

## Tracking Documents in Litigation

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Keeping track of documents is the bane of most litigators' existence. It's dry, boring, impersonal work which most of us hate.

But tracking documents is one of those tasks that can make or break a case. While you may not win your case with a good document system, you almost surely will lose without one.

I'm not talking here just about finding your "smoking gun." I mean finding notes of an interview with witness Steve Jones from 1997. I mean grabbing in seconds your client's medical records from an EKG by Dr. Smith on November 5, 2000. I mean knowing how to lay your hands quickly on printouts of e-mail between human resources and a department manager regarding another worker for the month of April 2001.

For 10 years I was a solo practitioner in North Carolina, and am now the litigator in a three-lawyer firm in Texas. When I started practicing, I could keep all the documents for each case in a small folder. But as my practice grew, and my cases became more complex, the paper in each case multiplied. I knew I needed a better system than stuffing documents in folders, no matter how well labeled.

I looked around, got advice from colleagues, and tried different approaches. I settled on a process which incorporates high-tech and low-tech solutions. The best part of the system: It costs less \$30. But just because the system is cheap doesn't mean it's easy. It's not. But it certainly is easier than spending the night before trial maddeningly searching for a document you didn't think you'd need, but which you know you have, and you know you produced in discovery, but can't now find.

My system uses software you already have – a word processor – and a \$27.99 "wheel-numbering stamper." That's it.

### First Things First

There are some basic questions you need to answer before setting up a document-tracking system, often called Bates numbering. They include:

- What information do you need from each document?
- Who will track the documents?
- Do multiple people need access to documents and the tracking system?
- Will you track all documents, or only discovery? Discovery in and out?
- Do you need to track privileged documents withheld from discovery?
- Can you invest in software to keep track of documents?
- Are other counsel using tracking numbers (such as Bates numbering), and will you use the same system?

This article is for those who can't spend, or don't want to spend, thousands of dollars on the cream-of-the-crop document management tools. I would love to buy a program like Summation. But it's just not in the budget.

First, look at what you want to track. If you need to track every document, privileged documents, fact information in documents, etc., then my system isn't for you. You need a database program, such as Summation. Or, integrate my system with CaseMap from CaseSoft, [www.casesoft.com](http://www.casesoft.com). This \$495 program is a database designed for litigators. It links facts, sources of facts, documents, and issues. I find it indispensable. But I use it with my document system, not in place of it.

Second, decide who should do the work. Attorneys usually try to push the drudgery of reviewing stacks of documents onto a junior associate, paralegal, or secretary. My advice: Don't. It's the kiss of death. I believe the attorney primarily responsible for a case should review every document that comes and goes. I know that's impractical in some really big cases, but in most litigation – up to 10,000 pages – there's no substitute for the attorney looking at a piece of paper and deciding if the paper is important or not. You never know when a paralegal will get sick, or an associate will leave. That doesn't mean the attorney has to do all the tracking work, only that the attorney looks at all the paper.

Third, decide what you'll track. Do you need to keep up with all documents in a case, including discovery, pleadings, non-discovery documents, etc.? Letters? Photographs? Interview notes?

Fourth, what kind of numbering system will you use, and how will you use it? Some litigators scan all their documents, use an automated computer numbering program, and then print out new copies of documents with numbers printed automatically. Others print tiny labels which they stick on a corner of every document.

I don't like the computer numbering, because it takes time to scan everything, you can't control where the number appears on a document, and the number may cover something important. As to labels, they are time consuming to print and stick on each page. Plus, I always get a chuckle when I see someone who uses the label system, and all his folders seem to "bow out" at the documents' lower right corner, where the labels are affixed.

Finally, decide what numbering system you want to use. I took the numbering system my \$27.99 stamper used – 6 digits, starting at 000001. If you want to use letter to identify producing parties, etc., my system won't work.

## **The System**

Here's what I do. I'm not saying it's the only way, or the best way. But it works for me.

I only number discovery, what goes in and out. I don't track non-discovery documents using document page numbers; those, I put in folders and track in CaseMap. Why don't I track everything? Because I have two purposes for numbering: 1) To identify whether and when a document was produced; and 2) To locate discovery documents. This system does both. And I figure that most everything relevant eventually will be produced in discovery.

At the beginning of a case, I have my secretary start a WordPerfect file called, for example, "Smith Bates Numbers." If I respond to requests to produce, the first page of my first response is numbered "000001." If the responses are five pages long, and there are 50 pages of documents attached, the last number is 000055.

Before the discovery responses go out, I print off a final version and attach all the documents. My secretary then stamps every page using the wheel number stamper, which automatically inks and advances one number per page stamped. The secretary copies the discovery, sends it out with numbers stamped on each page, and returns a copy to me. I then dictate the following, which she puts in this format in the WordPerfect "Smith Bates Numbers" files:

000001-000055, Plf's First Responses to Def's First Requests to Produce  
000001 - 000005, written responses  
000006 - 000022, Dr. Jones records, 12-21-98 through 1-13-99  
000023 - 000055, Bills from Memorial Hospital, 12-21-98 through 1-13-99

When opposing counsel responds to my discovery, the secretary first stamps each page. She gives the responses to me, and I dictate the following:

000056-000122, Def's First Responses to Plf's First Requests to Produce  
000056-000062, written responses  
000063-000098, 2-1-01 expert report of Dr. Henry  
000099-000110, CV of Dr. Henry  
000111-000122, 1999 tax return

While dictating the contents of the responses, I also examine the documents for content and completeness. I mark which documents I want copied and kept separately in a folder for later use, put in CaseMap or another litigation database, or what I want scanned into the computer.

Once the documents are stamped and entered into the numbering file, all documents (including discovery responses) are put in one or more boxes in numerical order. Copies of important documents, or sets of documents, also are put in separate folders by topic.

One benefit of this system is that my numbers become the standard for both sides. It never fails that, at summary judgment hearings, opposing counsel refers to my numbers when identifying documents.

### **Why This System**

The benefits of my system are:

1. It's cheap.
2. It's easy to use.
3. It's easy to understand.

4. It tracks all discovery, so when opposing counsel says they never got a document, I can pull out my list and show where it was sent, and pull out the Bates-stamped paper. Or, I can send opposing counsel a letter citing the specific page numbers where responsive documents were produced.
5. It can be searched. If I later need to find Dr. Jones' 12-26-98 notes, I just search for "Jones," and I find the entry for his 12-21-98 through 1-13-99 records.
6. It's accessible. Because we keep the tracking file on a shared network drive, anyone can access it. My secretary can find a document as easily as I can.
7. Because it uses an inexpensive wheel numbering stamp, available at Office Depot and elsewhere, you don't have to worry about technology breaking down.

The drawbacks of my system are:

1. It's lawyer intensive.
2. It's boring (but no more boring than any other system).
3. It still requires paper files and going to a file box to retrieve a document.
4. It can take time to find the ending point of a set of documents, such as medical records.
5. Documents from a single person or organization, or regarding a particular subject, may be spread among several discovery entries. In other words, my system groups documents by discovery production, not by subject. You can, though, keep a second copy of related documents separately in another folder.
6. It does not track data in documents.

## **Conclusion**

I'm not claiming that this is the only way to track your documents, or even the best way. But it's an inexpensive, low-tech method that has worked well for me.