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Montgomery County Paralegal Association*

April 2019

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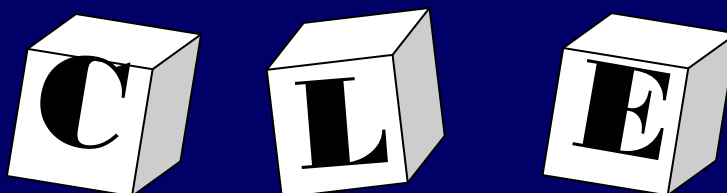
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Mcalkins@millerturetsky.com

MAY



EMPLOYMENT LAW

Monday, May 13, 2019 at 6:00 pm

Presented by:

Michael J. Torchia, Esquire

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Approved for 1.5(S) CLE by NFPA and Keystone Alliance

NEWS & ANNOUNCEMENTS

NEW MEMBERS THIS MONTH:

Donet Taylor, Law Office of Stacey O'Donnell
Brittany Bucsok, Student, Lansdale School of Business

Volunteers

Volunteering is an altruistic activity where an individual or group provides services for no financial or social gain "to benefit another person, group or organization".

MCPA would not be the organization it is today without its volunteers. Volunteers are how MCPA is able to hold its CLE events for no or a nominal charge.

MCPA is always looking for those members who want to be part of the organization by volunteering. Please contact President, Nancy Piechota at npiechota@mansionprior.com for more information about how you can volunteer to make a difference!



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CAUSES OF INADVERTENT DISCLOSURE OF PRIVILEGED DOCUMENTS AND STRATEGIES FOR PROTECTING PRIVILEGED DOCUMENTS

PART I OF A III PART SERIES

Submitted by TASA

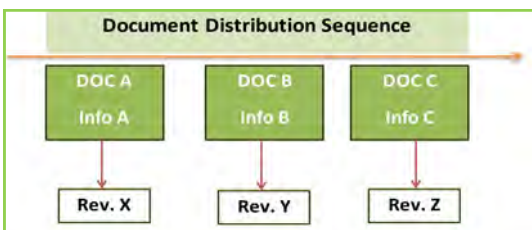
There is an inherent difficulty in keeping privileged documents and especially work product in e-discovery. This problem can cause the most serious damages to litigants, and consequences including anything from direct loss of cases to protracted procedural complications are reflected in a large number of cases. Each time when a privileged document is leaked, there is no real remedy. Clawing-back documents gives the producing party only a right to stop the receiving party from using the leaked documents directly. However, nothing can stop the receiving party from collecting information from other sources to strengthen its case by using the leaked documents as road maps. One should expect that the receiving party will keep copies of leaked documents for reference and may use them to cross-check anything affecting its case. Therefore, this problem must be addressed seriously. I will discuss what the main cause for the frequent leaking of privileged documents.

A Foundational Problem in the E-discovery Review Model

An inherent flaw in the network-based document review model is mainly responsible for leaking of privileged documents. This problem has existed since the start of using the network-based review model. Reviewing a pile of documents by attorneys in an offer is different from reviewing documents over the internet. The document allocation affects how documents are reviewed. This review industry has used the network-based document review model without examining its problems.

1. The network-based review model

When many reviewers review documents using a server and multiple client computers, documents are assigned to different reviewers in batches. Since different documents carry different kinds of information, the reviewers acquire different parts of the case knowledge. Therefore, they will understand the same documents in different ways, depending upon what they happen to know.



Assuming that three information units A, B, and C carried in documents A, B, C are assigned to three reviewers X, Y, and Z, the three reviewers acquire different pieces of information and thus will make fatal errors, as shown below:

If Info A is essential for understanding info B in Document B, reviewer Y will make a mistake in coding for the document B. For

example, if Info B indicates an email of John Doe with unknown identity, Info A is an agreement showing that John Doe is an attorney for the client. Reviewer Y will make a mistake in coding for privilege because he could not access Info A. There is an unlimited number of this kind of information-information interactions in the real world. Sometimes, knowledge required for correctly coding a document may be found in multiple documents.

In business documents, nearly all names, product names, transaction names, facts and legal issues are mentioned without providing details of their legal significance. The details often appear in one or more other documents which might be non-responsive. Therefore, reviewers have to make guesses and often make wrong guesses.

