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# Certifying the Expertise of E-Discover Specialists

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On Dec. 1, 2006, the Federal Rules of Civil Procedure (FRCP) were amended, forever changing the discovery process. I'll spare the reader yet another e-discovery article centered around the 2006 amendments. I only mention 2006 as an introduction to 2015, when the next set of amendments is due to take effect. Also, the 2015 amendments highlight why now, more than ever, the legal industry needs to unite behind the idea of an e-discovery certification to promote industry-wide standards and best practices.

If the 2015 FRCP Amendments are adopted, as most in the legal world think they will be, I believe that law firms, service providers and corporations will once again be faced with a shift in the process and workflow associated with e-discovery. While we are only 20 years removed from the release of Microsoft Windows 95, the litigation landscape in 2015 might be better measured in light years.

As in 2006, attorneys in 2015 will once again face intensification of an ongoing trend in discovery—that is, the identification, collection, analysis, review and production of documents—which will require greater reliance on technical professionals.

How did we get here? Prior to 2006, corporations, law firms and legal service providers on the front lines of discovery were forced to identify talent from a small pool of candidates. Law firms either hired technical staff with a working knowledge of programs such as Summation or Concordance, or they tasked someone in their internal IT department to learn more about these programs. These technical workers were then supplemented with paralegals familiar with the workflow of paper discovery. In some instances, paralegals with limited computer systems experience were tasked with administrating the software themselves. Meanwhile, service providers, such as the local copy shop that had just added its first scanner, heard the term "load file" for the first time. Other service providers either hired computer programmers to create their own proprietary review software or partnered with the few large providers in the market who had already done so.

Completing this cast of beleaguered would-be techies were in-house computer professionals and attorneys forced to deal with the aforementioned technical specialists with varying skills and backgrounds. Back then, having someone familiar with the "off the shelf" software of the era was usually enough. In most cases, such software was used to organize discovery that originally existed as paper. The idea that a different process and workflow was needed for electronic discovery was not as widespread as it is today.

Also not nearly as prevalent was the EDRM (Electronic Discovery Reference Model), created in 2005 to standardize definitions and protocol. As a result, the number of litigation technology specialists and paralegals who knew about the EDRM and regularly relied on it was a fraction of what it is today. I still remember the first time I used the now famous EDRM workflow diagram in a meeting, and how it took well over an hour to explain it to a conference room full of attorneys, most of whom up to that point had handled their electronic discovery tasks in the same manner they routinely used for paper. Email messages, Word documents and other electronic file types were simply printed to paper and placed in responsiveness and privileged piles with the rest of the paper documents. Back then, the term electronic discovery referred to the process of scanning those printed email messages and Word documents along with the other paper documents prior to loading them into whatever review software was being used. When it came time for production, those same scanned documents were printed again and manually labeled with Bates stickers for Bates numbering.

Looking back, none of this lurching progress should really come as a surprise. The vendor market was still developing, law firm technical staff were using the tools of the day the best way they knew how and attorneys, with little computer knowledge and their own work to handle, just assumed that the technology specialist and/or paralegal knew what he/she was doing. Indeed, most attorneys understood computers before 2006, but most did not have a high-level understanding of their client's corporate network infrastructure. Therefore, they were not always able to adequately direct the technical workers and paralegals who were assisting them.

The reality was that far too often, technical staff and lawyers, either in-house or on the law firm

side, were forced to make decisions during the discovery phase without the benefit of the reliable sounding board that the EDRM has become. Decisions made on technical issues were made within the vacuum of those with technical knowledge, while legal decisions were made within the vacuum of legal knowledge. It would have been a rare day in 2004 when a technology specialist was called into a meeting with the client to discuss things such as discovery workflow, risk assessment, compliance, budgets and timelines.

Today, there is a greater supply of talented e-discovery professionals in the marketplace. Instead of simply being the only "techie" in the IT group who knew how to use Summation or Concordance, technical workers are now choosing to work in the field of e-discovery. These technical professionals are often brought into the initial meeting and conferences, routinely consulted throughout the matter's lifecycle, and in some cases actually brought into court to testify.

Yet, even with all of the strides made since 2006, I believe we still have a long road ahead of us. Establishing best practices is simply not enough. Professionals need their expertise validated. It is in this area that the Association of Certified E-Discovery Specialists (ACEDS) is leading the charge. ACEDS, which held its first conference in 2011, is an association of legal and technical professionals whose mission is to help its members increase and certify their knowledge of e-discovery. In addition to offering a nationally recognized credential known as the CEDS Certification, members have access to up-to-date news, online webinars and opinion articles by members and others. ACEDS also holds an annual conference for member education and networking.

The certification process focuses on technical issues, cost-effectiveness and risk reduction in all phases of e-discovery. To become certified, a candidate must pass a rigorous exam. Before being accepted to sit for the exam, the candidate must join ACEDS, enroll in the certification process, pay the associated fees, and agree to provide professional references and the required "qualifying credits" within two years of taking and passing the exam. Candidates obtain qualifying credits by documenting professional e-discovery experience, other e-discovery-related training or certifications, and prior education such as a law degree, bachelor's degree or associate's degree.Earning the required credits demonstrates that the candidate who passes the exam is well-rounded in not only the field of e-discovery, but also as a professional.

The test covers a range of subject matter, from a technology section that favors a technical background, to planning and management issues more familiar to attorneys.

The ACEDS certification will have a significant, positive impact on the legal industry in the coming years. With e-discovery becoming increasingly complex, law firms and service providers with CEDS professionals on staff will be demonstrating to clients that they understand that e-discovery management is serious business. It is almost a practice area unto itself and, if mismanaged, fraught with pitfalls and penalties. They will also demonstrate to clients that the security and integrity of corporate data is as important as its proper handling during discovery.

With the 2015 FRCP changes staring at us like the bright light at the end of a tunnel, litigation technology specialists who have had their expertise validated by the CEDS exam will be the ones who do not see that light as a large locomotive barreling down the tracks at them.

As professionals, it is the responsibility of technical staff to ensure that both the attorneys we work for and the clients they represent receive superior service, our professional judgment and the assurance that electronic discovery best practices are being followed by the litigation team. Simply knowing how to use Summation is no longer enough. •