



## E-Discovery: Justifying the investment in an e-discovery consultant

Why bringing in an outside expert can help bolster your in-house team

BY MATTHEW F. PREWITT

In previous columns, I have considered how the addition of an e-discovery consultant to your company's litigation team can materially strengthen your company's defense in complex litigation. In this column, I address the perception that retaining an e-discovery consultant may conflict with your company's objective to develop and utilize in-house resources.

As in-house counsel, you probably have been an advocate for increasing your company's internal e-discovery capabilities. Does retaining an outside consultant undercut the message you have been delivering? The reality is that an outside consultant can complement your in-house resources and allow you to utilize those resources more effectively.

If your company has made the investment to develop its own in-house ediscovery team, then the role of the e-discovery consultant in complex or highly contentious litigation is both to augment the existing resources and to mitigate the litigation risks created by reliance on company employees for collection and review. Corporations are most likely to rely on in-house resources in low-value, repetitive litigation where the integrity of the ediscovery collection and review are unlikely to become contentious issues.

As a dispute moves outside this comfort zone, relying solely on in-house resources creates greater risk for your company. Working with an outside consultant can expand the number of cases in which your company can safely use its own personnel for collection and review without exposing the company to undue risk. The judicious retention

of outside consultants is the natural next step in expanding your company's reliance on internal ediscovery resources.

For example, the outside consultant can act as an affiant or testifying witness in complex discovery disputes to vouch for the completeness of your company's e-discovery. Although this role can be addressed in routine litigation by the leader of your in-house team, in complex or contentious litigation, your company will benefit from having a non-party with greater independence fulfill this role.

In a high-value case where your company's employees have a clear economic stake in preserving the financial health of their own employer, you should not rely solely on these employees to attest to the completeness of the production. An outside consultant who is responsible for planning, overseeing and auditing the collection and review process can help your company complete a defensible production while using in-house resources.

### *About the Author*

Matthew Prewitt is a partner in the Chicago office of Schiff Hardin LLP, where he specializes in complex litigation. He also is an adjunct professor at Chicago-Kent College of Law where he teaches a seminar in complex business litigation. He may be reached at [mprewitt@schiffhardin.com](mailto:mprewitt@schiffhardin.com)