



Prepare a Litigation Response Plan

Lawsuits happen. Here's how you can prepare your organization to respond swiftly. **BY TOM HOWE**

Corporations get sued! No matter how diligently corporate officers work to minimize litigation risk, lawsuits happen. Whether or not the lawsuit has merit, the corporation, through its legal department and outside counsel, must vigorously defend against the claim.

Plaintiffs in many ways have the advantage of momentum when a lawsuit is filed. Capable plaintiff lawyers investigate the claim fully and prepare the complaint to initiate the lawsuit, motions, and other pleadings. They file the lawsuit on a date convenient for them and only after all claims and defenses they evaluate and prepare for.

The corporation, on the other hand, must respond quickly based on short and inflexible deadlines imposed by law and the court. Many times this causes enormous stress at the corporation as employees struggle to identify, gather, and distribute information to their attorneys.

The attorneys, of course, must quickly review and evaluate the voluminous information to defend against the lawsuit. Given all this, how should a corporation prepare for and deal with inevitable lawsuits?

BE PREPARED

With the flood of government regulations dealing with privacy, security, digital risk, financial reporting, and more, you must have a litigation response plan.

Corporations use formal plans to deal with many important matters. Imagine a corporation that functions without a business plan, marketing plan, disaster recovery plan, or ethics policy. You must add a litigation response plan to the list as an important tool to handle the defense of litigation.

Proactively formalizing the response process and strategies to litigation offers many advantages. You

can discover patterns and collect common information needed for most lawsuits. You can identify departments and employees that have documents and information relevant to lawsuits. With a plan, employees know their responsibility, the process, and deadlines. They work more efficiently, which helps to avoid unnecessary meetings and reduce costs. Having a plan in place can streamline the process and workflow to gather the evidence and information needed for the litigation. This helps the corporate attorneys get the documents and information more quickly so they can more effectively handle the case. Lastly, you meet deadlines imposed by law and the court, and avoid sanctions and regulatory fines.

WHAT IS THE LITIGATION RESPONSE PROCESS?

Before creating a litigation response plan, you have to analyze how the corporation currently responds to litigation. All lawsuits require the gathering of some type of information such as documents, e-mail, or other digital data. How do you do this at your company?

Let's look at a common example: A plaintiff files a "Request for Production of Documents." This is usually a lengthy document that lists numerous requests for documents or information. Typically, the corporation's attorney reviews the document and might refuse to comply with one or more of the requests because it is overbroad, vague, or not relevant. But eventually, the corporation must comply with some or all of the requests and the attorneys send the Request for Production of Documents to departments and employees within the corporation to ask for all documents, e-mail, and information pertinent to the requests. This is a daunting task!

EXECUTIVE SUMMARY

With the flood of government regulations dealing with privacy, security, digital risk, financial reporting, and more, you must have a litigation response plan. This article details the litigation response process so you can prepare for the inevitable.



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REQUEST NUMBER 1 (OF 91)

All documents and communications (including, but not limited to, home office, regional office, and national office) pertaining to treatment and services of plaintiff, including but not limited to:

All documents or communications of any employee of Corporation relating to any service of treatment or request of authorization of same;

All documents or communications from any employee of Corporation relating to the decision to approve or deny requests for authorization for treatment or services of plaintiff;

Any documents or communications between Corporation and plaintiff, or anyone acting on plaintiff's behalf;

Any documents or communications between Corporation and any third party concerning plaintiff;

All e-mail messages of any employee of Corporation regarding plaintiff's injury or treatment on or after October 22, 2001.

A Request for Production of Documents can be 100 pages long, with hundreds of separate request items. See the sidebar for an example of a single request in a Request for Production of Documents for a case in which an employee of a company is injured.

The example request shown in the sidebar, like most such requests, requires the search and review of paper files, e-mail, databases, and computer files (e.g., Word and Excel documents). This single request sets off a complex workflow to identify, collect, organize, and distribute information to corporate attorneys.

Among other things, this process requires you to decide which documents, e-mails and other information you have to gather; determine which department(s) or employee(s) in the company have the information; send requests to employees to submit needed documents; collect information from database servers, e-mail servers, and document files; and distribute collected information to the corporate attorneys.

Rather than wrestle with these decisions and processes each time a lawsuit is served, be proactive and take time to create a litigation response plan.

LITIGATION RESPONSE PLAN OVERVIEW

To create an effective litigation response plan, you must set out in great detail the people, protocol, workflow, and collaboration processes for responding to a request for information relating to litigation. The plan can improve accuracy in the collection of documents and information, and timeliness in providing the information to the attorneys. You should include the following essential information in the plan.

Lawyer contact information

Corporations must maintain up-to-date contact information with the names, addresses, phone and fax numbers, and e-mail addresses of all corporate legal department attorneys and outside counsel attorneys who handle litigation cases.

