

Publications

How to Decide Who Handles Your E-Discovery

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Julie Brown, Vorys' litigation technology executive manager, authored an article for *Corporate Counsel* titled "How to Decide Who Handles Your E-Discovery." The article focused on how law firms should law firms should create their own decision-making guidelines around insourcing or outsourcing e-discovery. The full text of the article is included below.

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How to Decide Who Handles Your E-Discovery

Many large companies have set up sophisticated processes and systems for managing e-discovery in a cost-effective and defensible manner. However, for corporate clients that don't have a process in place, law firms are often left to determine when to outsource this work and when to keep it in-house.

Like many firms, Vorys, Sater, Seymour and Pease (where I am the litigation technology executive manager) has evolved its approach to e-discovery over the years based on experience, technology, project sizes and partners. We have developed methodologies and processes that guide our decision-making and that take into account data volume and time constraints as we try to find the most cost-effective approach for our clients.

Rather than play each matter by ear, law firms should create their own decision-making guidelines around insourcing or outsourcing. As part of that process, firms should identify the right outsourcing partners. Firms should also take several specific steps to ensure that they cultivate processes to work successfully with these partners. This approach will help law firms, their partners and their clients create the best process for each matter.

One Firm's Method

Over the decades, firms have developed different arguments for insourcing and outsourcing e-discovery, including cost containment, maintaining control and meeting deadlines. As recently as a few years ago, some law firms wouldn't consider managing this area themselves, even for matters that now seem relatively small (such as 50 gigabytes of data or less). In the old days, processing e-discovery was complicated and time consuming.

At Vorys, we have taken a more formal, process-based approach to deciding whether to handle matters internally or send them to a partner. Our firm has nearly 375 attorneys located in seven offices in Ohio, Texas, Pennsylvania and Washington, D.C. We consider multiple factors, including internal resources, the size of the project, costs around software and data backup, and choices for staffing.

For any case over 10GB, we prepare a detailed cost estimate comparing our in-house services to those of our preferred providers. If the preferred provider can deliver the same level of service at a lower cost to the client, the work is outsourced. The critical question then becomes: How much will it cost?

We have created a form that calculates estimated costs based on the results of early data assessment (EDA), or in some cases utilizing estimated volumes where the data is not available for EDA. This tool calculates all associated costs from processing through production. We can also compare and contrast the costs associated with the use of various strategies, including linear review (internal vs. contract attorneys), analytics (email threading, concepts, near duplicates, etc.) and technology-assisted review. Preparing these estimates not only allows for a cost comparison, it also opens up a dialogue between litigation technology support staff, the attorneys and the client at the beginning of the case.

The Role of Data Volume and Deadlines

Of course, the greatest driver of e-discovery today is the volume of data. Our firm elects not to handle major cases that involve more than 100-200 GB of information. If data volumes are under that threshold but more than 10GB, then we will review each scenario and make a formal cost comparison. Depending on the specifics of the matter, we may find that a third party can complete the project at a lower cost to the client or faster than we can.

For matters with less than 10 GB of data, we provide a recommended strategy with a cost estimate and seek approval before commencing work. We have invested heavily in developing standards for our internal processes, and this allows us to manage these smaller cases at a lower cost to the client and with a faster turn-around than outsourcing could provide. While cases with smaller data volumes are easier to manage overall, they often come with their own issues - particularly around deadlines. Some need to be processed and ready for review the same day, and production is often due the next day. At Vorys, our in-house systems generally allow us to process, analyze/cull, review and produce small data volumes to meet these deadlines.

Developing Processes

As we have learned, there are multiple factors that firms should consider when creating a process. This requires some introspection. Firms should create a list of what they do well and what they don't. It's important to look at strengths and weaknesses, both from an internal perspective and from the perspective of clients. Law firms also need to identify the areas where they struggle, or do not have the

resources to manage e-discovery in terms of cost and time.

Firms should also identify which opportunities represent the best fit for outsourcing. For example, there are firms that are very small that try to oversee major e-discovery matters. This leads to an enormous amount of work and creates a great deal of risk for both the firm and the client.

At Vorys, before we began developing our in-house capabilities, we made sure that everyone involved at the firm was committed to doing it thoroughly and properly. This involved devoting people to develop efficient processes and standards to leverage the technology we needed.

Finding the Right Partners

When outsourcing makes the most sense for the firm and the client, finding the right provider is critical. Firms need to find an e-discovery company that can serve as a strategic partner rather than just a service provider. In our case, we partner with QDiscovery and have had great success with that business arrangement.

Vorys uses a formal request for proposal process to evaluate and approve preferred providers. This 30-90-day process includes written RFP responses, interviews with the providers, a security review by our chief security officer and reference checks. Currently, we use U.S.-based review only, although we have previously evaluated offshore providers and used them when it fit our requirements and case needs.

Firms should outline expectations from the beginning. Once firms have identified a provider, both sides should lay out their expectations for each other. Firms may want to set up an extranet that they share with the provider to automate processes, log media and let the provider know what projects and items will be sent their way. Even when the provider has the tools, the firm needs to think through the entire project.

Along with technical capabilities, firms and providers need a working relationship built on trust, respect and open communication. Once we decide to outsource a project, we meet with the provider at the outset and identify roles and expectations. We want to have some control over the project, but we also want our provider to advise and consult throughout the life of the matter. We have frequent phone calls around strategy, and we also ensure our litigation support team has adequate rights in the document review software. This allows us to be responsive to immediate needs of the legal team rather than waiting on a provider service level agreement to complete certain tasks. At Vorys, our provider is open to ideas and suggestions about how to manage the project. But we also appreciate our partner's invaluable recommendations and guidance through processes. Having a strategic relationship, constant communication and a team approach can't be overemphasized.

Of course, there is no way to get around the aspect of cost. Firms should look for providers who can complete a project less expensively than the firm can, when other factors are equal. However, that doesn't mean the biggest bargain is the best bet. In order to determine what is reasonable, firms need to know standard industry rates.

It's also important to conduct due diligence, including requests for information (RFIs), security audits and reference checks. Firms should also be sure to balance workloads so the provider doesn't get buried under multiple projects. Before sending over large-scale or numerous projects, firms should consider that many

attorneys at the firm will be contacting the provider. That will make it difficult for the provider to prioritize projects. It may be necessary to have someone at the firm who can work with the partner to triage different matters.

E-discovery is a significant part of litigation, and clients require help and guidance from their law firms. By developing sound methodologies to evaluate whether each matter should be handled in-house or sent to a third-party provider, firms can provide clients with the information necessary to make the right decision.

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