



Document Management for Complex Cases: Including PRA Requests in Anticipation of Litigation and Tech and Support Services

PRESENTED BY

Julie Chapman
Stephanie Berntsen
Kelly Walsh

REPRESENTED BY

Schwabe



WPPA Continuing
Legal Education

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Julie Chapman

Senior Paralegal

Julie Chapman supports attorneys in complex civil litigation cases, including condemnation, construction, and commercial litigation.

Her responsibilities include all aspects of case management, discovery, and litigation support. Julie has extensive trial preparation and support experience and is a firm leader in using software programs such as Relativity and Trial Director.

She regularly attends trials to manage presentations.

503-796-2065

jchapman@schwabe.com



Stephanie Berntsen

Shareholder

Stephanie Berntsen provides proactive, common-sense legal advice on employment issues for companies operating in the Pacific Northwest.

While Stephanie's goal is always to help prevent or resolve disputes before litigation, she has extensive experience defending companies against claims of discrimination, retaliation, and wage issues (including class actions) in administrative and court proceedings.

206-689-1235

sberntsen@schwabe.com



Kelly Walsh

Shareholder

Kelly Walsh routinely assists Ports and other public entities with issues related to public records requests.

This includes a full range of services, including analyzing and advising on exemptions, spearheading large document review teams, and handling litigation when necessary.

360-905-1432

kwash@schwabe.com

Duties to Respond

- Burden primarily on responding party
- Civil Rule 26(b)(1): “Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action ...”
- Public Records Act RCW 42.56: The PRA mandates full disclosure of public records except for limited exemptions provided by the Act.

Receiving Large Document Request

- Collecting hard documents
- Collecting electronic documents
- Collecting ESI (and what is it?)

Key Information to Obtain

- Position/Title/Duties
- Who is your supervisor?
- Who do you supervise?
- Scope of involvement in project or issue
- Who else was involved – and how?

Key Information to Obtain for Hard Documents

- Location and explanation of hard copy files and organization
- Handwritten notes – how kept – where kept?
- Whether personal copies of documents are made to mark-up?

Key Information to Obtain for Electronic Documents/ESI

- What computers/work stations are used in the office
- What computers/work stations are used at home
- Phones/ipads/etc. that are used, either personally or professionally
- Cloud-based storage systems and/or external storage devices
- User names/passwords for all of above
- Voicemail is responsive – explore how and where kept

Sharing and Commenting on Shared Documents

- How are documents exchanged and commented on? Internally & externally?
- Shared storage and shared commenting
Use of internet sites for sharing, posting, and/or commenting on information

Preserving Information

- Once litigation is anticipated – formally notify staff to retain all documents
- Obtain written document retention policy
- Work with IT to suspend any automatic destruction of documents
- When collecting info – confirm nothing has been deleted from each custodian

The Custodian Questionnaire/Interview

- Collect and record information on where documents can be found
- Consider using a prescribed interview checklist
- Consider using a written questionnaire

An aerial view of a busy port. A large container ship, labeled "NYK LINE", is docked at a pier. The ship is covered in colorful shipping containers. Numerous yellow and green cranes are visible, some on the pier and others on the ship. The water is a clear blue-green. In the background, there are green hills and a city skyline under a cloudy sky.

CUSTODIAN Interview EXAMPLE

CUSTODIAN INTERVIEW QUESTIONNAIRE

Privileged and Confidential / Attorney-Client Communication / Attorney Work Product

Name _____
Position _____
Telephone _____
E-mail _____
Work Address or Location _____
Instant Msg. Screen Name _____
Interviewed by _____
Interview Date _____

 OPTIONAL CUSTODIAN BUSINESS CARD ATTACHMENT

1. EXPLAIN NATURE OF THE LITIGATION AND PURPOSE OF INTERVIEW

2. BACKGROUND

Please briefly describe your current job duties and responsibilities.

3. INVOLVEMENT IN FACTS SURROUNDING MATTER

4. LEGAL HOLD

Confirm the custodian received the legal hold and date.

Confirm that the custodian received and understands his/her obligations under the legal hold.

5. EMAIL

Do you have email that could be relevant to this litigation?

If so, would any or all of the email relevant to this case be in a particular folder?

