

**BIA White Paper**  
*The Role of ISO 9000 in Document Review*

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September 2009

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### What is “Quality” in Document Review Services?

In manufacturing, “quality” means conformance to specifications. As a practical matter, this often means “sameness.” That is, all the parts need to meet the same physical specifications. A Quality<sup>1</sup> initiative ensures that the highest possible percentage will meet specifications.

That is the genesis of the well-known Six-Sigma methodology for measuring quality in manufacturing: “six-sigma” statistically means  $\pm 3$  standard deviations from the specified mean or nominal value. In simpler terms, it means that 99.99966% of the parts are within tolerance, a failure rate of only 0.00034%.

Document review is different from parts manufacturing in several important ways. Most obviously, the reviewer’s task is subjective. Potentially evidentiary documents are individual mysteries to the document reviewer – they could have no importance, or be the “smoking gun” that wins (or loses) the case. It is up to the reviewer to examine the document carefully, apply lead litigation counsel’s instructions to the document, and exercise professional judgment to “tag” the document into the applicable categories. The decision-making process is, to a certain extent, subjective: reasonable professionals can differ as to the “correct” way to tag a document.

Not just the tagging is subjective. The benchmark for determining whether a reviewer’s judgment is correct is equally subjective. The “quality” of a reviewer’s classification is not like the quality of a mechanical part, which is judged by objective comparison with quantitative specifications. Whether a reviewer has correctly identified a given document as responsive to a query depends on:

1. How lead litigation counsel for the producing party has chosen to interpret and respond to the adversary’s requests for production,
2. And possibly, the litigation strategy adopted for the case.

***The only benchmark for accuracy<sup>2</sup> of classification of a document set is whether the reviewers have assigned the classifications that lead counsel wants.<sup>3</sup>***

Given the inherent subjectivity of the benchmarks, how can one measure the “accuracy” of a document reviewer’s work? This is the fundamental question in defining Quality in document review – seeking “conformance to specification” in the results delivered. Here, “specification” means the lead counsel’s instructions under the discovery order(s). ***Thus, conformance to specification would mean accuracy in tagging documents according to counsel’s instructions.*** Obviously counsel cannot review an entire

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1 In this White Paper, “quality” (with a lower-case q) refers to the accuracy of document classification in the document review process. (Also see footnote 2 re “accuracy”.) “Quality”, with a capital Q, refers to methodologies and systems used to achieve high levels of accuracy. Thus, the “Quality Movement” refers to development of methodologies which, in turn, improve the quality of individual products or services.

2 More specifically, “accuracy” includes two different Information Retrieval measures: “precision” and “recall.” As applied to document review, “precision” measures how many of the documents the reviewers identify as responsive to a query are, in fact responsive. “Recall” measures how many of the responsive documents in the set searched have been identified by the reviewers. A document review achieves “accuracy,” and therefore “quality,” if it maximizes both recall and precision.

3 The ultimate authority as to “accuracy” of a review is lead litigation counsel and not the court, a magistrate or another “objective” party. This is because the purpose of the review is to assemble a production containing all of the documents **that counsel has decided, in exercise of his or her legal judgment, to produce.**

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document set, or even a statistically valid sample, to verify conformance. Some other method for measuring results against the benchmark is necessary.

This White Paper takes up these questions and provides specific answers that can be implemented in any document review. Finally, we establish the linkage between Quality and defensibility – the key factor in establishing reasonableness of any document review methodology.

### Does Quality Increase Value to Clients?

There are two questions to be asked regarding value:

1. Does quality, as defined, increase the value of a document review engagement?
2. Does a Quality Management System (QMS) increase the value of a document review engagement?

The answer to both questions is “Yes”, but for different reasons.

Developing a way to deliver high levels of precision and recall in document reviews is of the highest value to clients. As recently written in the ABA’s *Business Law Today*, “The consequences of document review errors can be very significant, including sanctions, or the finding of a waiver of privilege. These consequences, which will often dramatically change the outcome and tenor of a matter, can be minimized or avoided altogether with a thorough, organized, and well-thought out, strategy for document review.”<sup>4</sup> The same article further pointed out that document reviewers who are not subject to quality control management may commit errors at a rate in excess of 50%.

Putting a quality management system in place means that documents will be correctly identified to the greatest extent possible. Mistakes can be made, but the achievement of a generally high level of precision and recall can provide the efficiency and accuracy the client is seeking. This reduces the possibility that crucial documents will be missed, improperly produced, or improperly withheld.

On another level, the existence of a formal Quality Management System provides an additional benefit to clients: by implementing formal procedures in the tagging of documents and in reviewing them for errors, the client has a defensibility argument if some documents are found to be incorrectly tagged by mistake.

