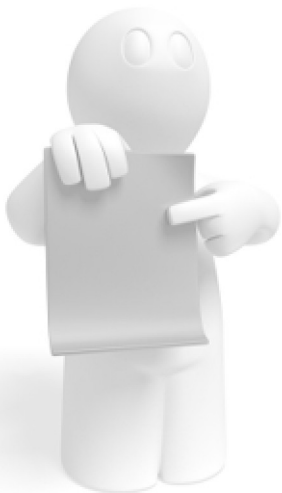




MANAGING LITIGATION AND WORK-PRODUCT DOCUMENTS:

Are two document systems really needed?



*JUST THE FACTS
MASTERFILE'S WHITE PAPERS*

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CONTENTS

The problem and the conventional solution	3
Can document management and litigation support be combined into one system?	4
Should evidentiary documents be kept with work-product?	5
The benefits of using one technology for both evidentiary and work-product documents	6
Summary	8

Legal offices are document factories -- they take documents in as raw materials and produce documents as finished products. In this article we're going to look at the rationale and benefits behind one of MasterFile's key design innovations: a single document repository for both evidentiary and work-product documents.

"We now use MasterFile for every file we open, whether the file is a litigation file or a transaction file. ... MasterFile has exceeded all of our expectations. ... We would strongly recommend that any law firm – large or small, litigation or transaction oriented – consider MasterFile for their document management needs." – Nicholas Davies

THE PROBLEM AND THE CONVENTIONAL SOLUTION

The 2002 BTI Consulting Group, Inc. study of corporate counsel identified the following as the top 4 functions and activities clients valued in their counsels' information systems:

- Litigation Documentation.
- Case Management.
- Document Management.
- Comprehensive search capabilities.

Note that 3 of the 4 are document related, and, in particular, two document types were identified: litigation documents and work-product documents (i.e. document management).

Now, conventional wisdom, and technology, suggests you manage both types of documents separately with two separate and costly systems:

- a litigation support system to manage evidentiary documents, and
- a document management system to manage work-product and work in progress.

Two systems will require you to install, configure, secure, support, maintain, train and upgrade 3 or 4 separate technologies for each system:

- a database technology,
- file servers,
- workstation software and
- a special "Internet option" for mobile users (i.e. working from home, for example)

all of which dramatically increases costs and complexity for both end-users and technical staff. Furthermore, leading document management and litigation support systems have not been integrated to work together.

And when you've finished installing these two stand-alone systems, think about item 4 listed above: "Comprehensive search capabilities". Imagine the following scenario:

You reviewed one of your client's documents stored in your litigation support system, had some questions and wrote to your client. However, your letter is stored in the document management system. When your client replied, they answered your questions, but also asked you to update the status of the case, advised you of changes in strategy they felt were needed, and also raised some other administrative issues.

A week later when you're coming back to the issue, here are the problems:

- You need to locate the original documents in your litigation support system.
- You need to locate your letter in your document management system.

You need to locate your client's reply -- where was it stored? In the in the document management system or in the litigation support system? Both? The reply to your questions gave you critical new evidence that should be in your litigation support system but the rest of the letter was not evidentiary in nature.

Clearly something is wrong. Having two systems just to deal with documents simply does not make any sense.

CAN DOCUMENT MANAGEMENT AND LITIGATION SUPPORT BE COMBINED INTO ONE SYSTEM?

At MasterFile we took a fresh look at both litigation support systems and document management systems. We wondered why should organizations incur all the associated costs of acquisition, installation, support, securing, maintenance, upgrading and training of two major systems just for documents. Could one system be sufficient?

To a large extent both litigation support and document management systems were very similar, as we might expect since both are "document systems". For example, both let you:

- profile documents with information such as document type, author, recipient, document date and a summary description,
- classify the documents by their matter or issue,
- index the documents' contents so you can search the database to locate what you need,
- be able work on your documents when you're away from the office,
- bulk load existing documents, and
- secure documents to limit access and help preserve confidentiality.

The differences between the systems lie in the type types of documents the systems manage:

- **Static, unchanging documents received from third parties (evidence)** -- Litigation support systems help you search, sort and sift hundreds of thousands of evidentiary documents -- static, unchanging documents received from third parties. They may come either in dozens of native file formats or as paper documents that need to be scanned and OCR'd so they can be searched by content to cull passages of key evidence.
- **Documents created and revised by your organization (work product)** -- Document management (DM) systems are designed to control work product created by your organization -- documents which undergo changes and revision. Unlike conventional litigation support systems, which traditionally store or convert documents in TIFF or PDF format, DM systems store in native format so they can be edited and revised.

Documents are controlled by the DM system so they are not scattered haphazardly in workstation or server directories, flash drives, etc. In addition, DM systems let you store draft versions as well as permit check-in/check-out of documents to allow a user to have exclusive access while they edit them.

It was clear to us that these differences were very slight and the two systems could be merged into one without any loss of functionality.

SHOULD EVIDENTIARY DOCUMENTS BE KEPT WITH WORK-PRODUCT?

