Document Gathering and Production

I. Rules of Document Discovery

A. Under The Federal Rules

Document production under the Federal Rules is governed by F.R.C.P. 34. The rule provides that the requesting party may inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations…).

Unless a party receives leave of court, a party may not serve a Notice for Document Production until the parties have had a meet and confer conference as required by F.R.C.P. 26(f). Thereafter, the rules do not provide who must initiate or respond to discovery first. Once a request for documents is made, the responding party must serve a written response within thirty (30) days, unless the court orders a shorter or longer time. F.R.C.P. 34(b). A sample Document Production Request is provided at the end of this section as **Exhibit 1**. The responding party must either allow inspection of the documents, or make an appropriate objection. When preparing a response, the responding party must restate the request and make a corresponding response. A sample Response to a Document Production Request is provided at the end of this section as **Exhibit 2**. If an objection is made, the parties must have a meet and confer conference in accordance with Local Rule 37.2 before bringing a Motion to Compel to obtain compliance. In the Motion, the propounding party must include a statement (1) that after consultation in person or by telephone and good faith attempts to resolve differences they are unable to reach an accord, or (2) counsel's attempts to engage in such consultation were unsuccessful due to no fault of counsel's. Otherwise, the court will refuse to hear

the Motion. A sample Local Rule 37.2 statement is provided at the end of this section as **<u>Exhibit</u> <u>3</u>**.

Documents must be produced as they are kept in the usual course of business, or shall organize them to label them to correspond with the categories in the request. F.R.C.P. 34(b).

A non-party may be similarly compelled to comply with a Document Production Request where a subpoena is served upon that entity in accordance with F.R.C.P. 45. If a request is overly broad or unduly burdensome, the responding party may seek relief from the court through either a Motion to Quash or a Motion for Protective Order.

Discovery requests and responses are not filed in federal court, and the responding party has an obligation to seasonably supplement its responses if additional documents become available.

B. Under State Law

Under Illinois law, document production is governed by Supreme Court Rule 214. Similar to the federal rules, the requesting party may inspect documents or "tangible" things. The responding party has twenty eight (28) days to respond to the request. While a party may prepare a formal response restating the proponent's request, oftentimes, it is common for the responding party to reply in a letter, responding to each of the numbered requests.

As under the federal rules, the responding party must either formally respond to the request or provide written objections thereto. Unlike federal court, however, the responding party must furnish an affidavit stating that the production is complete in accordance with the request. The concept of relevancy for purposes of discovery is

broader than that of what is admissible at trial. Bauter v. Reding, 68 Ill. App. 3d 171, 385 N.E.2d 886 (1st Dist. 1979).

Discovery responses are generally not filed in state court, and a party must seasonably supplement prior production responses if documents become known to that party. While subpoenas are not covered by a specific rule, a party can compel a non-party to produce documents via a subpoena duces tecum. Notice should be served upon all parties.

B. Special Considerations For Documents Given To Experts.

Under the Federal Rules, an expert has an obligation to prepare and tender a written report disclosing not only his opinions but the data or other information considered by the expert in forming his opinions. F.R.C.P. 26(2). Of course, this may include any documents provided to the expert.

Under Illinois state law, recent changes have been made to the Illinois Supreme Court Rules concerning the classification of witnesses. Currently, witnesses are classified as being either “lay witnesses,” “independent expert witnesses,” or “controlled expert witnesses.” Supreme Court Rule 213(f). Treating doctors are typically considered independent expert witnesses, whereas experts who are specifically retained are considered controlled expert witnesses. For the latter category, a party must not only disclose the expert’s opinions but also, any bases therefor. Similar to the federal rules, a party must disclose the bases of a controlled expert’s opinions, which would include documents submitted to the expert.

In the event that a party submits documents to the lay witness or independent expert witness which the witness would not ordinarily rely upon, the party may have

converted the expert to an independent expert witness, thereby triggering the party to the disclosure requirements required for that witness.

Counsel should endeavor to supply the controlled expert witness all relevant documents in the case, or he will be subjected to intense cross-examination for not reviewing all applicable documents. Counsel and their staff should avoid marking or flagging portions of documents or depositions when sending them to the expert as the witness may lose his aura of independence.

