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Martin Tully On His New Gig, Remote Review Perils, and Firms' ALSP Threat

Martin Tully, who recently joined Redgrave as a partner, noted that law firms who have yet to adapt to ALSPs' presence in the e-discovery market will find it difficult to stay competitive—or even survive.

By Frank Ready | August 18, 2021



Martin T. Tully partner with Redgrave. Courtesy photo

Martin Tully began practicing e-discovery “a long time ago, in a galaxy far, far away”—which is now lawyer speak for more than 30 years of trial litigation experience. However you want to phrase it, that kind of a resume will likely serve him well after joining the e-discovery and informational law-focused firm Redgrave earlier this month as a partner.

Tully, who also serves as chair of the Steering Committee of the Sedona Conference Working Group on Electronic Document Retention and Production, was one of the founding partners of the Chicago-based firm Actuate Law. While he noted that his colleagues at Actuate are “killing it” (in a good way), the opportunity to focus exclusively on information law at Redgrave was just too good to pass up.

“At this point in my career if I can see the opportunity to go into hyper-drive on something and accelerate... That’s attractive,” he said.

Below, Tully discusses the added burden that remote document review has placed on law firm attorneys as well as why e-discovery best practices still have “a ways to go.” This conversation has been edited for clarity and space.

Legaltech News: How have you seen the practice of e-discovery change over the course of your career?

Martin Tully: I remember back in the dawn of e-discovery when it first became a thing and I had to convince—I won’t name the firm—but I had to convince leadership at one of my former firms to actually have an e-discovery practice. That was a long time ago in a galaxy far, far away. And things have matured in this field, no doubt, and some would say it’s no longer e-discovery, it’s just discovery. ...

We may have figured out some pretty good best practices over the last 20 years, but there’s a lot more to be done and a lot more to be conquered. Frankly, we still don’t have a universal embracing] and understanding of best practices in e-discovery, so there’s still a ways to go and it’s continued to evolve and get more complicated with both volumes, types and sources of ESI...

Going back to privacy and cybersecurity, I think those are bigger elements than ever before. I also talk about e-discovery, information governance and data privacy as a Venn diagram. Those are three different things—technically four different things—but they overlap in very important ways.

We’re seeing a lot of competition for top e-discovery competition in the market. Is the promise of litigation experience enough to distinguish law firms from competitors like ALSPs or in-house departments in the eyes of job seekers?

I’ve long said that having that in the trench, complex litigation and trial experience, to go along with top-notch e-discovery acumen is a huge differentiator. Some people might take issue with this, but I’ve sometimes said that there’s a big difference between an e-discovery expert who assists litigators and seasoned litigators with exceptional e-discovery knowledge and expertise. Having the latter is something that not everyone can match and nor do they purport to.

ALSPs have established themselves as a viable alternative for process-centric e-discovery work. Will that force firms to evolve or reposition the e-discovery related services they offer to clients as a result?

Yes, and frankly the firms that haven’t already adapted or aren’t already adapting to that changing environment will find it increasingly difficult to stay competitive, much less survive. ... Some firms have tried to emulate that [ALSP] service by developing it in-house, or creating a legal tech subsidiary or investing in an

alternative legal service provider. So we're seeing more of that with varying degrees of success... but some have done it really well.

I think others have taken the route of having the expertise in-house that can match and exceed what you would consider to be a consultant [or] consulting firms, because the consulting firms can't practice law.

Do you have a sense of how comfortable or confident your law firm colleagues are with remote document review?

The pandemic forced a lot of people to get real comfortable with remote document review whether they wanted to or not. I think in some respects people were ready for it and anticipated what the advantages and challenges to it were and were able to address them. And others I think sort of had to build the plane as they were flying it. But I think going forward, most of this is going to stick—whether it's remote hearings, remote proceedings, remote document review. ...

You can no longer assume, like in the old days, that you can put 150 reviewers into a single facility and basically lock them down for your review. Now—and I've had to do this myself for clients—the reviewers are scattered all over the country [and] accordingly there's much greater vetting of the reviewers, who the reviewers are. There's much more scrutiny into their backgrounds and the **[quality of the]** reputations they make **[as reviewers]** because people are not going to be sitting in a warehouse somewhere, they are going to be sitting in their living rooms.

What would you say is the biggest e-discovery challenge facing businesses or other private entities right now on the global stage?

I think it's the rising importance of security and privacy in e-discovery. There are those—and I'm one of them—that really advocate that privacy and security concerns, particularly privacy, really have to receive greater weight in the context of a proportionality analysis. And I think we're starting to see that develop, and while privacy isn't specifically mentioned as a proportionality factor I definitely think that it's there. And I think that we need to see more support for that view by the courts, but it's early.