Now some may argue work product documents and evidentiary documents should be kept separate -- mainly because until now, existing technology left no other option. However, there are many advantages and logical reasons to keeping these documents together. For example:

Very often pleadings, work-product and correspondence between opposing counsel becomes evidence itself for motions and applications, or contains admissions and/or stipulations blurring the line between "evidence" and "other" documents, as in the example above.

Primary evidence is often used with current correspondence, affidavits, etc. used for pleadings so keeping all documents together is conceptually less taxing for end-users as it's one less issue they have to be concerned with when they're under pressure.

Nevertheless, if you prefer to keep evidentiary and work-product documents separate, MasterFile gives you that option too: simply set up two MasterFile databases for each case file, and still retain the cost, training, support and other benefits described below from using one technology and one system in your organization. For further discussion on this issue see our following article: "*The*

pros and cons of keeping evidentiary and work product documents together vs keeping them separate."

THE BENEFITS OF USING ONE TECHNOLOGY FOR BOTH EVIDENTIARY AND WORK-PRODUCT DOCUMENTS

At MasterFile we've developed the first and only document repository that uses one technology for both litigation and work product documents, which not only eliminated the problems listed above and slashed costs, but in fact brought many new synergistic benefits. For example:

- One technology eliminates the cost and headache of purchasing, installing, training, supporting, securing, backing-up, maintaining and upgrading multiple software, database and replication technologies.
- One technology means everything works the same way, dramatically reducing training requirements (For example, MasterFile's novel bulk loading tools are used for both evidentiary and work product documents). In fact you'll find MasterFile works just like your e-mail system so you and your team will be up and running in an hour.
- MasterFile's single-file-per-case design lets you incrementally expand its use within your organization, for either litigation support or work product document management, or both, without disrupting your technology infrastructure or current practices. You can simply start with key evidentiary and/or work-product documents from one client/matter file and one user and then scale to hundreds of files and users and more.
- MasterFile's robust, scalable repository eliminates complicated, conventional DM systems -- which require extensive technical expertise to set-up on workstations, file and database servers.
- MasterFile's repository also eliminates the headache of linking to document files stored on server or workstation directories and ensuring the database server and the document files linked to it were both in synch -- a real problem after a recovery from a backup due to a crash, for example.
- MasterFile's repository uses a unique "document-centric" design that not only automatically stores documents in their native format but also, using the included PDF print driver or optional OCR/PDF Evidence Cruncher, lets you convert and store documents in PDF format as well; that is, MasterFile can store the documents in both native and PDF format.
- MasterFile's unique views automatically keep both your evidence and work product categorized for ready reference by date, author, issue, document type, etc. so when you need to find documents, it doesn't get any simpler: pinpoint any document with just two or three mouse clicks -- you'll see at a glance

what's important in any document.

Searching becomes rapid browsing, constantly refreshing your memory with related information.

- Evidentiary documents, work product documents, notes and comments, facts, extracts, current correspondence, faxes, reports, pleadings, affidavits, court orders, transcripts, authorities, research, photographs, audio/video segments, etc. are all stored and full text indexed in one system so one search finds everything.
- A purpose built Extract Repository allows you to extract key information from work product, not just evidentiary documents, so critical paragraphs in affidavits, contracts, etc. can be seen at a glance, saving hours of rereading.
- Exclusive doc-link technology provides one simple technology for descriptive, one-click, hyper-link references to documents, extracts and facts. Doc-links eliminate spaghetti-like "evidence links" scattered and hidden throughout the database and they also eliminate "short names" for hundreds or thousands of documents or extracts -- a memory taxing exercise at best.
- Integration with e-mail let users collaborate and share evidentiary and work-product documents, extracts and facts via doc-links into the database so information stays confidential and secure, even over e-mail.
- Full, unrestricted, secure support for disconnected mobile users, branch offices, co-counsel, clients or war rooms connecting via the Internet, lets all users work on any evidentiary or work-product document even when disconnected.
- Robust and efficient bi-directional synchronization with all team members -- you update head office and head office updates you with one simple, easy to use technology.

MasterFile's robust, scalable, single-file-per-case repository stores everything -- profile information, documents, extracts, facts, work product, argument, notes, commentary, etc. -- in one Notes database file, simplifying backup and recovery, security, and mobile user support. It's the same technology that proves itself everyday with 145,000,000 users. Technology that's reliable and secure enough to be used as part of the US Navy's global classified network which connects every Navy ship in the world.

SUMMARY

Conventional wisdom suggests evidentiary and work-product documents should be managed by two different document systems. However, the differences between the systems are minimal and both types of documents can be managed by one system, slashing support requirements, costs, user training, etc. Furthermore, one system eliminates the confusion and headaches of having case information and documents split over two systems.

MasterFile is the first and only legal document system that manages and stores both static, evidentiary documents received by a law firm as well as work-product documents created by the law firm itself and finally lets lawyers and litigators have a comprehensive repository and view of an entire case or matter.



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