CONTINUED

CAUSES OF INADVERTENT DISCLOSURE OF PRIVILEGED DOCUMENTS AND STRATEGIES FOR PROTECTING PRIVILEGED DOCUMENTS

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2. Problems Shown in an Exemplar Document

Corporate documents are not written with sufficient details to allow outsiders to understand. Documents are written for people who understand business, company history, people, products, and events. This can be shown in an exemplar document containing one statement: “Dear Jack, I have just signed the agreement. I will give you a copy when I get their signatures.”



How to understand this document? One cannot fully understand it even though every word is **generally understood**. “A word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the **time in which it is used.**” Justice Oliver Wendell Holmes Jr., *Towne v. Eisner*, 245 U.S. 418, 425 (1918).

This document cannot be accurately coded. The reviewer must make arbitrary assumptions about the agreement, the recipient, and the signers (all of those pieces of information are not provided). The same document may be a piece of junk email if the agreement is a house contract sent to a family member; the document reflects a civil violation if the agreement is an antitrust agreement sent to a partner; the document would reveal a criminal act if the agreement concerns a criminal act. A document may contain one to several terms, and even tens to hundreds of terms that are susceptible to different interpretations. Misunderstanding of many terms will not necessarily result in a coding error; however, misunderstanding one or a few critical terms may result in fatal mistakes. Due to an overwhelmingly large number of instances

involving interpretation uncertainty, the total number of fatal errors is still very common. That is why the work products of human document reviewers are “full of human errors.”

3. Review Model Uses Resources to Achieve Bad Ends

The model flaw is responsible for massive duplicate tasks. If the review project has T facts or concepts that must be correctly understood by N reviewers, each of the reviewers have to repeat the same task to understand each of the T facts or concepts. In other words, each task is repeated by N times. The total number of tasks is $N \times M$ while it should be T tasks. In other words, the current review model wastes N-1 times efforts. If the document review lasts a long period of time, each reviewer might have to do duplicate works even for an identical task because the reviewer uses his knowledge at different times. Since the reviewer's knowledge changes by reading documents and acquiring case facts, the reviewer may make different decisions. The reviewer might repeat an identical task on the first day, the tenth day, and the fifteenth day. The reviewer might code for an identical issue differently due to changed knowledge and/or changes in memory.

This duplicate work process does not help the client in any way because it inevitably results in a massive number of conflicting coding decisions. Similar documents are often coded as both responsive and non-responsive; similar documents may be coded as both privileged and non-privileged; similar substances may be coded for redaction or for releasing. One reason for making a massive number of conflicting coding decisions is that most business documents contain large numbers of terms, persons, transactions, legal issues, background, and related events without

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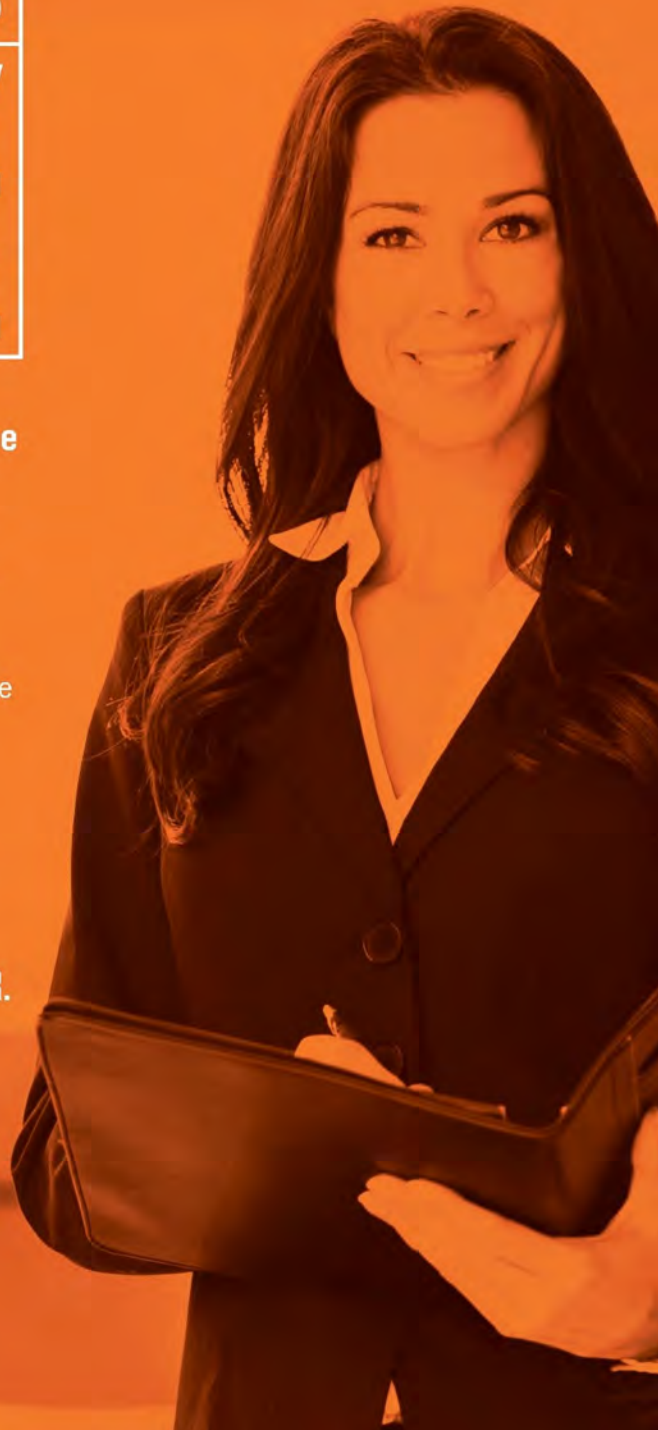
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CAUSES OF INADVERTENT DISCLOSURE OF PRIVILEGED DOCUMENTS AND STRATEGIES FOR PROTECTING PRIVILEGED DOCUMENTS CONTINUED