APPENDIX

Form 1 **Plaintiff's Document Production Request**

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[name of Plaintiff],	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Case No.: ________________
	)	
	)	Judge: ____________________
[name of Defendant],	)	
	)	Magistrate: _______________
Defendant.	)	

PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS

NOW COMES, the Plaintiff, by and through his attorneys, and propounds the following Request for Production upon Defendant, with the demand that Defendant provide for inspection and copying within thirty (30) days in accordance with Federal Rule of Civil Procedure 34:

REQUESTS

1. Any and all communications between the EEOC and Defendants regarding the charges filed by Plaintiff, including, but not limited to, any position papers filed by Defendants.

2. Copies of any and all charges or complaints alleging age discrimination or retaliation filed against Plaintiff's employers at the Rosemont office with any federal, state, county, or municipal agency from January 1, 1998 to the present date.

3. Any and all manuals, handbooks, directives, memoranda, or other documents from January 1, 1998 to the present time which represent written policies pertaining to age discrimination, hiring, and termination of employment by Defendants.

4. Any and all manuals, charts, or other documentation showing specific job titles and/or job functions with respect to the corporate hierarchy of Defendants as of November 1, 2000, September 10, 2001, January 3, 2002, and as of today.

5. Copies of any and all records relative to Plaintiff's employment, the decision to remove Plaintiff from the Discover Account and his termination including, but not limited to Plaintiff's entire personnel file.

6. The job description and all documents reflecting or relating to the duties, standards for performing, and evaluating all positions held by Plaintiff during his employment with Defendants.

7. Any documents regarding or relating to Defendants' contention that Plaintiff's performance was deficient.

8. Any documents describing all compensation and benefits offered or paid to Plaintiff.

9. Copies of any advertisements which advertised for a position, which Plaintiff held, for one year following the Plaintiff's termination.

10. The entire personnel file for any individual who assumed any job duties of the Plaintiff within one year following the Plaintiff's termination.

11. For the period of January 1, 1998, to the present, any and all documents reflecting the termination of any individual, who worked at the Rosemont office, terminated by Defendants over the age of 40 at its Rosemont office.

12. Copies of any statements of any witness or party to this action other than to his/her attorney.

13. Any and all documents that relate directly or indirectly to Defendants' decision to take the Discover Account away from Plaintiff and/or their decision to give the Discover Account to Mark Power.

14. Any and all documents, which relate to any warnings regarding substandard or deficient performance of sales executives between November 1, 2000 and January 1, 2002 at its Rosemont office.

15. Any and all documents, which reflect or relate to the month-to-month or annual performance rankings of sales executives both for the Defendant's Rosemont office and its offices throughout the country.

16. Any and all documents, which reflect or relate to Randall Hughes' training of the Plaintiff.

17. Any and all documents, which reflect or relate to the number of sales calls or sales meetings a sale executive was required to make.

18. Any and all documents, which reflect or relate to the number of sale calls made and/or sales meetings conducted by sales executives with clients or prospective clients employed from January 1, 2000 to January 1, 2002 at the Rosemont office.

19. Any and all documents, which reflect or relate to the performance of all sales executives, including but not limited to documents which contain the sales executives' actual monthly target revenue, monthly revenue generated and the percentage of the monthly target, between November 1, 2000 and January 3, 2002 at the Defendants' Rosemont office.

20. Any and all documents, including the pipeline reports, which reflect or relate to the counseling of sales executives at the Defendants' Rosemont office.

21. Any and all advertisements or brochures, including photographs, between September 1, 2001 and September 1, 2002 relating to these Defendant's advertisements relating to its managed services offerings.

