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**The Law and Technology of TAP:
Targeted, Automated, and
Proportional Collection for
Modern e-Discovery**

Our Discussion Panel



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Legal Overview: Proportionality and Collection of Data

Legal Overview: Proportionality and the Collection of Data

The Proportionality Challenge

Civil litigation should not be approached as if information systems were crime scenes that justify forensic investigation at every opportunity to identify and preserve every detail. Theoretically, a party could preserve the contents of waste baskets and trash bins for evidence of statements or conduct. Yet, the burdens and costs of those acts are apparent, and no one would typically argue that this is required. There should be a similar application of reasonableness to preservation of electronic documents and data.

--The Sedona Conference, The Sedona Principles: Second Edition. Best Practices, Recommendations, and Principles for Addressing Electronic Document Production, 2007.

Legal Overview: Proportionality and the Collection of Data

The Proportionality Challenge

Our company has multiple litigation matters throughout the country, and we've run into some state court judges who don't seem to grasp the magnitude of the voluminous amount of data plaintiffs often seek during discovery. Some judges have ordered us search for data across all employees and within "all" databases in our company, clearly contrary to rules of proportionality. How do you suggest educating judges about what eDiscovery entails and how they can make rulings more in line with the principles of proportionality?

**--Barbara Bennett, Litigation Support Senior Manager, Fiat Chrysler Automotive
Question to the Judges at the 2016 Relativity Fest Judicial Panel**

Legal Overview: Proportionality and the Collection of Data

The Six-Pronged Test of Fed. R. Civ. P. 26(b)(1)

- 1) The **importance** of the **issues** at stake in the action,
- 2) The **amount** in controversy,
- 3) The parties' relative **access** to relevant information,
- 4) The parties' **resources**,
- 5) The **importance** of the **discovery** in resolving the issues, and
- 6) Whether the **burden** or expense of the proposed discovery outweighs its likely **benefit**.

Legal Overview: Proportionality and the Collection of Data

Recent Proportionality Case Law

- ***In re 3M Combat Arms Earplug Prods. Liability Litig., No. 3:19-md-2885 (N.D. Fla. Mar. 20, 2020).***
 - Should a requesting party be able to compel a producing party to list every email in a thread in a privilege log?
- ***McMaster v. Kohl's Dep't Stores, Inc., No. 18-13875 (E.D. Mich. July 24, 2020).***
 - A search term dispute results in a court order that the parties share the cost of an expert to assist them.
- ***Lawson v. Spirit AeroSystems, Inc., No. 6:18-cv-01188 (D. Kan. Oct. 29, 2020).***
 - How much e-discovery—in this case, technology-assisted review (TAR)—should a party be allowed to demand?

Disrupting Discovery – 2021 Edition

The George Washington University Complex Litigation Center: Proportionality Guidelines

- Creating a framework to operationalize proportionality using identifiable and defensible metrics
- Drafting team and steering committee members include judiciary, practitioners, in-house corporate legal staff, and eDiscovery veterans
- Four sub-committees
 - Relevancy Factors
 - Data Source Burden and Effort
 - Discovery Cost Projections
 - Negotiation and Use Cases in Discovery
- Conference was held at the end of March with over 250 registrants, with participation from 55 judges.



1 Interview + Evaluate


Custodian Priority
Ranking

4 - Priority

3 - High

2 - Medium

1 - Low

0 - Released




Data Source Burden
and Effort

1 - Low

2 - Medium

3 - High

4 - Burdensome

Not Relevant




Data Source Category
with Cost Ranges (\$ - \$\$\$)

Computer

Cell Phone

User Share

Email

Accounting
Database

Step 1:
Conduct an assessment interview
to rank custodians by priority

Step 2:
Identify and rank data sources
based on collection difficulty

Step 3:
Prepare cost estimations to move data
from collection through review and
production

