



Inside eDiscovery Advice:
Contract Attorneys A to Z

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INTRODUCTION

The growth of legal technology as part of a broader legal services industry has led many to predict a diminished role for attorneys in the eDiscovery process. In particular, the temporary attorney market has contracted and evolved in reaction to enhanced technology, increased competition and client demands for greater efficiency. However, rather than facing obsolescence, the legal staffing market has matured as a component of a larger, more holistic discovery strategy. Contract attorneys continue to be a powerful option as part of an eDiscovery strategy.

I have hired and managed thousands of contract attorneys and here, I have compiled a list of best practices for using temporary personnel as a successful resource. The following advice and lessons explore hiring, orienting, supervising and maximizing temporary support within large law firms along with concepts and thoughts that seek to examine the character of the relationship between temporary attorneys and law firms.

Contract Attorneys A to Z:

Acclimate – If housed in your space, welcome and acclimate contract attorneys with a comprehensive tour of your office. Comfort with the work environment encourages concentration and focus.

Boundaries – Insurmountable boundaries (both physical and hierarchical) between contract attorneys and case teams may quickly destroy lines of communication and affect work product.

Co-employment – Contract attorneys who are sourced through staffing providers are employees of those agencies. Law firms and contract attorneys should always address issues regarding pay, hours, duration, workplace, etc. (all administrative issues) to the agency. It is critical to respect that employer/employee relationship and exploit the benefits of outsourcing.

Demonstrate – Technology and all required processes should be demonstrated during orientation. Never assume that a contract attorney has sufficient familiarity or experience with a review platform or a project-related process.

Experience – Successful experience as a contract attorney is usually the best indicator of success on your project. I have not found that law school, substantive practice experience, years of practice, etc. are compelling components of a review attorney's credentials. Document review is a distinct skill and candidates should be screened for that expertise.

Fairness – Prior to hire, a plan should be developed for releasing attorneys based on objective criteria (workload, performance, aptitude, attitude, collegiality).

Goals – Project goals (hours, docs per hour, error rate) should be explicitly assigned and individual attorneys should be measured against them on a daily basis.

Holistic – Organizations should have a centralized, holistic process for screening, hiring and orienting contract attorneys. A centralized approach assures process consistency (billing, conflicts, hiring protocols, etc.) and it better positions an organization to negotiate competitive staffing rates across geographic markets.

Information - Contract attorneys are most effective when they are provided with as much case-related information as possible. Although some fear that “too much” information (pleadings, case strategy, etc.) may improperly empower and distract an attorney team, my experience has proven that supporting information provides context and direction.

Jurisdiction - The analytical work performed by contract attorneys requires that they be licensed in at least one jurisdiction and in some cases, in the jurisdiction which the work is performed (e.g. the District of Columbia).

Knowledge – During a document review, contract attorneys often become more knowledgeable regarding a client’s business than case teams. Case teams should exploit the factual expertise that contract attorneys acquire beyond tagged documents in a database.

Market constraints in the legal profession have forced efficiencies on practice affecting staffing, volume, process and timing and the quest for cost savings is motivating an evolution in practice management.

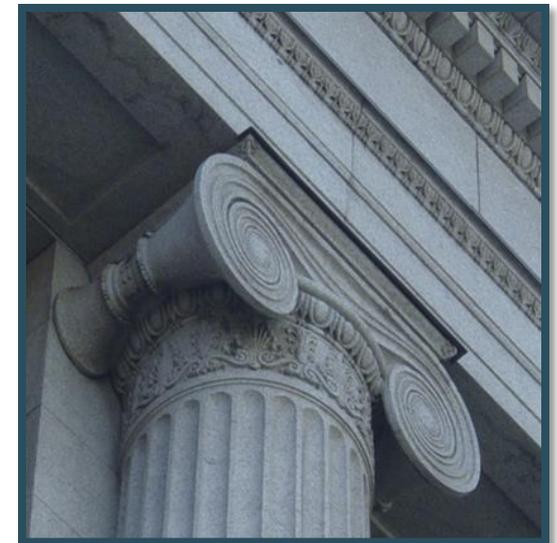
Are LPO’s the Remaining eDiscovery “Black Box?” – April 2014

Language – Foreign language reviews are increasing and attorneys with language skills are in high demand. When working with staffing providers, it is important to understand how agencies test for fluency (many use ALTA testing), whether candidates are native speakers and what their fluency score is. Native speakers are always preferred.

Memorialize – All substantive training, administrative guidelines, project expectations and any changes should be memorialized and distributed to contract attorneys. Clear instructions that outline an attorney’s work on your behalf are essential to delivering efficient, quality work product.

Now - Marshalling resources for an eDiscovery project is complicated and timing usually suffers as decisions are made regarding collection, custodians, technology, vendors, staffing and substantive analysis. Many who sit outside the process question extended timeframes without appreciating the dynamics or logistics. Firms should have vetted best practices approaches to minimize extensions and temporary staffing should be prepared for a “now” mentality when component parts finally assemble and review is ready.

Orientation – I cannot overstate the importance of a substantive orientation for document review teams. Ideally, this includes an explanation of the legal framework of the matter along with pleadings if present, a robust summary of the factual context, a thorough discussion of the subpoena and/or review tags, relevant information about the client’s business and organizational structure and a custodian/players list that describes roles.



Privilege – Privilege analysis and review is often ignored until it reaches “necessary evil” status in the discovery process. Few attorneys (partners, associates, etc.) have comprehensive understanding of privilege and its assertion may differ dramatically from case to case depending on corporate structure, business practices, strategy, etc. The idea that there is one, universally accepted approach for identifying and asserting privilege is absurd. Firms should have partners and clients collaborate to develop an appropriate privilege “matrix” incorporating communication and work product documents and relay that decision-making to priv teams in detail.