If so, what is the name of the folder?

Would there be any relevant email in your inbox?

Do you save your PSTs to your hard drive?

If so, is there any email related to this matter on your hard drive?

Do you use your home email for business? If so, what is that account?

Do you have any email in your home email related to this matter?

Do you use any other mail programs of which I should be aware?

_____ments in your
_____e of documents you

_____ook in which you
_____ed to this litigation

_____or passwords that
_____ments.

_____ht have information

_____ch as Google Apps,
_____any information

15. VOICEMAIL

Do you have any stored voicemails that might be related to this matter?

16. OTHER LITIGATION

Do you know whether data from you has been collected for other litigation that might be relevant to this litigation? If so, who was the attorney on that case?

17. IDENTIFICATION OF OTHERS

Who else should we talk to who may have paper or electronic information related to this matter?

18. INTERVIEWER COMMENTS

Mac or PC?

_____of any computer in the last 12 months?

_____berry or iPhone or other mobile device?
_____stored there?

_____evice that you use for work such as an
_____stored there?

_____or external drives? Any CDs/DVDs with

BY STORED DOCUMENTS

_____types of electronic information do you
_____want to this lawsuit? Word Docs, Excel

_____? Examples: Local drive, Interwoven (or
_____ement system), shared drive.

_____mes or filepaths where you keep the
_____enshots if possible – "Print Screen" key/
_____email.]

For information on shared drives, can that information be found elsewhere (i.e. desktop)?

Do you have a personal folder on a shared drive where you store documents or information?

_____Databases?

_____How are they accessed? Who administers the database?

_____Others?

8. INSTANT MESSAGING

Do you use instant messaging for substantive business communications?

Do you recall if you discussed anything related to this case on an instant messaging tool either internally or externally?

Do you ever save your IMs either by turning on the archive feature or by "print screen?"

9. SEARCH TERMS

Are there any words or abbreviations that you use to describe the information we have discussed? Any naming conventions or words you think would be helpful for us when we search your electronic documents?

10. HARD COPY DOCUMENTS

Do you have hard copy documents? If so, other than your office, where are your hard copy documents stored?

Assistant?

Central Files?

Offsite?

An aerial photograph of a coastal town and marina. The town is built on a peninsula with colorful buildings and a large parking lot. A marina in the foreground is filled with numerous sailboats docked at wooden piers. The water is a deep blue, and the background features a large body of water and a range of snow-capped mountains under a clear sky.

CUSTODIAN Questionnaire EXAMPLE

**Electronic Discovery
Identification and Preservation Questionnaire**

Client/Matter Name: _____ Date: _____

Client/Matter Number: _____

Purpose: This questionnaire is designed to help identify, preserve and collect electronically stored information ("ESI") for discovery. The questions below may best be answered by a client's Information Technology ("IT") personnel. It is recommended that a representative from the Litigation Support Department participate in discussions with the client's IT personnel.

CONTACTS

Law Firm: _____

Client: _____

Client IT Contact: _____

GENERAL INFORMATION

What is the relevant time frame? _____

Has a formal Litigation Hold been implemented? Yes No

Is there a written records retention/destruction policy? Yes No

Have data destruction and auto-deletion policies been suspended Yes No

Sources of Data	<input type="checkbox"/> Email Servers	<input type="checkbox"/> File Servers	<input type="checkbox"/> Workstation/Laptop
Containing Potentially Relevant ESI:	<input type="checkbox"/> Blackberries/PDAs	<input type="checkbox"/> Instant Messages	<input type="checkbox"/> Text Messages
	<input type="checkbox"/> External Hard Drives	<input type="checkbox"/> Websites	<input type="checkbox"/> Social Media Sites
	<input type="checkbox"/> Bloomberg Messages	<input type="checkbox"/> Databases	<input type="checkbox"/> Business/Personal
	<input type="checkbox"/> Backup Tapes	<input type="checkbox"/> Home Computer	Cell Phones

NETWORK SYSTEMS

Describe the network infrastructure and organization of ESI, including locations of user files and storage areas. Are there file servers, email servers, application or web servers? What is the operating system and version? Is this a centralized network system with a data center or separate networks?