details and documents reviewers are not intended readers who can understand every term in documents. Document reviewers must make a guess whenever they cannot access details. That is what I call “coding documents by guessing.”

4. Reviewers Cannot Identify Many Kinds of Privileged Documents



Frequent guesses in reviewing documents is the root cause of all sources of coding errors and inconsistencies. Naturally, it is impossible for all reviewers to accurately determine (1) work-product that does not

include proper privilege stamps or contain incredible privilege stamps, (2) privileged communications without showing any attorney names, (3) improperly marked privileged documents which are concerned with innocent and “trivial” subject matters, (4) privileged documents showing confusing, undisclosed, or incredible attorney names, (5) privileged documents showing recipients that appear to be privilege-breakers, (6) improperly marked privileged documents that have been found in ordinary files, (7) improperly marked privileged communications that have been sent to business partners and agencies whose identities are unknown, unclear, or confusing to reviewers, and (8) work products such as raw test data, factual reports, and case analysis reports which have been prepared by employees acting on behalf of undisclosed counsel.

The biggest risks are reviewers' inability to recognize the client's sensitive and non-relevant information. Under the review model, the reviewers are unable to determine trade secrets, sensitive business data, customer information, and harmful information that could be used by other persons or entities to harm the client business. Such information can leak out by one or several pieces, which can be combined to gain full meaning by those who have special knowledge.

The current review model has a self-degrading feature that review accuracy degrades as the review progresses. Document context deficiency inevitably becomes worse and worse, as reviewers removed more and more non-responsive documents from the review pool. Subsequent review, second-level review, third-level review, and high-level quality review often are conducted in a review context being worse than in the first review. The tenth-round of review could be done with higher risk of errors than the first pass review because the first-pass reviewers are in a position to see more helpful information. It is not strange that a review decision is changed back and forth with no predictable improvement. This also causes a huge waste: a law firm may conduct ten rounds of review, the coding performance in the tenth round may be worse than that in the first review while the intermediate reviews keep flipping coding decisions.

PART II OF THE III PART SERIES WILL APPEAR IN THE NEXT NEWSLETTER.

STAY TUNED!



Saturday, May 18, 2019
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Needed are experts, attorneys, law students, paralegals, paralegal students, notaries and witnesses.

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HIGHLIGHTS FROM THE APRIL BOARD OF DIRECTORS MEETING

The MCPA Board of Directors met on April 2, 2019 at the offices of Mannion Prior, LLP located in King of Prussia. Items discussed were:

- ♦ *The Board will be looking into allowing online payments through the website for the MCPA events that require advanced fees.*
- ♦ *A Survey will be sent to members for input regarding the upcoming Gala and future CLE events. We are hopeful for a great response from members.*
- ♦ *Tracey Barnes will follow up with the Bucks County Paralegal Club regarding the upcoming luncheon event on April 25th. Additional volunteers are welcome to attend to share your experiences and stories with students.*
- ♦ *MCPA has agreed to meet with Peirce College students, individually (in person or via phone) to share experiences and advice. Volunteers are needed to offer this great mentoring opportunity.*

All members are invited to attend board meetings to express their opinions about issues affecting the Association. Meetings are held at Mannion Prior, LLP. Mannion Prior, LLP, 840 First Avenue Suite 100, King of Prussia the first Tuesday of each month. For more information, contact Nancy Piechota at NPiechota@mannionprior.com.

