



MANAGED DOCUMENT REVIEW: AN OUTLINE OF BEST PRACTICES

Goals of Managed Review

- Minimize Risk
- Maximize Efficiency
- More Accurate Results
- More Cost Effective and Predictable
- Create a Defensible Process

Managed Review

Review Strategy and Planning

- Protocol Plan and Strategy
 - A Protocol Plan develops strategic background and direction for reviewing the documents related to your matter and includes a detailed background synopsis of the case along with establishing goals and objectives
 - Details samples of relevance and criteria for determining same
 - Definition and scope of privilege
 - Identifies confidential subject matter
 - Background on substantive issues to be recognized
 - Segregation of foreign language and documents with viewing issues
 - Q&A workflows to resolve issues that come up between review team and outside counsel
- Review Management Methodology and Procedures
 - Provide detailed description of Review Management methodologies that include:
 - Scope of review
 - Deliverables, reviewer work schedules, and timelines
 - Recruiting and testing appropriate reviewers for engagement

- Design and structure of a team based review system defining roles and responsibilities of QC/team leaders and project management
- Security audit and procedures
- Detailed training manual and process
- Design of workflows and utilizing available features of review
- Application to accelerate productivity of review
- Predictive coding/TAR options and workflows
- A statistically validated and defensible QC methodology
- Daily communication with procedural and technical issues that run from review team to outside counsel
- Pre-Production validation procedures for technical, targeted, and privilege queries
- Reporting metrics dashboard for productivity, accuracy, cost, and timelines
- Customized privilege review and privilege logging procedures
- Defensibility binder and production/project termination procedures
- Privilege Review Guidelines
 - Roles and types of reviewers on privilege team
 - Consulting on categories and sub-categories of scope of privilege
 - Consulting, training and customization of templates on privilege coding to minimize risk
 - Privilege logging methodologies
- Reporting Requirements
 - Agree of types and frequency of reporting and metrics to be delivered throughout the length of the engagement

TAR and Predictive Coding

- Identify key responsive documents and issues within days of initiating a review, regardless of the size of the document population.
- Make strategic decisions regarding the case much earlier in the case.
- Save substantial review costs by parsing out the ranked document set to specific review workflows staffed with resources that match the level of validation required for a given subset of ranked documents (i.e., the lowest ranked documents may be validated by using a QC sampling technique, off-shore reviewers, paralegals or low cost temp reviewers).
- Reduce time spent on documents inconsequential to a case thereby significantly reducing the overall litigation costs.
- Improve the accuracy and consistency of coding decisions across a population of documents.

Review Team Selection

- Background checking: criminal, credit, licensing, education
- Conflicts: extensive matter conflicts checking procedures
- Work history and reference checking: at least 3 references
- Document review skills testing: utilize past case metrics and provide “dummy documents” on case before start of review
- Second Level, QC, Team Leads, PMs – good to use contract attorneys with 3-5 years of substantive knowledge on subject matter being reviewed: provides better efficiency, risk management, and knowledge transfer to legal team
- First Pass Review: less substantive tends to be more efficient: look for skills of speed reading, issue spotting, comprehension, and quick decision making

Training

- Training binders created in conjunction with or by outside counsel
- Substantive training by counsel
- Review platform and technical training or “re-training” prior to start of review
- Protocol document and coding forms overview
- “Dummy Batches” assigned to reviewers and feedback given to and from counsel until stabilized
- Questions raised by reviewers need counsel’s guidance before start
- All follow up questions in daily issue log to counsel
- Review protocol amended as necessary based on counsel feedback

Facilities, Security and Technical Support

- Secured review space where only members of review team able to enter
- Zero/Thin client workstations or computers without printing
- Dual monitors workstations are more efficient
- Web Lockdown, as Needed
- Break time area should allow personal email and internet access
- 24/7 IT support

Review Management

- Team review structure with teams of 1st level reviewers led by a QC team lead that is responsible quality control and ensuring instructions from outside counsel and Review Manager are understood and followed

- At least 1 Review Manager should be assigned to oversee each team with the lead Review Manager of the case being the lead point of contact

Project Workflow

- Increased Productivity of Assignments
 - Technology should be applied to document populations (concept clustering, grouping similar formats, de-duplication, file types, responsiveness prioritization, and threading email discussions)
 - Important/Selective search terms in documents highlighted
 - Bulk coding of documents
 - Separating potentially privileged documents
- Increased Accuracy Standards
 - Solid sampling combined with validation searches
 - Targeted searches
 - Integrated approach with counsel and sampling their results along with a fluid resolution process for queries
- Tagging Structure Effecting Productivity and Accuracy
 - Amount and type of tags effect the integrity of workflow
 - Treatment of document families
 - Redactions

QC Methodology and Validation

- Reasonable Care, NOT perfection is the legal standard
- Rule 502 (b): reasonable steps to prevent disclosure of privileged material
- Defensibility: repeatable and defined QC methodology, training, standard and measurement of adequate performance and metrics
- A statistically validated model of batch QC with elevations based on type of error and error rates
- Zero Tolerance for Missed Privilege
- Integrated QC approach with outside counsel where they are given a percentage of a random sample batch
- Validation of review results prior to production
 - Target searches for technical errors and to see if all data has been reviewed appropriately
 - Targeted searches to find and fix discovered patterns of errors and identify document sets for re-review
 - Targeted searches to prevent privileged documents from entering the production set
 - QC should be implemented with counsel's approval and awareness and documented

Collaboration with Law Firms

- Structured and documented communication between review team, QC Team Leads, Review Managers, Supervising Counsel, and Client
- Regular meetings and communication between review team and law firm to discuss issues, new facts, strategies, and directions

Reporting and Metrics

- Daily Report detailing case overview, progress, and tagging decisions
- Procedural and technical issues preserved in an Issue Log
- Documents of interest to outside counsel
 - Metrics dashboard to manage reviewers
 - Near real time reporting
 - Productivity statistics (documents per hour)
 - Error rates
 - Reviewer tagging and decisions
 - Project timelines
 - Cost reports

Production and Privilege Logs

- Typically at “Meet and Confer” production format, fields, and procedures are agreed upon
- Production Logs matching up Doc IDs with Production IDs to correspond to original data collection
- Privilege Logs should be handled by teams of high level reviewers and managers with significant defense log experience
- Conditional coding minimizes risk of privilege error
 - Sub Basis for different types of privilege
- Should be in agreed upon format by counsel and opposing party
- Final privilege log review should be done by counsel

Recycling and Reusing Data

- Maintain a central repository for similar litigation in the future
- Final privilege calls can be preserved if same data set involved in related matter

Defensibility Binder

- A compilation of documentation of your case from collection through production
- Preserved record of answer to all questions that arose during the project