22. Any and all e-mails to and from the Plaintiff between January 1, 2001 and May 1, 2001.

23. Any documents mentioned directly or indirectly in Defendants' Answers to Interrogatories.

24. Any documents, which the Defendants contend, support the Defendants' Answer or Affirmative Defenses.

Plaintiff,

By: ______________________
[Plaintiff's attorney]

[Plaintiff's Attorney,
address, and telephone
number]

Form 2 **Plaintiff's Response To Document Production Request**

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[name of Plaintiff],	)	
	)	
Plaintiff,	)	
	)	
V.	)	
	)	Case No.: _________________
	)	
	)	Judge: ____________________
[name of Defendant],	)	
	)	Magistrate: _______________
Defendant.	)	

PLAINTIFF'S RESPONSE TO DEFENDANTS' FIRST REQUEST TO PLAINTIFF FOR PRODUCTION OF DOCUMENTS

NOW COMES, the Plaintiff, by and through his attorneys, and for his Response to Defendants' First Request to Plaintiff for Production of Documents. In support thereof, Plaintiff states as follows:

1. All documents identified in your answer to:

   (a) Interrogatory No. 2e of Defendants First Set of Interrogatories;

   (b) Interrogatory No. 3d of Defendants First Set Of Interrogatories;

   (c) Interrogatory No. 4 of Defendants First Set of Interrogatories;

   (d) Interrogatory No. 5 of Defendants First Set of Interrogatories;

   (e) Interrogatory No. 7 of Defendants First Set of Interrogatories;

   (f) Interrogatory No. 8 of Defendants First Set of Interrogatories;

   (g) Interrogatory No. 10 of Defendants First Set of Interrogatories;

   (h) Interrogatory No. 11 of Defendants First Set of Interrogatories;

   (i) Interrogatory No. 12 of Defendants First Set of Interrogatories;

   (j) Interrogatory No. 13 of Defendants First Set of Interrogatories;

(k) Interrogatory No. 14 of Defendants First Set of Interrogatories; and

(l) Interrogatory No. 15 of Defendants First Set of Interrogatories.

RESPONSE: See compact disc containing e-mails, commission summary for the Discover account, documents relating to Plaintiff's on-line job search and Plaintiff's earnings schedule, attached as **Exhibit 1**. Plaintiff also has in his possession the documents produced by Defendant in its Rule 26a Disclosures. At this time, Plaintiff does not know exactly, which documents he intends to use to prove his claims at trial. Investigation continues.

2. All documents supporting or relating to your answer to:

(a) Interrogatory No. 6 of Defendants First Set of Interrogatories; and

(b) Interrogatory No. 9 of Defendants First Set of Interrogatories.

RESPONSE: See compact disc containing e-mails and the documents produced by Defendant in its Rule 26a Disclosures. At this time, Plaintiff does not know exactly, which documents he intends to use to prove his claims at trial. Investigation continues.

3. All documents supporting or relating to the allegations contained in:

(a) Paragraph 12 of the Complaint.

(b) Paragraph 13 of the Complaint.

(c) Paragraphs 17, 26, 35 and 44 of the Complaint.

(c) Paragraphs 54, 62, 68 and 75 of the Complaint.

RESPONSE: See responses to other requests herein.

4. All documents relating to your employment with Defendants, or any aspect of that employment, including but not limited to your job performance and the termination of your employment.

RESPONSE: See response to request no. 1. Investigation continues.

5. All documents relating to your allegations that you are owed unpaid commissions.

RESPONSE: See compact disc containing e-mails and the documents, including the commission plans, produced by Defendant in its Rule 26a Disclosures. At this time, Plaintiff does not know exactly, which documents he intends to use to prove his claims at trial. Investigation continues.

6. All documents relating to your allegations that you were terminated because of your age and/or in retaliation for complaining that the Discover account was taken away from you because of your age.

RESPONSE: See responses to other requests herein.

7. All documents relating to communications between you and any employee or former employee of Defendants regarding any of the allegations set forth in your Complaint.

RESPONSE: See Charges of Age Discrimination and accompanying cover letters to Sprint's Employees with proofs of fax transmission, attached as **Exhibit 7**. See compact disc containing e-mails and the documents produced by Defendant in its Rule 26a Disclosures. Investigation continues.

8. All documents relating to communications between you and any other person or entity regarding any of the allegations set forth in your Complaint.

RESPONSE: See Charges of Age Discrimination, attached as **Exhibit 7**.

