



*Jason W. Hardin, Esq.*  
*Rachel G. Terry, Esq.*  
**FABIAN & CLENDENIN, P.C.**

# Managing a Large Case Document Review

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# **Fabian & Clendenin, P.C.**

From 1919 when Fabian & Clendenin was started, to 1926 when Harold Fabian helped the Rockefeller Family acquire the land to create Teton National Park, to the present, Fabian has had local, national and international impact. Our attorneys enjoy expertise in a wide range of practice areas. Each of us, individually, recognizes the legacy of quality and integrity established by our founders. As a firm and as individuals, we are committed to always doing our best as we honor the tradition of the Fabian name. The practice of law obligates us to public service at every opportunity. But foremost, our focus is on our clients — to whom we offer our dedication.

## **Jason W. Hardin, Esq.**

Jason is a trial attorney and litigator. He is a shareholder and member of Fabian's Board of Directors. He has been involved in all aspects of high-profile, big-ticket litigation and has successfully represented clients in many industries and sectors, with significant experience in the areas of complex business and commercial disputes, energy, mining and electric utilities, and construction and development.

Jason recently represented Murray Energy Corporation and its subsidiaries and helped orchestrate the settlement of all of the civil lawsuits stemming from the August 2007 accidents at the Crandall Canyon Mine.

## **Rachel George Terry, Esq.**

Rachel is an associate with a broad background in complex commercial litigation, with an emphasis on litigation arising from business torts, contract rights, mining and utilities, and real property. Her practice also focuses on appellate law, and she has experience handling cases before the Utah Supreme Court and Tenth Circuit Court of Appeals.

## Topics to Be Covered

- Getting a large document review project
- Planning and preparing for the project
- Conducting a thorough, accurate and efficient analysis
- Performing quality control and readying the database for production and use

## “Getting” a Large Case Document Review Project

- What does a large case document review typically entail?
- What firms typically conduct these projects and why?
- How can Utah law firms compete for – and get – large cases and large case document review projects?
  - Expertise and experience
  - High quality work product
  - Cost-effectiveness
  - Efficiency and timeliness
  - *i.e., better, cheaper, faster*

# Guiding Principles

- From this point forward, *ask and keep asking*:
  - “Will a court find this review and its particulars reasonable?”
  - “Do our choices and actions comply with the rules, and can we defend our choices and actions?”
  - This is a rapidly evolving area of law
  - Always update research and requirements before beginning a new review
- Construct and shape document review accordingly

## Planning and Preparing for a Large Case Document Review Project

- Good planning and preparation are critical
  - Scope planning
  - Issue planning
  - Logistical planning
  
- To the extent possible, learn your case at the outset
  - Interview key witnesses
  - Immediately gather and analyze key documents
  - Analyze claims and complaints
  - Research key legal issues regarding possible claims and defenses

## Planning and Preparing – Scope Planning

- Carefully assess the scope of the project
  - Responding to specific requests?
  - Preparing for civil discovery generally?
  - Complaints filed or claims made?
  - Possibility of other proceedings, like administrative or criminal?
  - Potential witnesses
  - Extent of hard copy documents
  - Extent of ESI

## Scope Planning (continued)

- Gather and preserve potential evidence
  - ESI
    - Images of hard drives and/or servers
    - Individual files or groups of files
  - Hard copies of documents
  - Videos, photos, etc.
  - Err on side of over-inclusion
- Choose analysis program(s) / vendor(s)
  - Size dependent, to a degree
  - Familiarity
  - Filtering versus reviewing

## Planning and Preparation – Issue Planning

- Create comprehensive list of factual and legal issues
- Create list of substantive tags based on issue list
- Create list of administrative tags
  - Tags that trigger quality control review (“potential” versus “confirmed”)
  - Hot Docs
  - Privileged and CBI
  - Redaction needed
- Create detailed tag descriptions
- Do not be afraid to change, delete or add tags or tag descriptions as review progresses
  - ***Be sure to document and track all such changes***<sup>9</sup>

## Planning and Preparation – Logistical Planning

- Assess team requirements and build team
  - Efficient staffing
  - Size, time and cost dependent
  - Expertise?
  - In-house versus contract attorneys
    - If contract attorneys, hire yourself versus temp service
- Team leader(s)
  - Shareholder(s) who has substantive knowledge, who grasps all legal and factual issues, who understands the overall case strategies and sensitivities, and who has some leadership skills
- Team manager(s) and quality control
  - Associate(s) with substantive knowledge
  - Sociable teachers; firm; able to keep control
- Logistical support personnel
  - **Someone with detailed knowledge of program(s) / vendor(s) is invaluable**
  - in-house or contract paralegal

## Logistical Planning (continued)

- Assess space and computer needs
- Create budget (or update previous budget)
- Create timeline and milestone goals
- Create background binders for team – another invaluable resource
  - Procedures and restrictions
  - Tags, tag descriptions and (maybe) issue list
  - Common acronyms, key words and definitions
  - Factual summary of case
  - Cast of characters
  - Organizational chart
  - Key docs and pleadings

## Logistical Planning (continued)

- Create database
  - Upload all ESI, photos, videos, etc.
  - Image and upload all hard copies of documents
    - TIFFs, maybe PDFs
    - To OCR or not to OCR?
- Keep an open line of communication with vendor from this point on

## Conducting a Thorough, Accurate and Efficient Analysis

- Filter the database
  - Client input and assistance
  - Time, custodian and file type filters
  - Content filtering (keywords and phrases)
- Balance cost and burden against accuracy and reasonableness during filtering
- Document how and why filtering was done and any subsequent changes

## The Analysis (continued)

- Initial team training
- Weekly team meetings
  - Who should attend?
  - What should be covered?
- Open lines of communication:
  - Continuous training
  - Timely feedback
- Training and feedback help avoid “re-dos,” maximize efficiency and decrease costs

## The Analysis (continued)

- Team managers should monitor progress and answer questions daily, if not hourly
- Create log of questions and answers
- Review must be malleable
  - Be prepared to get sidetracked, but also be prepared to deal with getting sidetracked
- Stay on budget and meet mileposts
  - Cut nonperforming team members
  - Keep client updated on changes to budget or timeline

## Performing Quality Control and Readying the Database for Production and Use

- What is “quality control”?
  - A system that:
    - Promotes accuracy by preventing over- and under-inclusion
    - Creates consistency in tagging and categorizing
    - Confirms privileged and CBI materials
    - Allows for accurate redactions to be made when appropriate
    - Resolves other issues and questions

# The Layers of Quality Control



- Team Managers' QC
  - Review all documents tagged "QC Required"
    - E.g., all potential hot docs, privileged docs, CBI, and docs in need of redaction
  - Searches and random checks
  - Statistics review
- Pre-production QC Steps
  - Certain words or phrases trigger QC review by team managers
  - Dummy checks (e.g., documents marked both relevant and irrelevant or marked neither) that prompt QC review by team managers
- Team Leader's QC
  - Word searches and random checks *following* team managers' QC and pre-production steps

## Production and Use

- Initially produce redacted images along with:
  - Explanation for redactions
  - Privilege log
- If opposing party is entitled to more, may have to produce native files
- Preserve native files until case closed



Thank you!