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## E-DISCOVERY

Some reports estimate that 90% of all business records are created electronically, yet fewer than 30% of these are ever printed to paper. Knowing the rules that apply to the exchange of electronically stored information (ESI) has never been more critical to the success of litigation, especially since the electronic discovery amendments to the Federal Rules of Civil Procedure and various state counterparts took place in 2006. Attorneys today must not only understand the complexities of the civil rules but also comprehend corporate IT infrastructure, backup protocols, and database creation and storage, along with a multitude of word processing, spreadsheet and e-mail applications.

As a firm of trial lawyers, we continually face admissibility challenges posed by electronic evidence. We understand that the core purpose of all discovery is to identify and exchange the evidence that is critical to telling your story in a meaningful way during a trial; the last thing any case needs is to be bogged down in discovery about the discovery.

### *Helping our clients save time and money*

By having an intimate knowledge of the applicable state and federal e-discovery rules, we can provide cost-effective (and time-saving) advice, while removing gamesmanship throughout the litigation lifecycle. At Goldberg Segalla, we always keep our clients' bottom line in mind. Here are just a few ways we respect your budget:

- Taking steps early in litigation to avoid sanctions
- Developing creative ways to review documents
- Cooperating with opponents in setting up joint document repositories
- Limiting the scope of discovery during a Rule 26(f) Meet and Confer conference
- Using Federal Rules of Evidence Rule 502 and Federal Rules of Civil Procedure Rule 16 orders to protect the attorney-client privilege during e-discovery
- Negotiating reductions in the scope of a legal hold
- Reducing the scope of ESI relevant to a matter
- Effectively using state-of-the-art analytical programs to help reduce the volume of relevant data
- Selecting the most cost-effective vendor for the collection and production of ESI

### *Our e-discovery philosophy*

Most reported e-discovery sanctions result from the failure to adequately preserve electronic evidence, typically following an event that triggers an organization's duty to preserve relevant evidence. We partner with e-discovery vendors that can provide forensic collection of electronically stored information, including imaging hard drives and network drives. Our e-discovery partners frequently establish secure online repositories to facilitate single-point collection and analysis of ESI from around the world. Similarly, we can arrange for review and analysis to be performed by teams of corporate and/or outside counsel at secure review stations, which are set up anywhere that access to the Internet exists. We have conducted reviews using vendors, contract attorneys, associates and other members of our team, depending on the experience needed.

Our e-discovery support goal is to identify the requirements of your project at the onset, and then work with your information technology staff and available litigation support services. Together, we will focus on developing a solution that will permit relevant materials to be identified, preserved, collected,

catalogued in a database, analyzed for defense purposes and applicable privileges, produced as required by litigation and ultimately selected for use in your defense at depositions and trial.

*E-discovery services*

Pre-litigation planning

Litigation support, including:

Issue coding

Deposition and trial preparation

Medical literature repositories

Medical literature reviews

Trial support

Trial presentations

Appeal brief support

Backup tape analysis

Data mapping

Identification of 30(b)(6) IT witnesses

Taking and defending 30(b)(6) depositions

Developing meet-and-confer strategies and procedures

Meet-and-confer negotiations

Developing attorney-client privilege protection plans

Rule 16 orders

Negotiating preservation agreements and orders

Forensic analysis

ESI

Admissibility

Preservation, collection, analysis and production

Privilege review, including detailed privilege logs

Issue coding and relevancy review

Repositories in support of pattern litigation

E-discovery

Management

Consulting in support of non-Goldberg Segalla trial teams

Counsel to corporate legal departments

CLE provider to in-house legal departments

“Duty to disclose” and scope of discovery counseling

Litigation readiness counseling

Coordinating e-discovery with IT personnel, in-house counsel, e-discovery vendors and outside co-counsel

## LITIGATION SUPPORT

With technology changing rapidly, the legal and technical needs of our clients vary widely. There is no "one size fits all" solution – the best practice is to tailor our litigation support solutions on a case-by-case basis. Accordingly, Goldberg Segalla does not try to sell unwanted programs, databases or storage capabilities simply because we have built a computer infrastructure and selected software that works for us. Instead, we collaborate with our clients to provide the most efficient and cost-effective solution in developing a protocol that best fits their specific needs, based on their case or litigation problem. Only then do we identify and select one or more vendors to help deliver the most appropriate solution. This approach allows maximum flexibility and permits us to work with the most knowledgeable outside vendors in the industry.

Our support goals are to identify the project requirements at the onset, interface with the client's IT and available litigation support services, and develop a solution that will permit relevant materials to be identified, preserved, collected, catalogued in a database, analyzed for defense purposes and applicable privileges, produced as required by litigation and ultimately selected for use in the defense of our client at depositions and trial.