9. All documents identified in Plaintiff's Rule 26(a)(1) Initial Disclosures.

RESPONSE: See documents produced by Defendant in its Rule 26a disclosures. All of the documents in Plaintiff's possession, with the exception of those produced herein, are in the possession of the Defendant, as evidenced by its Rule 26a Disclosures.

10. Your federal and state income tax returns for the years 2001 and 2002, with all attachments.

RESPONSE: See 2001 and 2002 Tax Returns, attached as **Exhibit 10**.

11. Your payroll stubs, payroll records, earnings records, and documents reflecting any and all sources and amounts of income or earnings from January 3, 2002 to the present.

RESPONSE: None.

12. Your 2000 and 2001 calendars, appointments books, and/or diaries.

RESPONSE: None.

13. Any notes or memoranda that you prepared regarding any of the allegations set forth in your Complaint.

RESPONSE: Objection, this request asks for privileged information or attorney work product. Without waiving said objection, none.

14. All documents not already identified and produced that you relied on to respond to Defendants First Set of Interrogatories.

RESPONSE: None other than those documents already produced.

15. All documents not already identified and produced relating in any way to the subject matter of the Complaint in this case.

RESPONSE: None other than the Affidavit of Jaswinderjit Mann, President of Paranet Solutions, LLC, attached hereto as **Exhibit 15**.

Plaintiff,

By: ________________________

[Plaintiff's attorney]

[Plaintiff's Attorney,
address, and telephone
number]

<u>Form 3</u> Rule 37.2 Letter

Dear counsel,

Please be advised that we have reviewed your discovery responses and have found various deficiencies. In accordance with Local Rule 37, I would request that you amend your responses to the following:

<u>Interrogatories</u>

Interrogatory No. 8: you have refused to provide information regarding prior suits and charges of age discrimination. This is clearly relevant to the CBOT's intent and motive.

Interrogatory No. 12: Similarly, the information regarding hiring of Reporter IV's is clearly relevant to the CBOT's intent and motive.

<u>Document Production</u>

Document Production Request Nos. 2-3: Our reasons for requesting this information are similar to those for Interrogatory No. 8 above.

Document Production Request No. 10: The CBOT's severance policy is clearly relevant as it may not have been evenly applied to older and younger workers.

Document Production Request No. 14: The personnel file of any individual who performed any of Plaintiff's tasks should be produced. We have no objection to having these documents being covered by an appropriate Protective Order.

Document Production Request Nos. 15-17: Kindly prepare a draft Protective Order so that we may obtain these files.

Document Production Request No.18: The personnel file of any individual who was terminated should be produced as it may have some bearing on an ageist motivation. We have no objection to having these documents being covered by an appropriate Protective Order.

Document Production Request No.19: The personnel file of any individual who was terminated for sexual harassment should be produced as it may be relevant to pretext. We have no objection to having these documents being covered by an appropriate Protective Order.

Kindly produce this information within the next seven (7) days.

II. PROPOUNDING AND RESPONDING TO THE DOCUMENT REQUEST/THIRD PARTY SUBPOENA

A. Instructions And Definitions

Discovery requests, including Document Production Requests, are often covered by an instructions and definitions section, which purportedly direct the responding party how to respond. Unless the case is highly technical or specialized, it is the undersigned counsel's opinion that including these instructions in a Document Production Request are a waste of time. Rather, requests for documents should be specific, and tailored to the case at hand.

B. Objections

Within the time frame for responding to a Document Production Request, a responding party may make a number of objections. Keep in mind, however, that discovery requests are liberally construed. Common objections include:

(1) that the request is not reasonably calculated to lead to admissible evidence at trial (a relevance objection is simply insufficient if the request can lead to admissible evidence);

(2) that the request is overbroad;

(3) that the request is unduly vague;

(4) that the request is an invasion of privacy (this objection may go hand in hand with No. 1, above);

(5) that the request calls for the production of documents which are inadmissible as a collateral source. (Typically involves unemployment compensation or payment of Plaintiff's medical bills);

(6) that the request involves attorney work product;

(7) that the request would invade the attorney-client privilege.

When the propounding party receives any of the above objections, and deems that they are meritless, whether in state or in federal court, the party should initiate a meet and confer conference to resolve the discovery dispute. If unsuccessful, the propounding party should file a Motion to Compel, seeking that the objections are stricken, and that the party be compelled to provide documents.

