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Mastering eDiscovery and AI in ADR: A guide for legal practitioners

As AI reshapes the legal landscape, mastering eDiscovery isn't just a career advantage for attorneys - it's now an ethical obligation they can't afford to ignore.

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The landscape of pre-trial discovery is rapidly evolving as eDiscovery and artificial intelligence (AI) continue to reshape legal practice. As AI technology becomes increasingly integrated into legal frameworks, legal practitioners who are early in their careers must understand how to navigate these new frontiers, particularly in alternative dispute resolution (ADR) settings. This is not an option, but rather, is part of licensed attorney's duty of competence. For example, Comment 8 to the ABA Model Rule 1.1, "Duty of Competence," specifically provides: "To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology..."

Understanding eDiscovery: A necessity for modern legal practice

Electronic discovery, or eDiscovery, is the process of identifying, collecting, and producing electronically stored information (ESI) in litigation and other legal proceedings. *The Sedona Conference Glossary: E-Discovery & Digital Information Management* (Fifth Edition), 21 Sedona Conf. J. 263 (2020) (last visited: October 15, 2024). ESI encompasses a wide variety of data sources, including emails, social media posts, documents, databases, and more. Given the increasing reliance on digital communication and documentation, eDiscovery has become a crucial element in modern legal practice. Garrie, Newman



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et al: *Uncovering Digital Evidence: A Comprehensive Guide for Legal Professionals in the Digital Era*, Springer Nature Switzerland AG (2024), Chapter 6: *Digital Forensic Investigations and eDiscovery*.

Balancing transparency and efficiency in dispute resolution

While ADR - such as arbitration and mediation - historically involved fewer formal discovery requirements than traditional litigation, the rise of eDiscovery has transformed this process. ADR parties often require the same level of data transparency as in litigation, and eDiscovery plays a pivotal role in facilitating that transparency. For example, in complex

cases involving intellectual property or corporate disputes, the discovery of critical documents can make or break a resolution.

How artificial intelligence enhances legal efficiency

Understanding the unique demands of eDiscovery is essential for legal practitioners handling ADR cases. While the informal nature of ADR might suggest fewer procedural hurdles, that doesn't mean the data management responsibilities are any lighter. Lawyers should be prepared to manage large volumes of data efficiently and ethically. This includes familiarity with data privacy laws, document review platforms,

and advanced search techniques to locate relevant ESI.

Furthermore, it's essential to anticipate potential disputes surrounding the scope of discovery in ADR. The flexibility of ADR processes can sometimes lead to disagreements about the extent of eDiscovery, including which documents are relevant and how burdensome discovery requests might be. Legal professionals must be skilled in negotiating these issues while effectively advocating for their clients. Practitioners should ensure familiarity with JAMS rules regarding eDiscovery. *Arbitration Discovery Protocols*, JAMS Mediation, Arbitration and ADR Services (last visited: February 17, 2025).

Using AI-driven insights to improve case outcomes

AI is revolutionizing eDiscovery by automating the more tedious aspects of document review and data analysis. Through AI-powered tools, lawyers can now sift through vast amounts of ESI more quickly and accurately than ever before. These tools use machine learning algorithms to categorize documents, identify key themes, and highlight potentially relevant information for attorneys. For a more detailed discussion, see Garrie, Newman et al: *Uncovering Digital Evidence: A Comprehensive Guide for Legal Professionals in the Digital Era*, Springer Nature/Switzerland AG (2024), Chapter 6: *beg Digital Forensic Investigations and eDiscovery*.

AI has also given rise to “predictive coding” or Technology-Assisted Review (TAR). Predictive coding allows machines to learn from human inputs, applying that knowledge to the broader dataset, significantly reducing the time spent on manual review. *Id.* at p. 179 (explaining Predictive Coding) and p. 188 (explaining testing, scalability, usability and accuracy); *The Sedona Conference, Commentary on Defense of Process: Principles and Guidelines for Developing and Implementing a Sound E-Discovery Process*, 15 Sedona Conf. J. 1, 55-56 (2014). (last visited: October 15, 2024). This not only increases efficiency but also reduces costs, a significant advantage in ADR where parties often seek expedited and cost-effective resolutions.