Litigation response team

Designate a litigation response team to review the Request for Production of Documents received from the attorneys. The team determines which documents and e-mail relate to each request, chooses which department(s) and employee(s) to contact to obtain the documents, and assigns timelines to complete collection of the documents and information. The

litigation response plan should include the names and contact information of each team member.

Document collectors

Of the 10,000 employees in your company, which employee has the document you need? Furthermore, which employee has the *version* of the document you require (e.g., the most recent version)?

The litigation response plan should identify which departments, employees, and groups of employees have access to certain types of documents and information. Employees responsible for collecting the document, e-mail, or computer file are referred to as document collectors. You will want to maintain a list of their contact information.

Lawsuit information

The following is some basic information you should collect about the legal case. Other details will be necessary depending on the type of case.

- Case name
- File number
- Case description
- Date of injury
- Attorneys' Request for Production due date
- Responsive document to attorney due date

Notes and history log

As information is requested from and provided by employees, you should maintain notes and a log to document which employees were asked for information, when the information was requested, and where the documents that have been collected are stored. Corporations usually have many legal cases pending, which makes it vital to store case notes in one place.

Task list

Much like notes, you should maintain all tasks relating to a case in one place. There are usually several people working on various issues related to litigation response. You should be able to review all tasks for the case as well as those items for which you are responsible.

Common document requests

If you review the last 20 Requests for Production your company has received, you will find a large number of items repeated in each case. Identify these items in the litigation response plan. You can maintain these documents in a central repository. There is no reason to waste an employee's time by asking for the same information over and over.

Document locations

Where is the document or information physically located in the company? Creating a topography map is helpful. Where are the file cabinets, file servers, database servers, e-mail servers, and backup tapes located? Your IT staff will likely have some useful information to add to this section of the plan.

Communication

It is important to know how you will contact the document collectors to provide the requested document (intra-company mail, e-mail, fax, phone calls, or intranet). You will want to standardize the method of communication so everyone has the same expectation regarding how document collectors request and send documents.

Timelines

When the attorneys send a Request for Production, or any request for information about a case, they will specify a due date for response. The litigation response plan should include guidelines for response deadlines, timelines, and reminder notifications. For example, say the attorneys

POLICY DEVELOPMENT

Figure 1: Tracking system—Put a system in place to facilitate the plan.

require the materials by July 1. An effective policy would state that document collectors are to provide all documents and information by June 15. If document collectors do not respond by June 7, they will receive a reminder e-mail.

Document tracking

How will you track the document collected for litigation? There should be a complete tracking system that includes a history log showing which documents have been requested by document collectors and produced

by document owners. With the log, you should be able to review documents by name, document type, and document owner quickly.

Workflow and collaboration

Tracking documents and information for litigation involves a system of complex workflow and collaboration. The plan should document the process of how document collectors are notified (e.g., e-mail, fax, phone calls, and intra-company mail), when they are notified (how soon after the request is received from the attorneys), and the deadline to produce the requested documents.

Reminder notifications

Missed litigation deadlines mean sanctions and regulatory fines. You can implement a ticker and reminder system to make sure documents are located, collected, and distributed to the attorneys in a timely manner. If documents are not produced by the due date, document collectors (and, optionally, their manager) should be notified with a reminder.

Central repository

The litigation response plan should specify where documents are stored after collection. In many corporations, collected documents are scattered among servers, folders, e-mail attachments, faxes, and CDs. A central repository is best, with all documents and information organized for easy review and distribution to the attorneys.

Distribution to the attorneys

The plan should specify how documents are distributed to the attorneys. Is it a "rolling" distribution, with documents sent immediately upon collection, or are all documents sent at once? Either way you do it, create a log entry noting when documents were sent, to whom and where they were sent.

Reporting and analysis

To manage cases, documents, attorneys, document collectors, and other tasks, you'll want to create daily, weekly, and monthly reports. These reports should include a list of corporate and outside counsel attorneys, open cases and due dates, documents ordered and received by case, "hot" cases that require special attention, and overdue tasks and other reports.

Reports are also useful for analysis and historical perspective. For example, you will be able to answer questions such as: Is the number of litigation cases increasing or decreasing over time? Is the average time to collect documents to respond to litigation getting shorter? How many cases are currently open?

TECHNOLOGY SOLUTIONS

After completing a litigation response plan, implement a system to follow the protocol set out in your plan. My company recently deployed a corporate legal department tracking system to manage cases, attorneys, document collection, tasks, and other items for one of its corporate clients (figure 1).

But remember: Before jumping into the implementation or execution phase, you first need the plan.

YOU CAN'T PREVENT THE INEVITABLE BUT YOU CAN PREPARE FOR IT

Take the time to prepare a litigation response plan. This will help you respond more efficiently and proactively to litigation. A plan will streamline the process of locating and tracking necessary documents, relieve your corporate employees of the stress of overwork, and help your corporate attorneys achieve better litigation results. **ADVISOR**

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