



DOCUMENT MANAGEMENT

PRE-TRIAL MANAGEMENT OF DOCUMENTS IN COMMERCIAL CASES

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I. Introduction

Commercial cases are often document intensive, both in terms of the documents to be produced by your client and the documents produced by the other parties to the litigation.

The delivery to your office of dozens of boxes of client documents presents two basic problems. How do I organize the documents for production? How do I access documents as I require them for discovery and other purposes?

The production of large documents by other parties in the litigation presents a similar challenge. How can I locate and retrieve key documents in the materials produced? How can I ensure that all relevant documents are included in the mass of documents produced?

A properly constructed document database is an effective tool to use in dealing with these problems. There are three basic steps towards the construction of a document database:

- (1) identification of documents for inclusion in the database;
- (2) entry of information concerning the documents into the database;
- (3) recording counsel's subjective assessment of the documents in the database.

II. Identifying Documents for the Database

A. Client Documents

The first step is to identify what documents should be contained in your database from the documents that have been delivered from your client. The object here is to ensure that all potentially relevant documents are included, and to eliminate unnecessary material from the database. You do not want to spend either your firm's time or your client's money entering information in the database about documents that are insignificant.

The more documents that are delivered to you, the bigger and more difficult this problem becomes. For example, we acted recently for a company in an action against its former officers and directors, lawyers and auditors for negligence concerning the transfer of the company's assets, in the form of cash and shares, to various Swiss bank accounts. The claim made many transactions involving the plaintiff company and its subsidiaries over a three or four year period potentially relevant. As a result, over 130 boxes of documents were delivered to our offices for review at the outset of the case.

The test we employed to exclude or include documents in the litigation database was on a file by file basis. This did not involve a detailed review of the documents. If a file contained a relevant document, it was identified for inclusion in the database. Also, if the file contained relevant but privileged material, the file was identified for inclusion with a note that it may be potentially privileged. This permitted further review of the files once they were included in the database. This process left over 85 boxes of files to be entered into the database on a document by document basis.

In selecting documents for inclusion in the database, it is important to preserve the integrity of the original client files. You do not know whether the state of a particular file and its contents may have some significance in the litigation, even if it is simply assisting with the preparation of your own client's evidence. This information should not be destroyed in the document assembly process through disturbing the order and location of original documents.

B. Other Party's Documents

The general rule is a simple one. All documents produced by the other side ought to be obtained and entered into the document database. It is a much more efficient use of your time to review documents as part of your document database than to sit and review them in opposing counsel's office. It is only in circumstances where it is patently obvious that documents produced by your opponent will have no significance that they should be excluded from your document database. Those circumstances will obviously be rare.

III. The Entry of the Document Into the Database: Coding and Scanning

Once you have identified the documents to be entered into the database, the next process is to identify the information about the document that you wish to have entered into the "record" of that document in the database. This process has become much more simplified in recent years with the developments that have been made in scanning technology and Optical Character Recognition (OCR) technology.

In the past decade, our firm engaged in an intensive objective coding of each document to be entered into our document database. As much objective information as could be gleaned from the face of the document that may be relevant to the issues in the litigation was entered into the litigation database.

For example, in the case referred to above, we would enter for each document the date of the document, the document type, any dates mentioned in the document, all names of individuals mentioned in the document, all company names mentioned in the document, all share amounts mentioned in the document or dollar amounts mentioned in the document. Attached as Appendix "A" is a list of the "fields" in this process that illustrates the type of information entered into each document record.

This information, once it was entered, permitted us to locate documents according to the information contained in their respective document record. For example, we could locate a document mentioning Smith and Jones between a particular date that referred to company activities or a particular amount of shares. This allowed us to locate particular documents in the hundreds of binders of documents that had been produced.

This extent of objective coding is no longer required with the developments in image scanning and OCR technology. Now part of the document record consists of an image of that document. OCR technology also permits you to search for words in the text of typewritten documents. This means you can rely on OCR technology to identify a name and certain words used in the documents.

It is still necessary, however, to engage in objective coding of the document. For example, OCR technology can tell you that a document contains the name Smith. It cannot tell you whether the document is a letter or some other type of document. It will not tell you whether the name Smith is

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in the text of the document or if Smith is the author of the document. This type of information is essential to the proper management of the documents and must be entered into your document record through objective coding. Attached as Appendix "B" is a list of the "fields" that we presently use for our existing litigation database.

Attached as Appendix "C" is a summary of the practice followed by our firm in organizing those documents selected for entry into the document database, and produce a List of Documents, both before image scanning was used and with image scanning.

IV. Subject of Review

The third and last step in constructing your document database is to record counsel's subjective review of the document. This can be done simply by attaching one or two word issues to the document. Many document databases now allow for lawyers to attach their notes to the document.

This process is important because it allows you to organize and review your documents by issues. The OCR technology cannot do this for you. Nor should the lawyers rely on support staff for entering objective information about the document to identify and segregate the documents into issues. Subjective assessment of the document and its importance or relationship to the issues in the litigation is properly the responsibility of counsel.