CONFIDENTIAL – SUBJECT TO ATTORNEY-CLIENT PRIVILEGE AND WORK PRODUCT DOCTRINE

Network Group Shares (department share):

List the Group shares to collect: _____

Should the entire group share be collected? Yes No

If not, specify folders/files to collect? _____

Databases (and other applications):

Are there any databases, applications or proprietary programs that generate or contain potentially relevant ESI? Yes No

Name of program or application and format of data: _____

Third Party Providers:

Do any third-party providers for internet, social media, Bloomberg, records management, email routing, etc., have any relevant ESI? Yes No

If yes, who and for what and where? _____

Text or Instant Messaging:

Do users have a text message or instant messaging program? Yes No

Is the data stored or backed up? Yes No

Telephone Systems (office or cell phone):

Are voicemail messages within the scope of the case? Yes No

If yes, how is data retained? _____

Backup Systems:

Has backup tape rotation been suspended? Yes No

Name and type of backup system: _____

What data is backed up? _____

Describe the backup process (full, incremental, frequency): _____

Is backup media available for the relevant time frame? Yes No

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Email System:

What email application and version is currently in use? _____

Has the current email system been in place during the relevant time period? _____

If not, describe prior system: _____

How long does active email remain on server? Deletion policy? _____

Is email archived by the user or force archived? _____

Where? _____

Is it necessary to collect archived email? _____

Is there a size limitation on a user account? _____

If yes, what is size limitation? _____

Does blackberry email pass through email server? _____

Is there an email retention/archiving system in place? _____

Name and version of application: _____

When were emails first retained/archived using this system? _____

Local Desktop/Workstations:

Are PC or laptop workstations in use? _____

Type of PC/Laptop and hard drive size: _____

Can users save to local hard drive locations? _____

Is the USB, CD/DVD or floppy drive active? _____

Are PCs or laptops ever re-imaged or replaced? _____

Explain: _____

** Client IT Staff: Please gather user PC machine names and verify location.

Network Personal Shares (home share, user share):

Does every user have a personal network share? _____

Should the entire personal share be collected? _____

If not, specify files/folders to collect: _____

Policy on Former Employees:

Is there a written policy on former employees? Yes No

What is the retention/destruction policy for: _____

Workstation/Laptop: _____

Email: _____

Personal Network Share: _____

System Upgrades—Hardware and Software:

Have there been any upgrades—hardware or software—in the relevant next 12 months that will impact data storage, retention or backup? _____

Legacy Systems:

Are there any legacy systems, old data storage or former applications relevant to this matter? If yes, what is the data and how is it stored? _____

Paper Documents:

Are there paper documents associated with this case? _____

Is someone gathering paper documents? _____

How many boxes of paper can be expected? _____

** Client: Please gather paper documents and deliver to Project _____

Client IT Personnel:

Are client's IT personnel trained in computer forensics? _____

Is client's staff able to forensically collect the ESI, including write protect data, maintain chain of custody, document the process and testify, if necessary? _____

CUSTODIAN INFORMATION

List below the names and locations of any custodians within or outside the company who may possess or control ESI or paper documents relevant to this litigation.

Custodian Names:

Custodian Locations:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Are there custodians who may have relevant ESI who are not on the network (e.g., former employees or consultants)? Yes No

Former Employee or Consultant:

Location:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Is there a need to create a watch list of personnel who may be leaving the company? Yes No

Notes / Comments / Search Terms:

Gathering the Documents

- Best practices for collecting
 - Format of documents (especially in litigation)
 - Native v. PDF format
- Best practices for transmitting to counsel

Discovery Protocol

- For large review sets, consider a written protocol
- Single document set will ensure all reviewers are reviewing the same
- Gives review team a single place to go for answers
- Provide background on case – key players – etc.
- Key coding:
 - Hot Docs: Harmful or helpful to case
 - Needs Review: Allows one attorney to review questionable or concerning documents
 - Privilege

Privilege or Exemptions

- RPC 1.6: Attorney-Client Privilege
- Work Product: Prepared during or in anticipation of litigation
- PRA Exemptions: Narrowly construed; burden on responding agency
 - E.g., RCW 42.56.070(1) (other statute); RCW 42.56.230 (Personal Information); RCW 42.56.250 (Employment and licensing)