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*If your Credential expires in April or May **NOW** is the time to submit your renewal application and proof of CLE.*

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MCPA BOARD OF DIRECTORS' MEETINGS

Board of Directors: A board of directors is a recognized group of people who jointly oversee the activities of an organization, which can be either a for-profit business, nonprofit organization, or a government agency.

Did you know that Board meetings are open to all MCPA member? That's right, anyone can come and see what the Board is discussing and voting on. You are encouraged to attend a board meeting to express your opinion about issues affecting the Association.

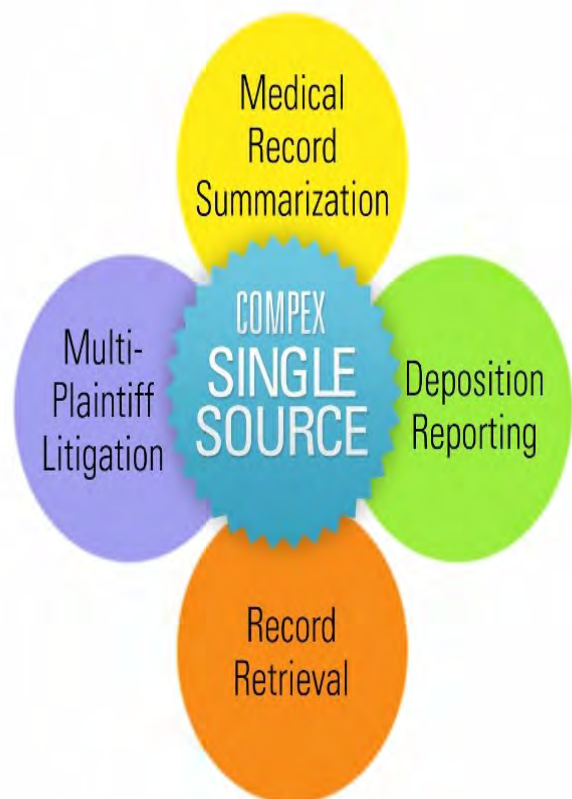
Meetings are usually held on the first Tuesday of each month at Mannion Prior, LLP. Mannion Prior, LLP, 840 First Avenue, Suite 100, King of Prussia.

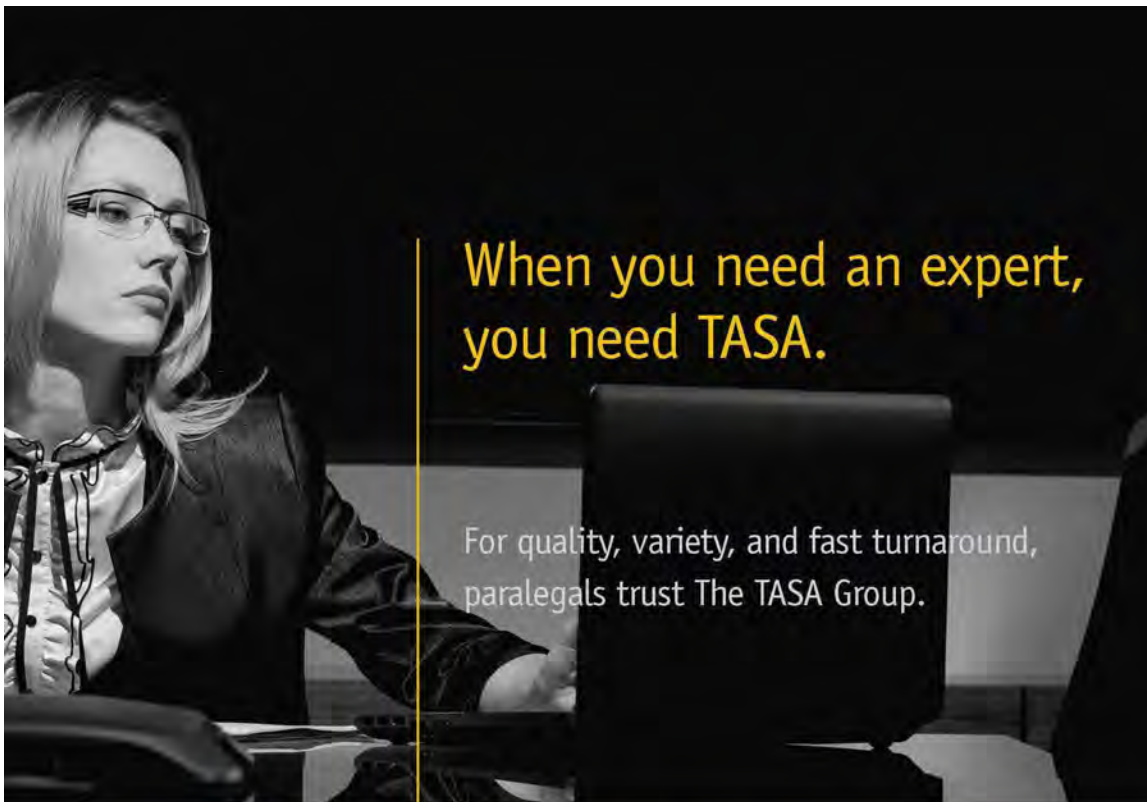
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Nancy is a Paralegal at the law firm of Mannion Prior, LLP in King of Prussia. Nancy also sits on the Board of Directors and also serves as Chair of the Marketing Committee. She lives in Berks County with her husband, Joe and rescue dogs.

