document, the litigator has a quick means of proving that the document was in fact produced in his discovery responses on a particular date or that the document was, in fact, never received. The spreadsheet is searchable using the "find" command in the spreadsheet or word processing software. It likewise can be manipulated so that the list can be regrouped by producing party, date, or other sort order if a spreadsheet is used.

Pros and Cons

The advantages of this system are self-evident. This system is inexpensive. Utilizing an automatic Bates-stamper, which can be retrieved at any office supply store for $50, and software that every law office already has, the litigator is able to implement a system for orderly management of discovery regardless of the volumes of documents produced. Likewise, the system is easy to implement. It requires no specialized training. Similarly, the system is easy to understand. Each participant in the process has a "hands on" understanding of exactly what they are doing in the process and can physically see how the documents are handled through each step. The system is reliable. In the event of a failure of the numbering machine, a new identical numbering device can be easily obtained on the same day. In the event of a hardware or software failure, the firm should have in place back up mechanisms for retrieval of corrupted files. The paper documents themselves are always physically available for retrieval upon request.

The primary disadvantage with this system is its reliance on paper. Paper requires storage space. It requires the time consuming manual retrieval of paper documents. Inherent in a paper-based system is the difficulty in transporting paper to each location where its retrieval may become necessary. Likewise, physical paper always results in the need to make physical copies of that paper and physical shipment of that paper, increasing copy and postage expense. Those shortcoming aside however, this system provides an inexpensive, simple, and reliable method for tracking storage and retrieval of documents in litigation which, if implement consistently, will serve the litigator well.

METHOD 2
IMAGING AND DATABASES

The Equipment

A markedly higher tech method of managing discovery relies on document imaging and linkage to a document database, through the use of litigation support software, such as Summation or Concordance. This method of discovery management relies much more heavily on computer equipment and software, resulting in the reduction or elimination of the need for storage and retrieval of volumes of paper. This method of document management requires a scanner, litigation support software, and imaging software or a third party vendor.

Hardware

Due to its heavy reliance on computers, imaging discovery requires considerably more processing power and hard drive space than Method 1. At a minimum, this system will require a computer with a PIII processor 300Mhz, and a hard drive measured in Gigabites rather than Megabites. Any machine on the market today will easily perform the functions discussed herein, however, if you have not upgraded your machines since the rollout of Windows 95, you will likely need to replace some computer equipment before using imaging to manage your discovery.

In order to be useful in this process a scanner should have a sheet feeder with the capacity to scan 10 or more pages per minute. For the typical small firm or solo practitioner, the Visioneer 9650 USB is sufficient. A twain based scanner, the 9650 scans 12 pages per minute and has a document feeder capable of holding twenty-five pages. Fujitsu also has a good line of quality scanners in the sub $1,000 price range. Visioneer and Fujitsu are both well known and reasonably priced lines. The Visioneer 9650 has a retail price of $600. For higher volume scanning, you should consider the outsourcing, or if you wish to handle the project in house, you may want to purchase an "industrial strength" scanner, such as the Canon DR3000 series. These scanners are known to hold up well and process documents in both simplex and duplex. The Canon 3060 scanner contains an automatic document feeder and can scan over 80 pages per minute. This scanner sells for approximately $3,400. For those cases involving tens of thousands of documents, it will likely be more efficient if not necessary to engage the services of a scanning bureau. These companies specialize in scanning documents and providing the necessary linking files to accommodate any litigation support software you may be using. Examples of such scanning vendors in and around the state include Uniscribe, New Orleans (www.uniscribe.com), Document Imaging Solutions, LLC, Cleveland, Mississippi (www.documentimage.com), the Data Company, Memphis, Tennessee (www.datacompanies.com), and Choice Printing, Jackson, Mississippi. Theses services also have the capability to input generic data about documents into a database for import into your litigation support software. Such data will generally include only basic items as

the title of the document, the date of the document, the type of document, but can contain more detailed information such as persons mentioned in each document or a summary of the document. Depending on the detail of service requested and volume of documents submitted, charges for these services range from $.10 per page for imaging only to $1 to $2 per page for imaging and database input. These services also possess the capability to perform OCR on the documents, giving you the ability to perform text searches from the discovery.

Software

The litigation software required for this method of document management is a specialized litigation software such as Summation (www.summation.com) or Concordance EX (www.dataflight.com). An off-the-shelf program like Access or Fox-pro could serve the same function, however I do not know how those documents would be linked to their corresponding image. There may by vendors with a solution to this. However, I would not think that the savings to be realized would be sufficient to forego the purchase of a full litigation support package, given the additional features built into these programs. Both Summation and Concordance are similar litigation support products, however this author is more familiar with Summation, having utilizing it in his practice for five years, and has only operated demo versions of Concordance. Accordingly, this paper will focus on the use of Summation exclusively. However, the reader should be aware that most of the same capabilities discussed herein are available in Concordance. The prices for Summation range anywhere from $1,000 to $2,500, depending on the feature set contained therein. Concordance is similarly priced. The electronic production of document features discussed herein, and in the accompanying white paper, requires the higher priced i-Blaze program, but the entry level Summation produce can be utilized to retrieve and database documents.