Clearly, mistakes happen. But the law demands reasonableness, not perfection. If mistakes happen despite the careful construction and implementation of a quality control system, a party may argue that it took reasonable steps to prevent error and its process may be held to be defensible. In the absence of reasonable processes, the party’s efforts may be found lacking and it may suffer serious consequences. See, e.g., *William A. Gross Const. Associates, Inc. v. American Manufacturers Mutual Ins. Co.*, slip op., No. 07 Civ. 10639 (LAK) (AJP) (S.D. N.Y., Mar. 19, 2009).<sup>5</sup>

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4 A. Prasad, K. Leffert, and S. Fulbright-Paxton, *Cutting to the “Document Review” Chase – Managing a Document Review in Litigation and Investigations*, 18 *Business Law Today* 2 (2008), <http://www.abanet.org/buslaw/blt/2008-11-12/prasad.shtml> (last visited Sept. 7, 2009) [hereinafter, “Cutting to the Chase”].

5 Of course, quality control cannot guarantee that a court will agree with counsel’s legal decision-making regarding what documents to produce or withhold. But it does help ensure that documents will not be withheld or produced by mistake, and that the methodology will be defensible.

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From this comes a very simple concept: **“Quality Equals Defensibility”**. By this, we mean Quality in the sense of the Quality movement, Quality Management Systems, Quality Methodologies, etc. – the “science” of Quality that has developed over the last 50 years. True, “quality” in its smaller meaning of accuracy is valuable. But when errors occur, defensibility of the process used in the document review becomes the key issue. Developing an integrated process, documenting it, following it, improving it, having it certified to formal standards – all these are the indicia of “Quality” in its larger meaning: a formal science of business processes and standards, created and followed to establish a repeatable process that gets the right results. When mistakes are made and the opposing side seeks sanction, your best – and perhaps only – defense is the Quality methodology that was used. Thus, Quality equals Defensibility.

### Ensuring Quality via Sampling by Trained QC Reviewers

Now, the hard part: how can quality, here meaning accuracy, be measured in an open-ended environment where all documents are different, each has a potential of evidentiary value *vel non*, and there is no “answer sheet”? Add in that “reasonable people can disagree” in their tagging judgments and most of us would consider that accuracy is not measurable. But we would be wrong. Though there is currently no standardized review methodology and no recognized way to measure review quality that does not mean that standards cannot be devised.

Faced with this issue one year ago, when establishing the Document Review Services division of Business Intelligence Associates, Inc., BIA developed an approach that satisfied all the above issues. Here it is in a nutshell:

1. The essence of the BIA quality control system is the second-level reviewer (“QC reviewer”). A QC reviewer is a qualified attorney with litigation, EDD and document review experience. The QC reviewer has had special training from the engagement manager regarding lead counsel’s instructions. QC reviewers remain in constant communication with the engagement manager and other QC reviewers, and receive lead counsel’s instructions regarding the developing meanings of various tagging categories, interpretations and issues regarding them. Typically, a QC reviewer will check the work of up to 10 document reviewers.
2. As a result of his or her training and experience, the QC reviewer’s judgment is assumed to be correct – i.e., consistent with that of lead counsel – unless there is reason for formal challenge.
3. Before starting a review, all reviewers (both first- and second-level) must be trained both generally in document review methods, and specifically in the tagging instructions (“the Client Protocol”) for the case at hand.
4. Tagging categories are established according to the Client Protocol, and the client decides what sampling levels would be used for various tagging categories. For example, Privilege may require 100% second-level review (“QC review”), while Non-Responsive documents involving Key Players may receive only 10% QC Review. (Sampling levels for tagging categories are agreed in advance with the client, based on counsel’s strategic priorities in the litigation.)
5. The document review platform automatically sends first-level reviewed documents to different directories, depending upon how they were tagged. QC Reviewers then perform a second-level review of documents in those directories, but **checking all tagging fields of each document**. In this way, *a selected sample of potentially problematic documents receives a full second review – not just a Yes/No check-off whether Privilege was correctly tagged.*

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6. The QC reviewer corrects any errors spotted in the second-level review. After completion, the reviewed document is judged as to the total number of errors and the maximum severity of errors. A score is then entered into the document for both “frequency” and “severity”.
  - a. To ensure consistency, formal standards have been set for scoring both measures.
  - b. Initially, these scores can be entered manually by the QC reviewer. Ideally, a software method should be established for automatic scoring of documents, to avoid issues of prejudice or favoritism.
7. BIA then developed a software database to report frequency and severity scores for all documents, reviewers and dates of the engagement.
8. BIA management uses this database application to see the accuracy of any or all reviewers, to see if there are meaningful patterns in the errors made, to search out the root cause of the errors and remediate them, and hopefully to reduce the engagement error rate.

