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# WHY SHOULD YOU DO A DEFENSIBLE COLLECTION?

Failing to properly execute a defensible collection, one firm wound up facing penalties, trial delays, and nearly lost their case.

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## CASE STUDY | WHY SHOULD YOU DO A DEFENSIBLE COLLECTION?

### Background

Our client was working on a matter and knew that establishing provable email communication would be paramount to winning their case. Understanding the importance of collecting that data properly, defensibly, and completely, they reached out to First Legal to assist with eDiscovery.

Unfortunately, counsel did not uphold their ethical responsibility of managing their client's understanding of what a proper email collection looked like. As a result, the client insisted on letting his IT team handle the email collection. So, at the instruction of counsel, First Legal curated a list of search terms for the client's IT team, along with specific instructions for using the searching system.

Once the client's IT team had performed the collection, they sent it to us for review. Everything looked normal, and it wasn't until eDiscovery was closed and counsel was preparing for trial that red flags began appearing.

In a deposition, the opposing counsel presented exhibits that First Legal and our client had not previously seen. This is a common issue that can easily be dealt with when it happens early in eDiscovery, but unfortunately in this case, it was too late for a simple fix. The trial had to stop so our client could investigate what had happened and decide whether it was a correctable mistake or something they would have to close their case over.

This created an additional month of an essentially separate litigation matter in which our client had to defend their collection process. Additional vendors and lawyers had to get involved and the costs and time resources quickly began climbing. If counsel had insisted that collection was done by experts instead of their client's IT department from the beginning, they could have avoided this difficulty.

The investigation process required hiring neutral, third-party vendors to examine what had happened. Yet the client still would not allow outsiders to supervise his IT team, so these vendors could not figure out what had happened either. As a result, counsel was in the challenging position of trying to defend this IT team's process despite not knowing what they had done.



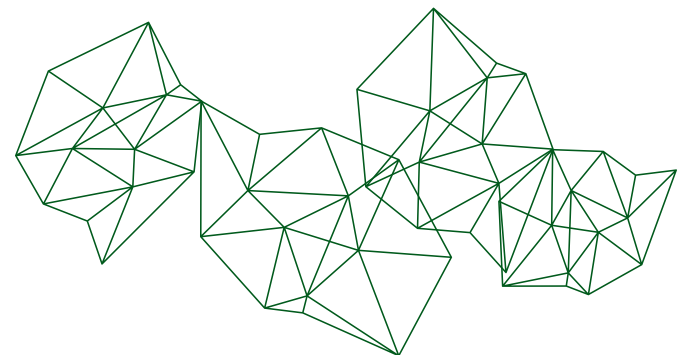


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# Outcome

Finally, the client gave in and allowed his attorney and First Legal to interview and screenshare with the IT team so we could follow their exact actions. Almost immediately, we identified the issue: the IT team had not followed our earlier instructions and had copy-and-pasted the search syntax, which resulted in the system running every entry as it they were one term instead of a series of individual terms. This had made the collection results more limited, and once we corrected it, we were able to see the missing evidence that opposing counsel had presented.

As a result of this mishandled collection, our client had to face penalties and monetary sanctions, and their case got very close to a mistrial. What should have been a two-week trial lasted three months, and instead of involving three attorneys, it involved eight. Rather than using one eDiscovery vendor, our client had to use three. All these difficulties were due to their client self-collecting despite not knowing how to, and not listening to the advice of experts. Our key takeaway in this matter is to always perform a defensible collection with experts from the beginning of a case.



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