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E-Discovery Attorneys: Hot or Not?

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There's a new tech boom of sorts. In the last few months I've received numerous inquiries from organizations seeking e-discovery managers, e-discovery consultants, e-discovery engineers, e-discovery gurus, e-discovery and document-retention specialists and, finally, attorneys who understand e-discovery. The calls have been from traditional brick-and-mortar companies, financial institutions, technology companies and law firms. In the end, after numerous conversations, it's clear to me they're all looking for the same thing: e-discovery attorneys.

There's a new attorney on the block. You can add e-discovery attorney to the mix of corporate attorneys, patent attorneys, litigation attorneys and so on.

The e-discovery attorney is simply an attorney who understands e-discovery. However, the difficulty arises when trying to define this new role. What our clients have in common is confusion and discomfort about e-discovery. They're uncomfortable sending confidential and proprietary data to unknown or offshore locations; they dislike second-guessing the reliability of a vendor; they want an in-house attorney who can testify about e-discovery and collection issues; they are frustrated by vague e-discovery rules and case law; and, ultimately, they're tired of paying huge e-discovery bills to outside counsel and vendors.

For this reason, 2006 may be the year of the e-discovery attorney. These tech-savvy attorneys -- many of whom were once doomed to the world of document reviews -- are becoming highly valued. In recent years, many e-discovery attorneys sought refuge in the litigation-support vendor world, while others have quietly followed e-discovery trends. These attorneys are now making names for themselves within their respective law firms. The Am Law 100 has been bringing back former technology and litigation associates to run their internal e-discovery departments.

Attorneys with this knowledge are also starting their own consulting companies. Four partners from well-established law firms recently formed Redgrave Daley Ragan & Wagner, headquartered in Minneapolis, to help clients manage electronic information.

George Socha of Socha Consulting has made a name for himself publishing his yearly surveys examining the size, scope and growth of the electronic discovery market, which he now projects to hit \$1.9 billion in 2006.

Larry Johnson and Tom Howe (both attorneys who joined the e-discovery vendor world and subsequently went back to practicing law) formed Legal Technology Group offering both legal consulting and electronic data processing.

While eDiscovery resources are on the rise, companies and law firms are desperately seeking attorneys who can be entrusted with their e-discovery issues. Fulbright & Jaworski, in a recently released corporate legal counsel survey, pointed to e-discovery as the No. 1 litigation-related burden for general counsel at companies with annual revenues exceeding \$100 million.

WHY HIRE AN E-DISCOVERY ATTORNEY?

The role of an e-discovery attorney can vary, but there are certain essential tasks. For instance, he or she can provide internal legal teams with guidance on how best to handle electronic data -- both internally and when working with data from other organizations -- if involved in litigation or mergers and acquisitions. This person could also manage outside e-discovery vendors, computer forensics vendors and outside counsel both in terms of cost and setting expectations. What's more, he or she could initiate internal document retention policies, determine how to best process internal electronic data and coordinate collection efforts with the IT department or external resources, if needed. Finally, this person would be able to testify on e-discovery issues and could help keep members of the firm abreast of current e-discovery legal trends and case law.

WHERE CAN YOU FIND AN E-DISCOVERY ATTORNEY?

As you might expect, the supply of e-discovery attorneys is not limitless. I would estimate the number of capable e-discovery attorneys to be around 200 worldwide, and the skills of these attorneys vary a great deal. There is only a handful who can run the entire process alone from start to finish. To cull the number of potential candidates even further, simply consider compensation, relocation expenses, personality and experience, and you have a very challenging search on your hands.

As corporations begin to hire e-discovery attorneys in-house, at some point they will make fine candidates for law firms, but this growth will take time. That said, your best bet is to persuade attorneys from e-discovery and litigation support vendors to return to the traditional world of practicing law. There are numerous trade shows and conferences where you might find a suitable candidate. Alternatively, another option is to convince an underappreciated law firm e-discovery attorney to make a lateral move. Major

law firms are beginning to appreciate their internal e-discovery resources. However, there are still some law firms that do not value or understand the e-discovery attorney.

WHAT SHOULD YOU PAY AN E-DISCOVERY ATTORNEY?

The typical litigation support and e-discovery vendor is paying an attorney between \$90,000 and \$200,000 to join its sales or consulting team (bonus or commission structures typically double total compensation). To manage an e-discovery department, it typically pays an attorney between \$80,000 and \$200,000 (with a small bonus). A rough estimate -- depending on experience level, e-discovery skills and job location -- would place total compensation between \$140,000 and \$400,000. This does not include the cost of purchasing e-discovery software, hardware and other resources needed to build an efficient e-discovery department.

DO I HAVE TO HIRE AN ATTORNEY?

An attorney doesn't necessarily have to fill this management role. There are highly skilled litigation support managers, paralegals, computer forensics experts and IT managers who can process internal data and manage outside vendors. However, if the goal of your department is to have someone who can testify and have credibility in court as well as with peers, process internal data, manage outside vendors and keep track of legal issues and rulings, then an e-discovery attorney would be the correct choice.

WILL AN E-DISCOVERY ATTORNEY CURE ALL MY HEADACHES?

The problem with e-discovery is that the laws and technology are imperfect.

There are tremendous e-discovery vendors, consultants and law firms in the marketplace, but reasonable e-discovery expectations are incredibly difficult to set. When an e-discovery attorney is brought in-house -- depending upon the available resources -- that person can cut costs and prevent problems. However, recognize that the technology your firm uses will be no different than what the vendors are using. As a result, a new e-discovery department may find itself working through problems that many vendors dealt with years before.

My advice is for firm leaders to be patient with a new e-discovery attorney. And, I would advise any e-discovery attorney to ask the necessary questions upfront, in order to determine whether an organization's expectations are realistic.

WHAT DOES THE FUTURE HOLD?

There are two major schools of thought on the subject. The first is that e-discovery attorneys are here to stay. As is the case with patent attorneys, organizations will always be on the lookout for good, solid e-discovery attorneys. The second is that the e-discovery attorney will be a short-lived litigation title: Ten years from now all litigation attorneys will understand e-discovery issues, and, looking back, people will wonder why e-discovery was such a big deal.

So what does that mean? Though this can be an exciting and dynamic role, I would advise young e-discovery attorneys to take steps to ensure that their position allows them to expand skills in other areas, in case the e-discovery role begins to disappear. And, law firm managers should consider how they can foster the professional development of these individuals. In the meantime, we're witnessing the dawn of this new role, and it will be interesting to watch how this trend plays out.