2 Strategize + Budget



Early Data Assessment Model

Case Study – Three Days

Data Metrics

664,277 — Total # documents

Documents within specified date range — **125,457**

17,053 — LEX search direct hits with family

Email threading
13,523

9,512 — LEX search direct hits

- Gather the Facts



- Understand the Story



- Let's Make a Deal



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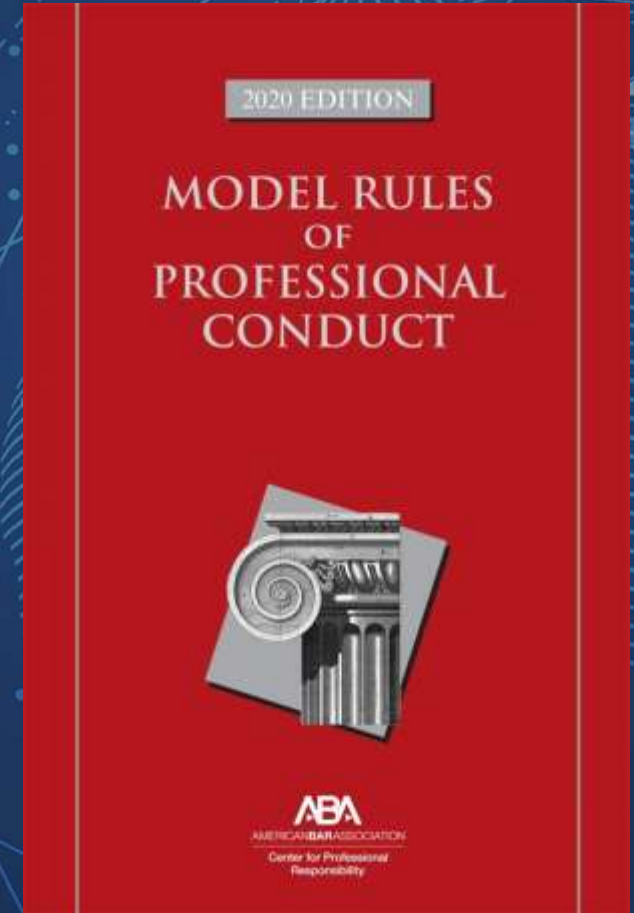
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Legal Overview: Legal Ethics and Collection of Data

Legal Ethics and Collection of Data

ABA Model Rules of Professional Conduct

- **Rule 1.1: Competence**
- **Rule 1.6: Confidentiality of Information**
- **Rule 5.3: Responsibilities Regarding Nonlawyer Assistance**



Legal Ethics and Self-Collection in E-Discovery



EEOC v. M1 5100 Corp., No. 19-cv-81320 (S.D. Fla. July 2, 2020)

Self-Collection as an Ethical Issue: "There is simply no responsible way that an attorney can effectively make the representations required under Rule 26(g)(1) and yet have no involvement in, or close knowledge of, the party's search, collection, and production of discovery" It is clear to the Court that an attorney cannot abandon his professional and ethical duties imposed by the applicable rules and case law and permit an interested party or person to 'self-collect' discovery without any attorney advice, supervision, or knowledge of the process utilized," Judge Matthewman wrote.

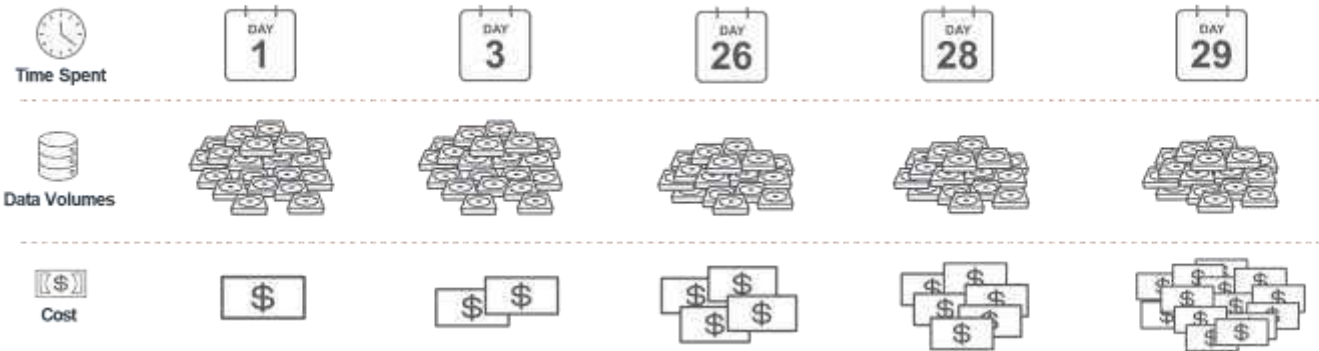
Key Benefits of the Relativity and X1 Integration

- Dramatically Increased Speed to Review
 - Remote collection measured in hours instead of days or weeks
- Highly Optimized Remote Collections
 - Access remote workers without VPN, keywords and culling criteria applied at the point of collection
- Bypass Costly Processing and Manual Handoffs
 - One-click upload of collected data into Relativity workspace



Streamlining the Traditional Collection Process

Traditional Approach:



X1/Relativity Approach:



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Demonstration



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Questions



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