***Kelly Lightcap, Pa.C.P. —Vice President***

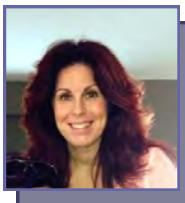
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Kelly is a Paralegal at the law firm of Bennett, Bricklin & Saltzburg LLC in its Blue Bell office. She currently serves as the Association Vice President having served as its Treasurer since 2013. She lives in Phoenixville with her husband and cat, Emmett J.

***Christopher Gregg—Treasurer***

Kane, Pugh, Knoell, Troy & Kramer
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cgregg@kanepugh.com

Chris works for the law firm, Kane, Pugh, Knoell, Troy & Kramer as a Paralegal. He has been an active board member for the past 3 years and serves as its Social Media Committee Chair. Chris was born and raised in Willow Grove and still resides there with his family and their dachshund Queenie.

***Jen Kuemmerle, CRP, Pa.C.P.—Secretary***

Luther Woods Nursing & Rehabilitation Center
(215) 675-5005
jekuemmerle@gmail.com

Jen is the Vice President of Finance at The Luther Woods Nursing & Rehabilitation located in Hatboro. She has served on the Association's Board of Directors and was recently elected to serve as its Secretary. She lives in Hatboro with her husband and two children.

BOARD OF DIRECTORS

Noreen Messmer, Pa. C.P.
(2017 - 2019)



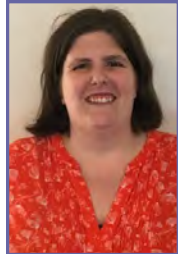
Noreen is a Paralegal with the law firm of Ford & Buckman, P.C. in Blue Bell and has worked with Sarah Ford, Esquire for over 40 years. She has been a Board member since 2010 and also serves on the Hospitality/Planning Committee. Noreen lives in Blue Bell and is the mother of three and Nana to three granddaughters.

Shari Weber Bradley, Pa. C.P.
(2016 - 2018)



Shari works at the firm at Sattin and Rona, LLC. A long time member of MCPA, she currently serves on the Board and is the Webmaster. Shari lives in Eagleville with her husband and has two grown sons and three grown stepsons.

Dana Jorna, Pa. C.P.
(2018 - 2020)



Dana has been an active member since 2013. Dana assists in the areas of Civil Defense Litigation, Medical Malpractice, Legal Malpractice and Personal Injury defense at the Kane Pugh Knoell Troy & Kramer, LLP law firm since 2013.

Tracey L. Barnes, RP, Pa.C.P.
(2019 - 2021)



Tracey is an Estates Administration and Estate Planning Paralegal at the law firm of Dischell, Bartle & Dooley, PC. She attended Penn State University, completing the Paralegal Certificate Program in the Summer of 1992 and took the Paralegal Advanced Competency Exam, receiving her RP (PACE Registered Paralegal) credential in 2000. In 2008, she received her Pa.C.P. certification through the Keystone Alliance of Paralegal Associations and is currently its Credentialing Chair. She has been a member of the Montgomery County Paralegal Association since its inception in 1999 and has been a Board Member, Secretary, Treasurer and President. In 2017, she was appointed as the CLE-Associations Co-Coordinator for the National Federation of Paralegal Associations (NFPA).

COMMITTEE CHAIRS

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