Handling Documents

- Once transmitted to counsel
- Document management systems
 - Logical
 - Everlaw
 - Relativity

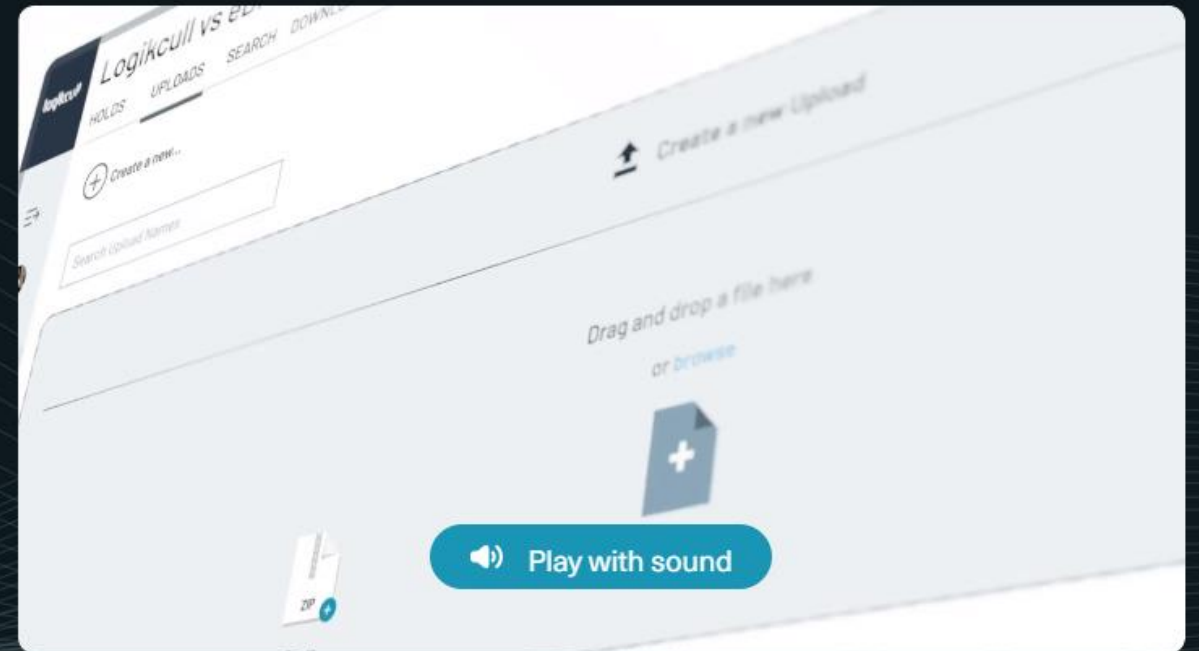
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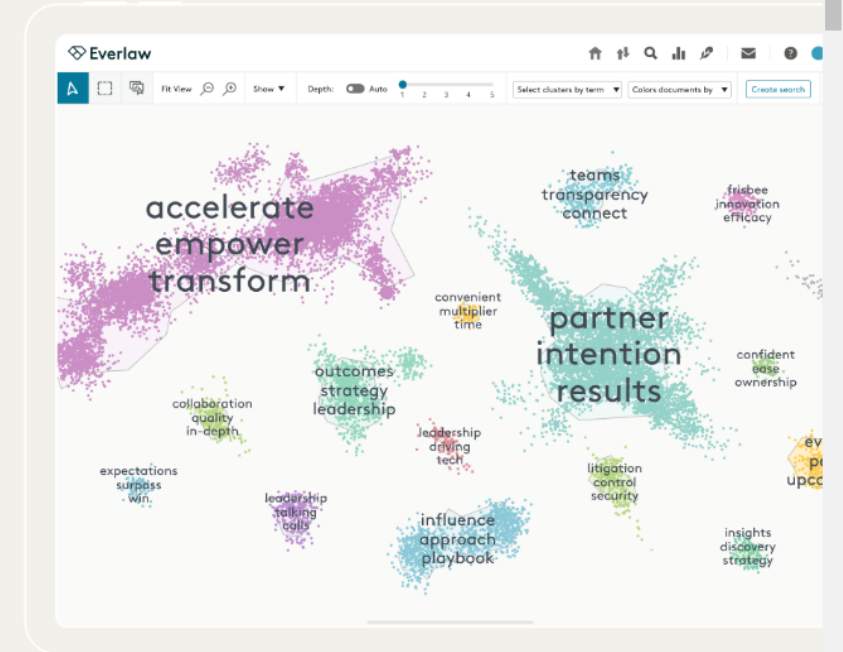