C. Attorney Work Product/Attorney-Client Communication Privilege

A responding party may assert two privileges and refuse to provide documents, the work product privilege, and those documents which are subject to the attorney-client privilege. Privileges from discovery are to be strictly construed as an exception to the general duty to disclose. Martinez v. Pfizer Laboratories Division, 216 Ill. App. 3d 360, 576 N.E.2d 311 (1st Dist. 1991). The party who asserts a claim of privilege has the burden of proving it. Monier v. Chamberlain, 66 Ill. App. 2d 472; 213 N.E.2d 425 (1st Dist. 1966).

Generally, the work product doctrine applies to documents prepared by either the client or the attorney in anticipation of litigation or trial. Dalen v. Ozite Corp., 230 Ill. App. 3d 18, 594 N.E.2d 1365 (2d Dist. 1992). The exemption does not protect material and relevant evidentiary facts from the truth-seeking processes of discovery. Monier v. Chamberlain, 66 Ill. App. 2d 472; 213 N.E.2d 425 (1st Dist. 1966). Documents prepared by a party which do not disclose the party's theories, mental impressions or plans, are discoverable. Supreme Court Rule 201(b)(2).

The attorney-client privilege applies to both communications made by the client to the attorney, as well as the attorney to the client. Robertson v. Yamaha Motor Corp.,

143 F.R.D. 194 (S.D. Ill. 1992). The privilege, however, is to be strictly construed within its narrowest possible limits. Buckman v. Columbus-Cabrini Medical Center, 272 Ill. App. 3d 1060, 651 N.E.2d 767 (1st Dist. 1995). Communications between the attorney and a manager not involving legal advice are not afforded the privilege. Midwesco-Paschen Joint Venture for Viking Projects v. Imo Industries, Inc., 265 Ill. App. 3d 654, 638 N.E.2d 322 (1st Dist. 1994).

With respect to the attorney-client privilege in the corporate setting, there are two tiers of employees whose communications with the corporation's attorneys are protected: the first tier consists of decisionmakers, or top management, and the second tier consists of those employees who direcly advise top management, and upon whose opinions and advice the decisionmakers rely. Id. The burden of proof lies with the party asserting that a communication occurred between a member of the "control-group" and counsel. Favala v. Cumberland Engineering Co., 17 F.3d 987 (7th Cir. 1994).

A party seeking to claim one or more privileges must comply with Supreme Court Rule 201(n) if in state court. The responding party must describe the document, and the exact privilege claimed. Generally, the responding party will furnish a privilege log detailing the privileged documents and the bases for the privilege.

The propounding party may then seek an *in camera* inspection, which requests that the court examine the privilege log and the documents. The court will then rule on a document by document basis which are privileged.

III. PRINCIPLES OF DOCUMENT GATHERING

A. The Client's Role

Once counsel receives a Document Production Request, he should send it to the client. Prior to assembling the response, the client should generally discuss the request with counsel to see if the parameters are reasonable. For instance, in an employment discrimination case, did Plaintiff's counsel request the personnel files of an entire plant? Not only would an overbroadness objection likely be upheld, but the expense to the client of gathering the documents could be enormous. After the initial conference with counsel, the client should gather up all responsive documents maintained in the ordinary course of business and turn them over to counsel.

B. The Law Firm's Role

The law firm should review the client's document production and determine if any objections can be made or which privileges may be asserted, if any. For instance, any documents between counsel and the client which purport to offer legal advice are privileged and should not be disclosed. Similarly, documents which reflect counsel's or members of the control group's mental impressions, theories of the case, or litigation strategy will likely be deemed work-product, and a privilege should be asserted. Is a Protective Order in place? If so, proper designations of confidentiality will have to be made. Documents should be bate-stamped, and produced in either a tab divided fashion or with paper separators reflecting each request.

