

Legal Process Outsourcing: The Case for Outsourcing to the Right Shore



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Introduction

Historically, attorneys were obligated to touch every piece of paper in their cases and review every document provided to them by opposing counsel. The proliferation of electronic data is changing that model. According to International Data Corporation (IDC), in 2006, the amount of digital information created, captured, and replicated was 161 exabytes or 161 billion gigabytes. This is about 3 million times the information in all the books ever written. Due to the burden of this data explosion, attorneys across America are looking to outsource their document review in order to have as many data items as possible be reviewed by attorneys – even if they can't do it themselves.

There are several options to consider when outsourcing your document review – the review can be outsourced to outside counsel, an “onshore” discovery management provider, or an offshore vendor.

Legal review of documents prior to production has traditionally been the most costly phase in litigation, with in-house counsel relying on outside counsel to provide this service. However, sending your document review offshore is an attractive option to some attorneys because the prices seem so low. When comparing the rates of in-house counsel to that of outsourced attorneys in India, for example, it is easy to see the cost savings: Indian attorneys may charge as little as \$20 per hour, compared to the more than \$250 per hour charged by law firm associates in the U.S.

Yet, many attorneys are reticent to offshore their document reviews. While it may make sense to offshore basic legal tasks, document reviews for relevancy, responsiveness, and privilege can be too subtle and nuanced. And more importantly, failure to locate the

relevant documents or tag an item as privileged can have severe ramifications in terms of sanctions for failing to produce and subject matter waiver. Also, there are data security issues to consider. Sending sensitive data, i.e. medical records or Social Security numbers, overseas can be a scary proposition. There are also ethics issues regarding the supervision of the work being performed. For many, “offshoring” is just too risky.

There is a middle of the road option, which costs less than the attorneys hired by outside counsel, lessens the security risk, and provides you with more transparency and control over the whole process: outsourcing documents to a service provider located in the U.S. The closeness in physical proximity of your onshore consultant can be invaluable during the crunch time of your review. Additionally, daily connections and discussions can be a very important part of ensuring the accuracy of your document review, especially when done under tight time frames.

Outsourcing, whether onshore or offshore, is such an attractive option that even some law firms are beginning to outsource document review. So, whether you are a law firm looking to outsource your document reviews, or an inside counsel who wants to contain costs and maintain control you should consider outsourcing to the right shore. No matter which option you select, there are several issues you should take into consideration.

Control: At the end of the day, no matter who reviews your documents you are still responsible for the end results. Since the attorney bears the ultimate responsibility you want to look for an option that provides you with the most control.

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Perhaps the most important issue surrounding the control of the document reviewers is training. It is in the discovery management provider's best interests to have a highly trained staff. A staff that is trained on technology, case issues, and review procedures creates a highly efficient review and a quality deliverable. This in turn drives down costs which make the onshore discovery management provider a more attractive alternative when compared to offshore vendors and outside counsel.

Sometimes, junior associates can be left to their own devices when performing a document review. But in fact, a junior associate was sanctioned in the Qualcomm case because he failed to see the importance of 21 emails that he stumbled upon in the course of his review. The court found that if a junior lawyer lacks the experience to recognize the significance of a document, "then a more senior or knowledgeable attorney should have assisted him." *Qualcomm Inc. v. Broadcom Corp.*, 2008 WL 66932 (S.D. Cal. Jan. 7, 2008) at *14.

If you are a law firm looking to outsource your document review, you can concentrate on training your junior associates in what they do best – looking at the substantive areas of law. There is more of a learning curve for offshore attorneys in that they must become familiar with the legal process of the United States as well as the substantive issues of the case. Outsourcing to an onshore discovery management provider eliminates much of the legal training needed. A good discovery management organization keeps their reviewers well trained as it is in their best interests to increase efficiency and decrease costs. However, as offshoring becomes more popular that gap in knowledge is slowly closing.

Core Team: Almost everyone uses contract attorneys to ramp up quickly for a project and release those contract attorneys when the project is over. This naturally keeps costs down. However, when those reviewers are let go, all of the knowledge about your case goes with them. And, should you ever need assistance on that case again chances are they will be working elsewhere. The same applies when you hop from offshore vendor to offshore vendor in search of the cheapest pricing. Since it's im-

possible for you as the attorney to touch every piece of paper in your case, the knowledge of the document set is invaluable.

A good discovery management provider will have a core team that is always on staff. In other words, the knowledge about your case, the issues, the players and the subtle nuances do not walk out the door when the project is over. As such, should you require further assistance with a document review or have a question about your document review, you have someone to ask.

Transparency: Often times, in-house counsel never knows what goes on under the roof of the law firm: The work goes in and a bill for services comes out with no vision into how the work was performed in between. A good onshore discovery management provider will have a fully transparent legal review process and share internal practices and processes with clients. They will have a defined approach that explains the review process and will require that key decisions to be discussed and agreement reached. Communication and transparency in the document review process are the two biggest keys to success.

A good discovery management organization has a proven track record with their legal review approach and can provide key metrics to demonstrate their success. They have an accurate model for metrics and timelines that will allow for highly accurate timeline projections, allowing for greater predictability and control of legal review costs. Their process is highly efficient and scalable, allowing them to legal review at a much lower cost. While most legal review is still provided on billable hour basis, a very simple, well defined review can now be provided on a per document charge basis. This makes costs even lower and more predictable – once you know your total review population, you can predict your total legal review costs.

Holistic Approach: Outsourcing legal review to an onshore discovery management organization ensures that a holistic approach to legal review will be utilized. Unlike off-shored document review outfits, discovery management providers don't just take a chunk of documents, review them, and spit out results. A good

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discovery management organization helps you manage your discovery – all of it - through every step of the litigation process. From consulting with you prior to the meet and confer on what is or is not accessible data, to collection, processing, review, and production. A good onshore discovery management provider will tell you that in the last case you worked on with them you stated that a certain collection of back up tapes was “inaccessible” and in this case you were about to call them “accessible.” Further, the right shore outsourced legal review organization will advise on how changes to the process, due to changes in the issues of the case or tweaks in processing, will affect those documents already reviewed and those about to be reviewed, and advise you of your options.

Conclusion

With the high volume of e-discovery collections and the increased costs of conducting a full discovery process, including legal review, on these collections, it is imperative that corporate law departments increase their control over their entire discovery process, including the legal review process, which is the most expensive phase of the case. By utilizing an onshore discovery management organization to outsource legal review, companies will benefit from a holistic approach to their discovery process that provides greater control, transparency, and a core team of subject matter experts in their cases with lower and more predictable costs.

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