

# The e-Discovery 4-1-1

A monthly publication of LeClairRyan's  
Discovery Solutions Practice



Legal Strategies. Business Solutions.

## Scheidlin Tells ICE to Play Nice: Production Format Strategies Pay Off

by [Richard Griffith](#)

**UPDATE:** This article has been updated due to a [recent case law development](#).

In a recent opinion, Judge Scheindlin addressed the question of whether the meet and confer requirements of Rule 26(f) of the Federal Rules of Civil Procedure apply to requests made under the Freedom of Information Act (FOIA). In *National Day Laborer Organizing Network v. United States Immigration and Customs Enforcement Agency*,<sup>1</sup> she held that this rule applies to requests made under FOIA and reiterated that counsel is required to meet and confer regarding production format and other issues affecting discovery at the outset of litigation.

Ultimately, Judge Scheindlin ordered the government agencies to reproduce any documents produced after the date of National's email regarding production format in accordance with the format requested in the email.

### Production Format Strategy

So how should you handle production format issues in your next case? Rule 34 of the Federal Rules of Civil Procedure permits the party requesting documents to specify its preferred production format. The producing party may then object, and the parties must come to an agreement. If the parties cannot agree, the requesting party may file a motion to compel production of documents and ask the court to decide which format is appropriate. The court will look at the principles of proportionality and weigh the needs of the requesting party against the burden imposed on the producing party.

If the requesting party does not specify production format, the producing party is required to state its intended production format and may produce documents as they are usually maintained by the client or in another reasonably usable form. The key is that the producing party may not downgrade the functionality of the data (e.g., printing a native Excel spreadsheet, converting it to non-searchable PDF format,

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### Meet DSP

#### LeClairRyan Bolsters Litigation Technology Team

To keep pace with the growing demand for high-quality and cost-effective e-discovery services, LeClairRyan's Discovery Solutions Practice (DSP) recently added two new litigation technology specialists.

Cheryl Livingston and Elwood Clark have extensive experience working at the intersection of litigation and technology and are quickly establishing themselves as valuable members of the firm's e-discovery team.

As litigation technology specialists, Cheryl and Elwood participate in custodial and centralized data source collections, work with e-discovery vendors to set up and administer document review databases, manage the technical aspects of e-discovery document

and producing it as a PDF document without metadata).

This case highlights the fact that parties are wasting their own time and their clients' money when they fail to discuss production format issues at the outset of litigation. Production format, including the production of metadata, should be discussed as part of every party's discovery strategy. Failure to do so may open the door to a discovery battle that detracts from the merits of litigation and is time-consuming and expensive.

<sup>1</sup> *National Day Laborer Organizing Network v. United States Immigration & Customs Enforcement Agency*, 2011 U.S. Dist. LEXIS 11655 (S.D.N.Y. Feb. 7, 2011).

<sup>2</sup> *National Day Laborer* at 16.

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## DSP Explores Offshore Document Review

There has been a lot of talk in e-discovery circles about legal process outsourcing (LPO) recently. Offshore resources continue to grab headlines with reports estimating that the Indian LPO market will reach \$15 billion by 2015.

In its never-ending quest to enhance quality and cut costs, LeClairRyan's Discovery Solutions Practice (DSP) is blazing a new trail in the LPO market.

DSP has carefully examined how other entities have structured their outsourcing operations to determine what models have failed and which ones would allow LeClairRyan to continue providing its e-discovery clients with a high-quality product at a lower cost. Successfully integrating LPO into domestic document review processes requires the coordination of skilled professionals who have a keen understanding of the review process as well as the technology involved.

After analyzing various outsourcing operations, examining ways to turn struggles into successes, and developing the people, processes and technology required to integrate LPO into its domestic document review process, DSP is proceeding with a pilot project in India.

Information and metrics gleaned during this pilot will help DSP determine how to refine its LPO model. Adding offshore document review to DSP's e-discovery toolbox is yet one more way of providing clients with cutting-edge services at competitive prices.

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productions, and help maintain the computer systems in DSP's document review facility.

Cheryl comes to LeClairRyan with 25 years of experience working in the legal and technology fields as a paralegal and a litigation support manager. She received bachelor's degrees in criminal justice and social work from Purdue University in Indiana and a bachelor's degree in computer information and technology from Mt. Sierra College in California. In her free time, Cheryl enjoys exploring her new hometown of Richmond and reading mysteries and fantasies.

Even before Elwood joined LeClairRyan, he was a valuable resource for the firm. While employed by IT and Communications Company, a Richmond-based technology company, Elwood regularly provided LeClairRyan with domestic and international data collection support.

Elwood is originally from central New York and received his bachelor's degree in network administration from Alfred State College. In his free time, Elwood enjoys visiting family in New York, going to the beach with friends, playing rugby for the Richmond Lions, and cheering on the Buffalo Bills. He is planning a June 2012 wedding in St. Thomas.

[Learn more about DSP](#)

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