Also necessary for this process if scanning is to be completed in house, is software capable of scanning the documents and importing them into Summation. Ipro Tech provides a software product, Scan It, that will scan your documents and create the linking table necessary for Summation or Concordance. The cost of this software is $250 - $500, however, rights to download a scaled down version specifically for use with Summation is included with free with Summation i-Blaze.

The System

While the previous Bates-stamp system described in the preceding section began with numbering of documents, the electronic system described herein begins with scanning the documents. Using software produced by I-Pro, called Scan-Sum or a similar product produced by another software vendors, blank sheets are placed between each document and the documents placed on the scanner feeder as they are received. The documents are then scanned into the computer using I-Pro software. The software recognizes the blank sheets of paper as document separators, and registers each document accordingly. The images are scanned using the universally used Tiff format. After all

documents are scanned, the computer operator simply selects an option to import the documents into Summation. Once imported, copies of the documents are placed in the Summation document database, and separate field entries for each document are automatically created.

The next step involves manual review and database entry for each document. This database review can be performed either through review of the actual paper document, dictated for later transcription and database input, or can be reviewed directly on the screen. The standard document database form included with Summation is quite extensive, although it is not necessary to utilize each field. Additionally, the database is customizable, and if additional fields are needed, they can easily be added.

The database can be reviewed as either a form or table. A table resembles the spreadsheet entry discussed previously. Once documents are scanned into Summation, the user can utilize Summation to automatically number any chosen documents or all documents as the user so chooses. The stamping process is done electronically, and can either be accomplished as each document set is produced, or can be batch-processed for all such documents as they are brought into Summation. The bates-stamp numbers are automatically entered into the appropriate database fields for each document, and can be automatically burned onto each document image, at the discretion of the user.

When selecting a set of documents for production in response to a request for production, the user merely selects each document in the database usually utilizing the table format for selection, and selects those documents for production, using the "summary/production tools/make a production set" choice. Thereafter, the user has the option to set production numbers for the documents selected and thereafter can name the production set being produced. Upon creating the production set, Summation saves the production set as a "briefcase", which contains all of the selected database data for the documents, together with the document images. The user can then select the "briefcase" and either (a) print out the document images for production to opposing counsel in hard copy or (b) create an electronic production response utilizing his choice of either html or pdf formats. Utilizing the electronic method, the user can then burn the production set to cd and avoid dealing with any paper documents whatsoever. The file, in a universally readable format, can even be e-mailed, eliminating postage charges altogether. To create an electronic data set, select "options/export data and images to browser briefcase." The user is then given the option to select pdf or html. Thereafter, the document set is produced and ready for transmittal to opposing and co-counsel.

Pros and Cons

By utilizing this method of discovery management, the litigator has access to all documents in a case without the need for transporting or handling any paper whatsoever. The documents can be easily stored on cd or the litigator's hard drive, and thereafter, are available anywhere the litigator has his computer. An additional advantage is the ability to utilize optical character recognition on the documents, giving the user the ability to conduct word searches from the scanned images database.

Summation i-Blaze has this feature built in, however the program is not very well suited for this purpose and a large volume document production should be OCRd by a scanning service. Through the use of OCR, not only can the user search the database entries, similar to the find feature on the spreadsheet method discussed earlier, but can likewise conduct full tech word searches on the images themselves. This method is, of course, not absolute, as the OCR capabilities of the software are only as good as the quality of the image scanned. However, it is, in any event better than the alternative of not having any search capabilities whatsoever.

In addition to the advantages inherent in the elimination of paper documents, including the ease of transportation, reduced storage costs, more rapid access to documents, and the ability to conduct searches, this system of document management likewise provides the litigator with an easy and reliable method of confirming discovery responses. Like the manual method discussed previously, the user has a database entry for every document sent and received. Additionally, if the electronic method of production is utilized, the user has an exact duplicate file at his fingertips of precisely what was produced to opposing counsel. Any controversy arising as to whether a certain document was previously produced can easily be resolved by exploring the duplicate document production contained on the litigator's computer.

The primary disadvantage to this system is cost. The software is very expensive. Additionally, the software is not very intuitive, despite company claims to the contrary, and requires training. Technical support is available as part of an annual maintenance contract, however this, too, is expensive and time consuming. As a final matter, as with all computers, reliance on this system is subject to computer crashes. This system is only as reliable as the computers on which you have the data stored. Inevitably, the greater your need for a document, the greater the likelihood of a computer failure. However, these disadvantages not withstanding, in a document intensive case, there simply is no substitute for the capabilities realized by electronic management of discovery.