

Keeping Tasks Inside the Firewall

Fenwick's Electronic Information Management Group offers soup-to-nuts EDD services.

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Since it was founded in 1973, Fenwick & West has catered to clients in the high tech industry (an early job: incorporating a small computer company named Apple). In the late 1990s, Fenwick began ramping up its IT and project management processes, anticipating the changes that technology and, in particular, electronically stored information (ESI), would bring. A major goal was to create “a robust IT environment [that] efficiently and economically hosts all of the electronically stored information needed to handle a client matter,” says Robert Brownstone, the firm’s technology and e-discovery counsel and co-chair of its Electronic Information Management Group.

Fenwick’s EIM group is a self-sustaining practice group, with 20+ attorneys (five partners and 15+ associates/counsel) and 10 non-IT support professionals. EIM handles clients’ EDD “inside the firewall,” as the expression goes. It covers e-discovery and document review, as well as satellite issues such as privacy and security. The support staff includes a forensics investigator, and technical and scientific staff trained in networking, preservation, analysis, search, and review, he says.

The firm also has a separate Discovery Managed Review department (with five full-time staff attorneys) that works closely with EIM. The team periodically uses contract attorneys and support staff when demand exceeds the current capacity.

The EIM team also provides mandatory intensive training both for first-year litigators and litigation support staff. New associates, “are taught in litigation that they



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need to take ownership of the process,” says Brownstone, who teaches EDD at the University of San Francisco Law School.

Although the firm declined to discuss numbers, Brownstone says that Fenwick’s EIM is in the black. In addition to generating independent revenue, clients cite EIM’s services as a key factor in selecting Fenwick over other law firms, partly due to cost-saving ESI processing capabilities, he says. Like all practice groups, the yearly budget is “based on costs from previous years and projected demand based on anticipated growth and projected data volumes,” explains Brownstone.

Chief Technology Officer Matthew Kesner says EIM can process 100 TB of ESI a year — more than many commercial centers. Fenwick uses Lateral Data’s Viewpoint software as a primary tool. Brad Bonnington, project support manager, works closely with the vendor to

generate upgrades so the software “does everything we want,” says Kesner, a member of LTN’s Editorial Advisory Board.

EIM has built up and standardized its system on one soup-to-nuts platform for reviews of client data, adds Brownstone. “We rarely use another platform, except Concordance,” which is used for incoming data from opponents.

EIM was created in the aftermath of *Compuware v. IBM*, a 2002 bet-the-farm antitrust and infringement case. “Our client (plaintiff Compuware) needed all its budget for the case to go to our lawyer fees,” recalls Brownstone. “So the lead trial lawyer on our firm’s team asked Matt [Kesner] to have our IT department find a way to handle the millions of pages of e-documents being dumped on the plaintiff by IBM/Cravath,” said Brownstone, referring to defense counsel Cravath, Swain & Moore. “Scores of lawyers at our firm helped do the reviews in various repositories/platforms pulled together by the newly-formed practice support IT team.” The case settled in 2005 (IBM agreed to pay \$300+ million to Compuware) — and the EIM group was born.

Today, the majority of Fenwick’s EDD work takes place at its Mountain View, Calif., headquarters. The firm also has offices in San Francisco, Seattle, and Boise, Idaho. A key advantage to keeping EDD in-house is the ability to maintain focus on the case at hand, says Brownstone. Vendors “always say they’re malleable and flexible, but they’re not set up to handle that kind of culling down of data in a targeted way. We found it was more helpful to have this in-house and try to routinize it as much as possible.”

Fenwick views EDD as more than a necessary evil or something akin to data processing: “We’re always looking for ways to automate legal work, so that the clients don’t pay for anything they don’t value,” says Kesner. One change is coming: The firm is in the midst of changing its billing model due to client demand, says Kesner. It is testing a new model, where it will charge per gigabyte for processing, monthly hosting, and production. “We

have been billing by the hour. That doesn’t make comparisons to other e-discovery vendors easy,” he says. “We will still have some hourly charges for custom work but that will be at a greatly reduced hourly amount. With the new model we still expect to charge a fraction of most third-party vendors.”

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