Questioning – Document review is an iterative, organic process and at heart, it is an investigation. Daily team meetings with members of the case team, interspersed with opportunities to take advantage of an open line of communication allow for the essential back-and-forth flow of information. More than saying that questions are welcome, firms should provide teams the means and regularly (even daily) scheduled meetings are very important.

Rates – How law firms manage the cost of sourcing contract attorneys (absorb, pass along, bill to the client at a higher rate to accommodate administrative costs, etc.) varies greatly and has changed dramatically since the 2008-ish economic recession. Clients have also become more savvy and cost expectations more frugal. Firms should create contract attorney bill rate guidelines that provide a range of appropriate scenarios for recouping staffing costs that incorporates the possibility of overtime according to the local jurisdiction. A senior member of the case team should work with internal eDiscovery/review experts on each matter to verify firm expectations and the case team should establish an agreed rate with the client before any staffing.

Skill – I whole-heartedly believe that document review and contract attorney work is a learned/acquired skill bolstered by an inherent understanding of substantive categorization and analysis. I have managed many document review teams staffed by associates and I tend to find that they are not effective reviewers...that is not to say that they couldn't be with more experience. When staffing your project, you should seek to know as much as possible about the candidates review experience and, where possible, avoid inexperienced reviewers.

Time Management – Hours billed on review teams should be strictly managed on a daily basis. In addition, the firm's expectations on work hours and output should be presented during orientation and absences should be recorded to adjust productivity goals.

Unit – Contract attorney teams should function as a unit to encourage consistent analysis, productivity, fairness, etc. The hallmark of managing teams as units is uniformity. Information should be distributed at a unit level, issues should be addressed at a unit level, and individual problems should be sheltered from the whole to avoid distractions in close-knit working environments. Ideally, this approach develops solidarity and a morale built on equity and usefulness.

It is critical to acknowledge that business decisions are driving the discovery staffing environment. Within the world of document review, outsourcing conditions have standardized and firms better understand how to manage both the work and resources.

Show me the Money: Are Contract Attorneys Commodities – August 2014

Veterans – It is significantly helpful for firms to maintain a database of employed contract attorneys that includes resume, conflicts information, rate, dates of employment and final assessment (the assessment should be shared with the staffing provider). Firms are usually benefitted from sourcing veteran candidates for new projects. They understand your environment, process, personality and expectations. One caveat...when comparing a veteran against a well-respected new candidate, make sure that the vet is truly a “super-star” and not just familiar and comfortable.

Woebegone – Contract attorneys are valuable components of the legal eco-system. However, the uncertainty and status of the position may create morale issues, especially over long-term projects. Although firms are not responsible for professional psychotherapy, I do think that it is important to address this cultural dynamic by involving them in your process, respecting their background and ability, sharing substantive information and, where possible, educating them on eDiscovery and the value it has in modern practice.

X-ray – Transparency is often challenging on large eDiscovery projects and especially with workers who are not permanent. However, I recommend sharing appropriate information regarding process, duration, issues, etc. with temporary attorneys. Foremost, it shows professional respect and creates a team-oriented morale. Secondly, for attorneys who work project by project, hour by hour, it allows them some degree of planning. These two factors will make your firm a desirable place to work and that benefits your client and work product.

Rapidly changing eDiscovery technology and expectations serve to complicate what is perceived as best practices and large law firms continue to bolster institutional expertise with temporary personnel to provide more competitive services for evermore educated clients.

Introduction - My Point of View Inside eDiscovery – November 2013

Yahoo! – There is a perennial question about how much personal access contract attorneys should have to the internet (beyond a review platform) and to their personal devices. Confidentiality is an important consideration with allowing access. However, licensed attorneys have individual professional responsibilities and I think that it is appropriate to remind temporary attorneys of their commitment to their license. More broadly, I do not like to institute Draconian restrictions because I feel that it belittles an attorney's professional status. However, rules should exist and be enforced and guidelines should be in place to control calls, browsing, etc. to respect review colleagues and the work.

Zeal – Conscientious and motivated contract attorneys are key resources for case teams. Review teams have first-hand, in-depth knowledge of your client's data and I encourage case teams to utilize that expertise beyond pure review. I have enlisted contract attorneys to work on deposition preparation, case strategy, additional collections, privilege analysis, etc.

About the Author



Jackson Palmer is a dynamic and creative eDiscovery attorney with 14 years experience working in large law firms developing and managing the EDRM process with a specific focus on creating and implementing document review strategies. From contract attorney to staff attorney to firm-wide eDiscovery leadership, Jackson has developed and evolved along with the eDiscovery discipline. Jackson enjoys a unique perspective on the successful management of the eDiscovery workflow in large law firms. As legal technology continues to evolve and impact the practice of law to greater degrees (cyber-security, information governance, risk management, etc.), Jackson focuses his strategy on an holistic, institutional, balanced approach that acknowledges the critical role of an educated team, cutting-edge technology, structured best practices, and advanced billing competitive with the market. Jackson believes that it is essential for eDiscovery professionals/attorneys in the law firm environment to blend the business and process savvy of vendors with the substantive counsel of high-caliber lawyers. Jackson envisions an industry-leading, service-oriented model that integrates eDiscovery across all practice groups and administrative departments and is conceived as practice management.

Jackson regularly writes and comments on the legal technology industry on his professional blog, Inside eDiscovery available at www.insideediscovery.com.