

eDiscovery Lessons from a Recent N.D. Cal. Order

The recent order in the Northern District of California by Judge Kang regarding search terms, requests for production, and interrogatories highlights a growing trend that no counsel should ignore: when parties don't cooperate on search terms, the court might make you.

Judge Peter Kang repeatedly expressed disappointment in both parties for their lack of cooperation and poor communication, underscoring the rising expectations for efficient eDiscovery practices.

This case study will break down key lessons from the case and provide actionable steps to help your team avoid similar mistakes.

Key Lessons

#1 Proportionality

One of the key issues in this case was the failure to properly narrow search terms, which led to excessive document hits. This isn't just about inconvenience, it's the significant cost of reviewing irrelevant data, missing deadlines, and delaying case progression.



Practical Tip: Your eDiscovery strategy should always aim for proportionality. Always refine search terms early in the discovery process. Leverage data analytics and technology to test search term performance before agreeing to them. This upfront effort can save thousands in review costs and speed up case timelines.

#2 Transparency: Judge Kang emphasized that the lack of transparency, particularly in providing hit count statistics, undermined productive discussions between the parties. Without transparency, trust breaks down, and meet-and-confer sessions lose their effectiveness.



Practical Tip: Make sharing data metrics, such as hit counts, part of your standard eDiscovery protocol. Set a precedent for openness with opposing counsel, ensuring all parties understand the scope of the discovery, and can collaboratively refine search terms.

#3 Proactive vs. Reactive: One of the biggest takeaways from this case is the importance of being proactive in eDiscovery. Waiting for issues to escalate before taking action is costly. Courts prefer to see disputes resolved outside their chambers.



Practical Tip: Develop a standard ESI protocol for eDiscovery that prioritizes proactive communication and problem-solving. Ensure that your team is well-versed in the latest eDiscovery technologies and strategies to quickly resolve issues internally. If you need technical expertise, don't hesitate to bring in an outside expert early in the process.

#4 Court Involvement: When courts step in to resolve discovery issues, it not only leads to public reprimands but also opens the door to sanctions, extended deadlines, and unnecessary costs, which can damage your firm's reputation.



Practical Tip: Schedule regular check-ins with opposing counsel and document all discovery negotiations. Having a clear paper trail shows the court that you've made every effort to resolve disputes without their intervention.

#5 Technology: This case also highlights the growing importance of technical expertise in resolving eDiscovery challenges. Tools like AI-powered search refinement, automated hit count reporting, and predictive coding can significantly reduce the scope of irrelevant data.



Practical Tip: Don't just rely on your legal team—partner with an eDiscovery provider that can offer advanced eDiscovery solutions. These tools not only save time but also help pinpoint the most relevant data quickly, reducing overall costs.

Conclusion

Whether you're an experienced legal team or just beginning to navigate eDiscovery, the lessons from this case are clear. By prioritizing proportionality, fostering transparency, and using the right tools, you can avoid costly mistakes and protect your firm from sanctions.