AI's impact on ADR

The role of AI in ADR extends beyond just eDiscovery. AI-powered platforms are emerging as valuable tools in the actual dispute resolution process, such as facilitating negotiations, predicting case outcomes, and assisting in arbitration decisions. For example, some AI systems can analyze historical case data to provide insights into likely outcomes based on similar cases, helping lawyers and their clients make more informed decisions about whether to settle or proceed.

Moreover, AI can assist mediators and arbitrators by synthesizing complex data sets into digestible summaries, aiding their decision-making process. For legal professionals, integrating AI into dispute

resolution will be key to maintaining a competitive edge. *Artificial Intelligence Clause*, JAMS Mediation, Arbitration and ADR Services (last visited: February 17, 2025).

Challenges and ethical considerations for legal practitioners' data privacy and security

With the advent of eDiscovery and AI comes the need not merely for technical competency, but for heightened awareness around data privacy and security. Handling sensitive information requires strict adherence to data protection laws like the General Data Protection Regulation (GDPR) in the European Union and the California Consumer Privacy Act (CCPA) in the United States. Mismanaging this data can lead to legal repercussions, especially in cross-border ADR cases where data privacy rules differ significantly.

Legal Professionals must ensure that their eDiscovery processes comply with relevant data privacy laws. They also need to consider the security measures taken by their chosen eDiscovery platforms. Failing to protect sensitive data could jeopardize not only the case but also the client relationship and the lawyer's professional reputation.

Ethical and practical challenges in eDiscovery and AI

While AI offers many advantages, it also presents ethical challenges. For example, predictive coding can inadvertently introduce biases if the initial training set provided to the AI tool is skewed in some way. It can also open up litigants to arguments of “under-inclusivity” in data sets searched and weaknesses in selection criteria. Lawyers must remain vigilant to ensure that AI outputs are not accepted without critical oversight. It's important for legal professionals to understand the limitations of AI and ensure that human judgment remains central to the dispute resolution process.

Moreover, transparency in AI use is essential. ADR proceedings thrive on trust, and parties (and often the specific arbitrator(s)) must be informed when AI tools are used in their cases. Lawyers should be upfront about how AI is deployed and ensure that the technology enhances, rather than detracts from, the fairness of the process.

Key considerations for legal practitioners

1. Stay informed

The fields of eDiscovery and AI are constantly evolving. Legal practitioners should actively seek out continuing legal education (CLE) courses, attend webinars, and read industry publications to stay updated on the latest developments. Organizations like the ABA and JAMS offer valuable resources that can help new lawyers remain current on trends and best practices.

2. Leverage technology

Familiarize yourself with key eDiscovery tools and platforms, along with their capabilities and limitations. Whether you are working in a large firm with dedicated eDiscovery teams or a smaller practice with limited resources, understanding how these tools function will be beneficial. Learn the basics of predictive coding, data preservation, and document review software, and keep up with emerging AI platforms that promise to streamline the process.

3. Prioritize collaboration

Collaboration is key in both eDiscovery and ADR. Given the technical nature of eDiscovery, legal practitioners should not hesitate to work closely with IT professionals, forensic experts, and eDiscovery consultants. In ADR, collaboration extends to working with opposing counsel to establish fair and reasonable discovery parameters.

4. Focus on client communication

Clients may not always understand the intricacies of eDiscovery

or AI, but it's crucial to keep them informed. Simplify explanations and ensure they understand the costs, benefits, and risks associated with these technologies. Effective communication will help build trust and ensure that clients feel comfortable with the strategies being employed on their behalf.

5. Develop negotiation skills

eDiscovery in ADR often involves negotiation. Lawyers must be adept at discussing the scope and limitations of discovery with opposing counsel. The goal should always be to achieve a fair balance between transparency and efficiency, ensuring that neither side is overwhelmed by excessive discovery demands.

Adapting to the digital transformation in ADR

For legal practitioners stepping into the world of ADR, mastering the basics of eDiscovery and AI is more important than ever. These technologies are transforming how legal disputes are managed and resolved, offering exciting opportunities for those who can harness their potential. By staying informed, leveraging technology: prioritizing collaboration, and remaining mindful of ethical considerations, legal practitioners can navigate these evolving frontiers with confidence.

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