

Litigation Lifecycle

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Agenda

It's a Process

Reasonable Anticipation of Litigation

Records Management Practices

Litigation Hold & Information Preservation

Data and Document Collection

Review and Production

Managing the Case

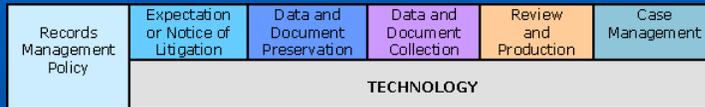


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It's a Process

Key Steps in the Process



- The Role of Records Management Policy
- Multiple Interlocking Steps
- Planning is Essential
- Expect to Negotiate

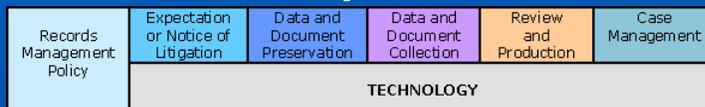


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It's a Process

Data Authenticity



- Chain of Custody
- Important Best Practices and Methodologies

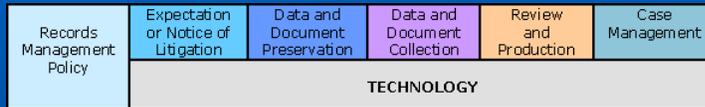


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It's a Process

Cost Control



- Controlling Volume of Data
- Controlling Scope of Services
- Use Efficient Tools for Collection Review and Production

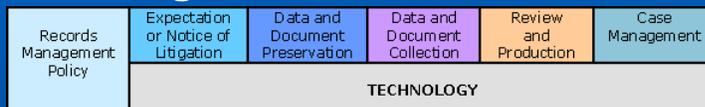


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It's a Process

Planning



- Holistic View of the Entire Process
- Manage Dates and Timeline



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Records Management Practices

What is a Reasonable Policy?

Records Management Policy	Expectation or Notice of Litigation	Data and Document Preservation	Data and Document Collection	Review and Production	Case Management
TECHNOLOGY					

- Reasonableness makes a Policy Defensible
- Must Consider Circumstances of the Line of Business



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Records Management Practices

What is a Complete Policy?

Records Management Policy	Expectation or Notice of Litigation	Data and Document Preservation	Data and Document Collection	Review and Production	Case Management
TECHNOLOGY					

- Well Documented Plan and Procedures
- Internal Compliance Auditing
- Employee Education and Training
- Roles and Responsibilities Clearly Identified
- Methods and Chains of Communication Clearly Identified
- Define Suspension of Records Destruction



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Reasonably Anticipated or Notice of Litigation

When Are We On Notice?

Records Management Policy	Expectation or Notice of Litigation	Data and Document Preservation	Data and Document Collection	Review and Production	Case Management
TECHNOLOGY					

- Statutory or Regulatory Obligations
- Reasonable Expectation
- Threatened or Pending Litigation
- Preservation Letter or Service of Complaint



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Reasonably Anticipated or Notice of Litigation

An Existing Plan for Next Steps

Records Management Policy	Expectation or Notice of Litigation	Data and Document Preservation	Data and Document Collection	Review and Production	Case Management
TECHNOLOGY					



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Data and Document Preservation

Implementing Litigation Hold

Records Management Policy	Expectation or Notice of Litigation	Data and Document Preservation	Data and Document Collection	Review and Production	Case Management
TECHNOLOGY					

- Identify Issues, Time Frames, Key Players in the Legal Action and Types of Data that are Potentially Responsive
- Execute Communications Strategy to Reach Custodians and IT
- ... With Periodic Reminders to Custodians and IT
- [Suspend Records Destruction](#) of Potentially Responsive Universe of Data
- Quarantine Data



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Data and Document Preservation

Implementing Litigation Hold

Records Management Policy	Expectation or Notice of Litigation	Data and Document Preservation	Data and Document Collection	Review and Production	Case Management
TECHNOLOGY					

- In Parallel – Negotiate Preservation. Who, What Types of Data and What Time Frames, What Issues and Key Words, For How Long.



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Data and Document Preservation

Outside Counsel Responsibilities

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TECHNOLOGY					



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Data and Document Preservation

How to Preserve Data

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TECHNOLOGY					

- Evaluate the Burden of Preservation
 - What Types of Data? (Accessible or Inaccessible)
 - Where is the Data? (Physical Locations & Storage Media)
 - How Much Data?
 - For How Long?
 - Business Interruption
- Quarantine Tapes or Collect Devices or Image Hard Drives



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Data and Document Preservation

Data Handling and Authenticity

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TECHNOLOGY					

- [Keys to Establishing Authenticity](#)
- Define Person Responsible for Data Collection
- Document Every Step in Collection
 - Date / Time / Who / What They Did
 - Media and Device Serial Numbers
- Use Accepted Methods for Data Handling
- As If You Might Need to Testify



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Data and Document Preservation

Correct Collection and Spoliation

Records Management Policy	Expectation or Notice of Litigation	Data and Document Preservation	Data and Document Collection	Review and Production	Case Management
TECHNOLOGY					

- [Use the Right Tools to Collect](#)
- Remember Meta Data and How Easily it Can Be Changed
- Consider 3rd Party Collection
 - Establish Independence
 - Necessary Expertise



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Data and Document Collection

Identifying the Data

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TECHNOLOGY					

- Answer The Question Who – What – When - Where



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Data and Document Collection

Constraining the Amount of Data

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TECHNOLOGY					

- Cost is Exponentially Related to Volume of Data
- Get Agreement on Time Frames
- Get Agreement on Custodians
- Get Agreement on Key Words
- Get Agreement on Types of Data (databases vs Ms Office)
- Get Agreement on Sampling



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Review & Production

In-House vs. Outsource Solutions

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TECHNOLOGY					

- Cost of Software and Storage
- Web Access vs. Network Access
- Project Management Support



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Review & Production

Efficient Review – Deduplication

Records Management Policy	Expectation or Notice of Litigation	Data and Document Preservation	Data and Document Collection	Review and Production	Case Management
TECHNOLOGY					

- Eliminates or Masks Duplicate Documents
- Increases Coding and Redaction Accuracy
- Reduces Number of Page Views
- Different Strategies



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Review & Production

Efficient Review – Bulk Tagging

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TECHNOLOGY					

- Increases Coding Accuracy
- Be Sure You Understand Exactly How it Works
 - Across the Entire Dataset?
 - Conflicts Between Custodians?
 - Default or User Choice?



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Review & Production

Efficient Review – Security & Flexibility

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TECHNOLOGY					

- How Much Security Accessing the Data?
- How Much Security if Sharing the Data?
- Security Auditing



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Review & Production

Production of Documents

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TECHNOLOGY					

- Carefully Evaluate Time Line
 - Produce by Date
 - How Many Pages Involved
 - Time to Print or Process with Bates & Branding
 - What Format



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Managing the Case

Tools of the Trade

Records Management Policy	Expectation or Notice of Litigation	Data and Document Preservation	Data and Document Collection	Review and Production	Case Management
TECHNOLOGY					

- Software for Managing Documents
- Software for Managing Transcripts and Exhibits
- Software for Trial Presentation



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Important Resources

The Sedona Guidelines
for Managing Information and Records in the Electronic
Age

www.thesedonaconference.org

ARMA International

<http://www.arma.org/erecords/index.cfm>

Litigation Support Technical Standards

www.ediscovery.org



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