### *A comprehensive database that helps build your case*

The final result of the ideal plan is often a relational database. This may include:

- .pdf or .tiff images of all information collected, reviewed and produced
- Basic metadata and text for electronic documents
- Bibliographic coding
- OCR text for hard copies
- Subjective coding
- Privilege assessments
- Confidentiality assessments
- Production history
- Tracking, as to exhibit use at depositions, trial and evidentiary rulings

In many cases, it is also preferable to maintain the document database within a case management program. This structure allows pleadings and transcripts to be linked to the documents, and the documents themselves can be used to develop timelines, chronologies and demonstrative exhibits.

If pattern litigation emerges and there is a need for litigation management tools, we are familiar with a variety of case management programs. At Goldberg Segalla, our solutions include:

- Creating sets of client documents for production purposes on CD-ROM or DVD using Summation (which we use in our day-to-day practice)
- Developing uniform document responses for use in the national management of pattern litigation discovery responses
- Working with our clients and vendors to create a proprietary litigation management solution or selecting a suitable litigation management solution from the many available on the market
- Partnering with our clients to create a specialized extranet or secure website to facilitate and promote online collaboration among team members located around the world

Developing solutions in pattern litigation where data sets can be stored online and plaintiffs' attorneys can be granted access to a secure website (via a case-specific password) to obtain materials responsive to discovery requests

Working with a vendor to create an online claim process if deemed appropriate as a potential alternative to litigation (often depending on the volume of potential claims involved)

Since we do not view litigation support services as a profit center, we can provide the most objective solutions for our clients. We believe that our "best practices" approach to litigation support makes the best economic sense to our clients. In addition, this flexible model allows us to work with some of the most well-respected outside vendors in the industry for critical litigation support services – giving our clients the best chance for success in all phases of litigation.

#### *Litigation support detailed services*

Pattern and class-action litigation planning

ESI and document management support, including issue coding, deposition and trial preparation

Discovery Resources Guide©: these client-specific white papers guide outside counsel through all phases of the litigation lifecycle

Integration of IT contacts and data maps into the Discovery Resources Guide©

Medical literature repositories

Medical literature attorney reviews

Trial support

Trial presentations

Appeal brief hyperlinks

Case management

Model discovery responses

Model pleadings

Discovery counsel to ensure uniform control and tracking of ESI and document productions

Coordination of expert, forensic and other evidence analysis

Chain-of-custody compliance and counseling

RFP drafting for litigation support and e-discovery vendor services

#### **RECORDS AND INFORMATION MANAGEMENT**

Our extensive courtroom experience has allowed us to test, refine, and execute information management strategies that are defensible, cost-effective and proactive. As trial lawyers, we leverage our extensive trial experience to help companies avoid a wide array of costly information management mistakes and sanctions. More importantly, our insight and strategies help companies achieve their objectives and reach their goals.

At Goldberg Segalla, we work directly with clients to implement targeted records retention and information management strategies designed to control the ever-increasing volume of electronic information. Our team (including attorneys, IT partners and vendors) uses our valuable trial experience to craft defensible corporate governance and document retention strategies. Given our experience with litigation support and e-discovery, we can help guide you toward the most cost-effective information management policies and procedures, thereby minimizing the rising costs often associated with preservation, collection, review and production of electronic information.

### *How a lawyer can help with information management*

Including a Goldberg Segalla attorney on your information management team has added benefits over traditional records management approaches. For example, our knowledge of case law and our trial experience bring a meaningful perspective to the entire information management lifecycle.

The character of information management has changed significantly over the past 10 years. More than ever, the driving force behind information management is to develop defensible strategies that are designed to avoid sanctions, minimize litigation costs and protect your company's bottom line. More information management departments are falling under the umbrella of corporate legal or risk management departments—and this trend is here to stay. With Goldberg Segalla, most deliberations about information management policy and procedures are protected by the attorney-client privilege.

As lawyers, our approach is deliberate, measured and designed to keep your best interests first and foremost when crafting information management strategies. Because we are not selling a product, our vendor relationships are designed simply to deliver the best information technology solutions to each client's particular needs.

Finally, because we are experienced trial lawyers, we understand exactly how to help clients develop uniform, repeatable and efficient pre-litigation and litigation strategies. With the growing importance of legal holds, we are at the forefront of providing opinions relating to trigger events, determining whether the duty to preserve records exists and defining the scope of a legal hold. We also conduct interviews with custodians to confirm adherence to legal hold policy and procedure, in accordance with existing case law.

### *Information Management Services*

- Records management policy and procedures

- Electronic records policy and procedures

- Records retention schedules

- Disaster recovery and backup procedures

- Data management plans for retention, format, and backup procedures and duration of retention

- Employee policies related to e-mail, Internet, company IT usage, and employee use, storage and copying of electronic documents

- Employee and management training

- Safe communication training

- Legal hold

  - Policy and procedures

  - Notices

  - Opinions relating to trigger events, the duty to preserve records in anticipation of litigation or investigation and the scope of preservation

  - Release counseling and opinions

  - Auditing and training programs

  - Custodian interviews to enforce and monitor legal holds

Data mapping

Data, employee and international privacy laws counseling