C. Electronic Discovery

[I] Introduction

Many organizations now store some, if not all, of their files on computers, use email as a significant, if not primary, means of communication, and leave messages on electronic voicemail systems. When one of these organizations becomes a party in a

lawsuit, often the opposing party seeks access to this electronically-stored information. Standard discovery procedures allow a party to request all relevant materials from an opposing party. However, it is not clear that discovery of digital information is similar enough to traditional discovery to warrant a wholesale application of existing discovery rules. Insofar as discovery is intended to provide equal access to all relevant information, digital discovery helps to fulfill the fundamental goals of the system. In some respects, information in electronic format means easier access - a lawyer may search through documents on a disk for key words and dates quickly. Almost all agree that digital discovery means more complete access; email has been called a "truth serum," access to which could expose all manner of wrong-doing.

Despite the benefits, the move to digital documents poses new challenges in the discovery context. First, it may be difficult, time-consuming, and/or expensive for the producing party to segregate relevant from non-relevant or privileged from non-privileged information when it is stored in this format. For example, parties are often required to search back-up tapes, but such tapes are generally designed only for disaster recovery, not for retention and data retrieval, so the cost and burden of reconstructing, restoring, and searching data on such tapes can be enormous. Second, the operating systems for both the producing and the discovering party may be incompatible. A further potential problem relates to "hidden" evidence. There may be more relevant information stored digitally than normally would exist in an all-paper environment. Deleted information may be stored unintentionally in backup files. However, the deleted data may not be stored indefinitely: information of this sort may be overwritten by the normal operation of the computer - once hard-drive space has been exhausted, the computer

begins to write over old non-saved information bit by bit. Solutions to this problem - to suspend business activity in order to preserve this information, an extremely costly solution for the producing party, or to preserve every document of the company, which could lead to a system crash - are imperfect at best. If a company stores its data offsite on a website maintained by someone else, who is the custodian of this data? Who controls and must review and produce it?

[2] The Applicable Federal Rules

Rules 26 and 34 of the Federal Rules of Civil Procedure (which regulate the production of evidence in litigation) are the critical rules governing the discovery of electronic information. These rules make electronic information available for broad discovery but provide some significant protections for the party whose electronic information is sought.

Rule 26, General Provisions Governing Discovery: Duty of Disclosure, states in relevant part that all parties in litigation must disclose "a copy of, or description by category and location of, all documents, data compilations, and tangible things in possession, custody, or control of the party that are relevant to disputed facts alleged with particularity in the pleadings" F.R.C.P. 26(a)(1)(B). Rule 26 also provides the scope of discovery: "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action . . . including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things." F.R.C.P. 26(b)(1). Rule 26 also defines discovery limits: "The frequency or extent of use of the discovery methods . . . shall be limited by the court if it

determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive . . . (iii) the burden or expense of the proposed discovery outweighs its likely benefit . . ." F.R.C.P. 26(b)(2). In addition, Rule 26 allows a court to authorize a protective order to protect a party from "annoyance, embarrassment, oppression, or undue burden or expense" F.R.C.P. 26(c).

Rule 34, Production of Documents And Things and Entry Upon Land for Inspection and Other Purposes, states in pertinent part: "[a]ny party may serve on any other party a request (1) to produce . . . designated documents (including writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form)" F.R.C.P. 34(a). A 1970 amendment created this description of "documents" to make clear that Rule 34 applies to electronic evidence. Advisory Committee Notes, F.R.C.P. 34(a). The advisory notes also confirm that the producing party may be responsible for translating the information into a form readable to the discovering party.

[3] Obtaining The Data

While encrypted data can be retrieved and scrutinised, most proven crypto-systems provide a degree of protection that cannot be overcome by normal means. There are methods of attack that have proved successful but, these methods are not of a crytpo-analytic nature. If the individual is not cooperative and refuses to provide their key, there may be no way to gain access to a plain text version of what is protected in this way.

On the other hand, if the data has been encrypted using options readily available in standard software such as Microsoft Word or Excel, for example, the keys may be derived by using special purpose software. A number of standard software applications have poorly implemented or flawed cryptographic options and these can be attacked successfully, albeit for a price.

Obviously the outcome of any investigation cannot be predicted so there can be no assurances that it will produce any useful evidence. However, the amount of time needed to investigate properly the contents of any given system will be approximately the same regardless of the outcome – and it is an expensive process.