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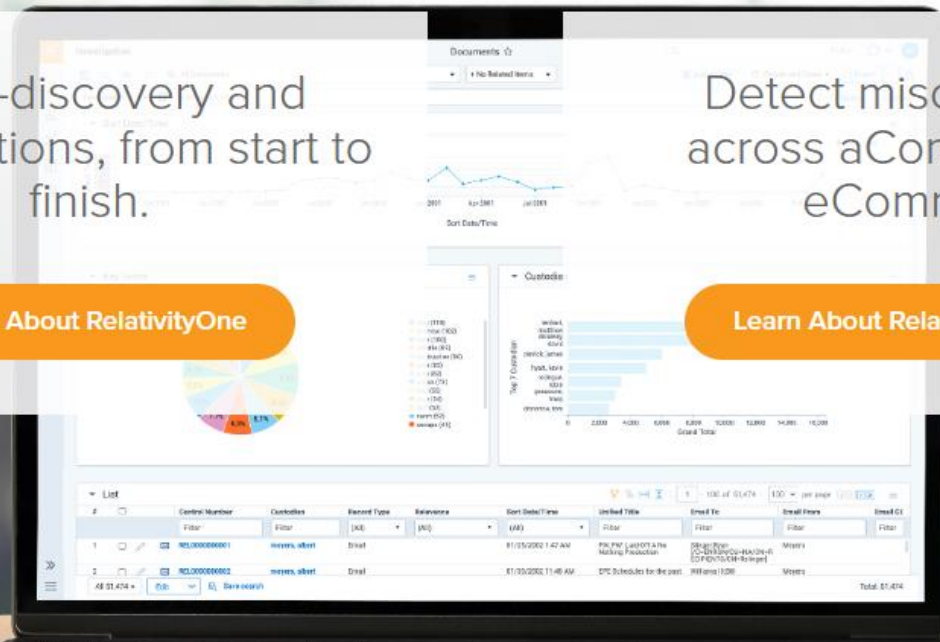
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Producing the Documents

- Bates number all documents
 - Doesn't matter if PRR or Litigation
 - Retain fully numbered set
- Best Practices for Transmission
 - When to include ESI transmission
 - How to ensure ESI gets included in transmission

Questions?

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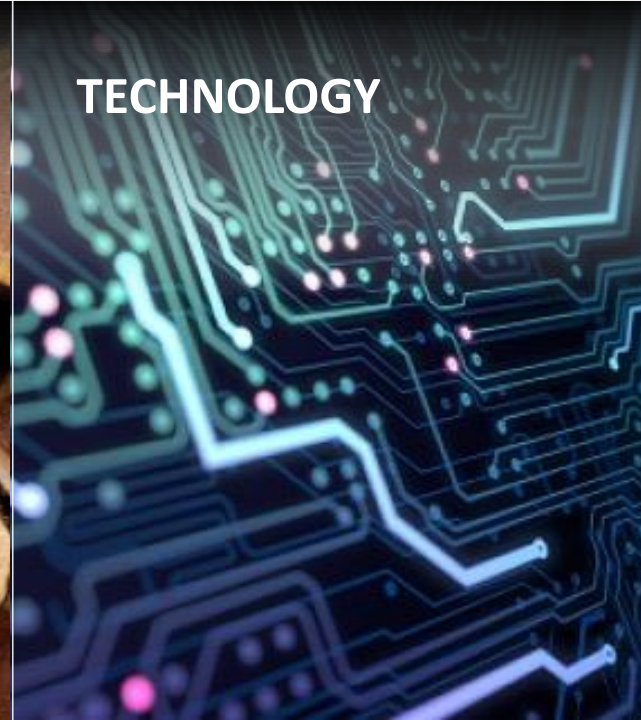
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