BIA’s innovative approach allows for the individuality of the documents reviewed, allows for definitional variations between review engagements, and can even be used to see when errors may come from the QC reviewer – after all, errors may not always be the fault of the first-level reviewer.

### “Quality Equals Defensibility”

Much of the current EDD literature is concerned with the concept of “defensibility” – that is, the ability to defend the document review process when errors are found. The focus is on the reasonableness of the methods and processes by which tagging was done. Although courts have recognized that individual errors will occur from time to time when identifying, categorizing and producing massive numbers of documents, ***errors in the process*** are the typical basis of sanctions. Sanctions have ranged from monetary fines to adverse inference jury instructions, to summary judgment against the offending party. Defensibility is clearly a major issue to consider when planning a document review project.

Just as there is no recognized way of measuring accuracy in document review, there is no standard methodology for a reasonable, defensible, document review. BIA Document Review Services, in looking at the defensibility issue, decided that there were examples to follow in other industries. The need, we felt, was not to have a single EDD methodology to be applied to all engagements; that would be impossible given the wide variety of issues, documentary data, discovery orders, etc. What BIA did see, however, was that there was a highly developed Quality literature found in the manufacturing industries: the field of formal Quality Management. Here, there are international standards – in particular, the [ISO 9000](#)<sup>6</sup> family of Quality Management System standards. With ISO 9000, there is no single methodology proposed; rather, it defines a set of values, objectives and expectations that must be met by each company’s Quality Management System.

ISO 9000’s standards for quality management systems helped BIA apply its innovative quality control methods consistently and systematically, achieving:

- Demonstrably reasonable results;
- The highest level of document review quality; and

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<sup>6</sup> By reference to “ISO 9000”, this article refers to the entire ISO family of Quality standards – past, present and future. BIA has been certified under ISO 9001:2008; however, this article’s scope includes the prior ISO 9001:2000 and potential future versions. See International Organization for Standardization, *ISO 9000 essentials*, [http://www.iso.org/iso/iso\\_9000\\_essentials](http://www.iso.org/iso/iso_9000_essentials) (last visited Sept. 7, 2009).

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- A system that would be defensible in the face of any court challenge.

### What is Required in an ISO 9000-Certified Quality Management System?

Following are some of ISO 9000's higher-level requirements:

#### Requirements to Achieve Quality Performance:

- Establishing a Quality Environment
- Hiring the Right People
- Continuous Work Supervision
- Quality Control Processes & Procedures

#### Quality Management Principles:

- Customer focus
- Leadership
- Involvement of people
- Process approach
- System approach to management
- Continual improvement
- Factual approach to decision- making

#### Management Responsibility:

- Management Commitment
- Customer Focus
- Quality Policy
- Planning
- Responsibility, Authority and Communication
- Management Review

With these principles in place, ISO 9000 provides a highly developed and tested framework that can be applied to EDD projects. ISO 9000 and other methods<sup>7</sup> for improving product/service quality have been researched in depth,<sup>8</sup> and some have valuable lessons to offer the EDD Quality Management problem. BIA looked to find appropriate Quality methodologies designed to improve product/service quality. That is, we looked to the "Science of Quality". ISO 9000, which establishes the standards a Quality Management System must achieve, does not specify which methods to use. Once BIA developed its own, custom approach to document review Quality Management from the various Quality methods available, it then built a Quality Management System ("QMS") around these methods. This QMS is what was certified under the ISO 9001:2008 standard.

Thus, understanding that "Quality" refers to Quality Management methodologies, BIA affirms that "**Quality Equals Defensibility**". Those seeking a defensible EDD / document review strategy, one that

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<sup>7</sup> Including among others: Business Process Management, Service-Oriented Architecture, Theory of Constraints, Six Sigma, Lean Management, Lean Six-Sigma, etc.