The production of reports containing just the evidence of interest in a format that is readable and practical to use is an important part of the process as is the investigator's expert testimony. The tools currently available have been tested and proven and are becoming recognized and approved in many jurisdictions.

Useful evidence cannot be manufactured. As with any other type of investigative technique what is found is all there is. It may be relevant or it may not. However, computer forensics is one tool that everyone in the legal profession should be aware of.

D. Planning And Budgeting

As noted above, counsel and the client should jointly review the document request. Generally, the party seeking the production bears the cost of any document duplication. These costs, however, do not include the client's or counsel's time in assembling the documents. Counsel and the client should determine if the request is

reasonable. If not, counsel should make the appropriate objection and place the onus on the propounding party to seek compliance.

E. Dealing With Vendors

Oftentimes, in-house copying and organization of documents may be too time consuming and expensive. Counsel and the client should consider sending the production out to a copy services such as Record Copy Service. The vendor can bate-stamp, tab, copy and deliver the documents. Have the copy service directly bill the party seeking the production.

F. The Production

The party will have to produce all non-privileged documents within his control, or which a third party has, but are within the control or custody of the party. Central National Bank v. Baime, 112 Ill. App. 3d 664, 445 N.E.2d 1179 (1st Dist. 1982). As mentioned above, documents should be numbered bate-stamped, and if necessary, designated "Confidential" or "Confidential - For Attorney's Eyes Only", if those designations apply. The documents should be organized by either tab or paper divider.

IV. ORGANIZING FOR THE FUTURE

A. What To Do With The Other Side's Documents

First, the propounding party should check to see if production is complete. Did the responding party provide all documents responsive to the request? Further, did the responding party refuse to provide certain documents by making objections? Are those objections well grounded? If the responding party did not provide all responsive documents, the paralegal should advise counsel to prepare a Local Rule 37.2 letter if in federal court, or a Supreme Court Rule 201k letter if in state court. The letter should

reflect a meet and confer meeting, a telephone conference, or the attempt to schedule a telephone conference.

After the initial analysis, the paralegal should determine if further document production is required. Should counsel sent a supplemental document production request, or subpoena a third party for documents based on what she has learned?

B. What You Need For Depositions

After the paralegal has examined the documents for completeness and has determined that no further document production is required, the paralegal should work with the attorney to determine what issues in the case need to be proved up, and which witnesses can prove those facts. Organize the documents by witness. For key portions of documents, have them highlighted. Have at least three copies of each document ready for the deposition – one for the attorney, one for the deponent's attorney, and the "original" one for the witness and eventually the court reporter. Make sure that the documents are made a part of the deposition.

C. What You Need For Summary Judgment/Adjudication

As with Section B. above, the paralegal should determine which documents will prove issues in the case. Ensure that each witness lays a proper foundation for admission of the document. If the case is an employment discrimination case, and an issue is performance, can the decisionmaker lay a proper foundation for the admission of a performance appraisal? The summary judgment response should have the documents appended (either to the brief itself or as a separate appendix) and the brief should have applicable citations to either depositions or affidavits which lay the proper foundation for the documents. If documents are marked confidential, special steps need to be taken to

file these documents with a Motion for Summary Judgment, or a brief. Check your local rules for specifics.

At trial, the paralegal should work alongside counsel to determine how the court wishes to have documents presented to the jury. Some judges will permit the jurors to have binders of exhibits. If the court permits this, hole punch all documents which counsel intends to offer into evidence and include them in the binder. Have them all numerically tab divided with a table of contents in the front. Make enough books for each juror, and alternate, opposing counsel, the court, and a separate book for the witness. Have a checklist available so that counsel knows which exhibit was offered into evidence, stipulated into evidence, and admitted into evidence. Each exhibit should also have an exhibit sticker on it just in case it gets separated from the binder.

Further, the paralegal should work with counsel in determining which exhibits to use for demonstrative purposes. Should blow-ups be made? If so, certain areas of the document can be highlighted, bolded or italicized. Another option to consider is scanning the documents into a computer, or using an overhead projector, to show the jury. Make sure that the demonstrative exhibit is marked.