<sup>8</sup> See "Aligning Business Process Management, Service-Oriented Architecture, and Lean Six Sigma for Real Business Results", IBM® Redguide™ publication, document #REDP-4447-00, March 16, 2009

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can hold up in court, should look to the science of Quality Management for answers. There is much to learn from past research in this field, and a number of specific lessons that can be used in Document Review Services. The Sedona Conference “Commentary on Achieving Quality in the E-Discovery Process” states, “this Commentary posits that **legal practice needs to incorporate the best thinking from other disciplines**, even if lawyers need to learn new techniques, and even if some of the “mystique” of legal work is left behind.”<sup>9</sup>

The idea of looking to formal Quality Management systems developed in other fields is not limited to BIA. In fact, the above-referenced document’s table of contents has only two content chapters – both reflecting the approaches set forth in this document. They are:

- Achieving Quality Through Project Management and Better Measurement
- Applying Quality Measures in E-Discovery

### Process-Driven Document Review

“With an organized and methodical approach for management of the document review process, communication between all key parties, and steps along the way to evaluate the efficiency and accuracy of the review, the document review process can be improved, and the risks to clients and counsel from errors in the document review process can be minimized.”<sup>10</sup>

The key to successful implementation of Quality methodologies is having “an organized and methodical approach for management of the document review process”. Essentially, this means having a process-driven approach: document review can no longer be informal, can no longer vary widely according to the manager or reviewer involved, and must be measurable. A process should be developed that is both “organized and methodical” according to The Sedona Conference. To benefit from the formal review, audit and certification of ISO 9000, it must also conform to the values set forth in the preceding section. Thus, the critical step is having a “process-driven” document review. That process must include not only the actual review of documents, but also the Corrective and Preventative Actions required by ISO 9000. If documents are not checked for errors, it is likely that sanctions could be imposed. Although the field of Quality Management is new to the legal field, it is well established in the manufacturing field. Many valuable lessons can be found in that literature.

One note about “process-driven” document reviews: if such an approach is established, it must be consistently followed. This poses organizational problems to two types of EDD vendors:

1. The document review “agency”, which hires part-time attorneys as available to staff projects; and
2. Traditional law firm organizational structures, where the guiding hand of the Partner often replaces the role of “an organized and methodical approach”.

To meet the requirements of ISO 9000, processes must be established not only for the document review phase, but also for other key phases that “empower” the document review. These include Management

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<sup>9</sup> See The Sedona Conference, *Commentary on Achieving Quality in the E-Discovery Process* (May 2009) [emphasis supplied], available at [http://www.thesedonaconference.org/dltForm?did=Achieving\\_Quality.pdf](http://www.thesedonaconference.org/dltForm?did=Achieving_Quality.pdf) (last visited Sept. 7, 2009).

<sup>10</sup> *Cutting to the Chase*, *supra*, note 4

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Responsibility, Hiring, Training, etc. – and all these processes must be measurable to ensure their level of performance and improvement over time. For some organizational structures, this may be hard to achieve. In particular, a document review “agency” which hires *ad hoc* personnel on a temporary basis, cannot provide in-depth training, both general and engagement-specific, that is required for on-going Quality improvement.

But at BIA, the Document Services Division was based from its very beginning on process-driven methodologies. With that foundation, it was far easier to implement appropriate Quality measures and corrective procedures than under a non-process driven structure.

### Summary: The Value of ISO 9000 Certification for Document Review Engagements

For clients seeking a Document Review Services vendor, ISO 9000 certification – and preferably under the more recent standard, ISO 9001:2008 – means that the vendor has a formal Quality Management System in place. This ensures that error-checking is done, that actual errors are corrected, and that preventative actions are put in place to help prevent similar errors in the future. This is the same approach for a human-services project as for manufacturing high-quality products.

In addition, the EDD vendor must measure their service accuracy, maintain records of same, and ensure that areas of weakness are addressed by management. This is central to the ISO concept of a Quality Management System.

Does ISO 9000 certification of a QMS guarantee that errors won't be made? No, and there is probably no method on Earth that achieve that goal. Law is a profession based upon human needs, definitions and frailties. There will always be errors – the question is whether the EDD vendor has established a reasonable system to deal with such errors constructively.

As a purchaser of EDD services, clients seeking the best Document Review Services would be well guided by looking for formal, independent proof that such procedures are in place. ISO 9000, with its well-established format, provides a foundation within which other, more specific Quality methodologies can be implemented. Although ISO 9000 is not required for such implementation, its presence ensures that such Quality-enhancing methods and processes are consistently followed.

With formal procedures in place, the meaning of “Quality Equals Defensibility” is clear to the client, to the EDD vendor, and to the courts. Adherence to these principles is likely to improve the accuracy of document review projects and provide a robust defense in the event of challenge by opposing parties. There is a solution to the EDD / Document Review issue of Quality Management, and clients are well advised to protect their interests by seeking EDD vendors with a formal Quality Management System. This gives the client the best chance of ensuring:

- That the documents it wants to see will be found;
- That those it wants to be produced will be produced;
- That those it wants to withhold under Privilege will be withheld; and
- That the entire process will be able to withstand any legal challenge that may arise.