SIMPLIFIED | A Digital Mini-Book Series by LLM, Inc.

Questions and Answers:

A Guide to Custodian Interviews

LLM LIQUID LITIGATION MANAGEMENT, INC.

The Purpose of Custodian Interviews

Why conduct them in the first place?

- They help ensure all data has been collected, meet the preservation obligation and contribute to building a case.
- They inform the entire scope of data map development and the e-discovery process.
- They assist in the preparation for disclosure in keeping with Rule 26(f).

STEP 1

STEP 2

STEP 3

STEP 4

STEP 5

Step-by-Step Interview Preparations

There are key steps that ensure you are prepared as you enter the early stages of a case or investigation. These steps will lay the groundwork for an efficient use of your time and reduce costs as you preserve data and perform custodian interviews and collections.

Because each interview will have information that's very specific to it, the preparation must be thorough and customized.

PRE-INTERVIEW STEP 1:
Assess Case Scope

PRE-INTERVIEW STEP 2:
Identify the Business' Custodians

PRE-INTERVIEW STEP 3:
Identify the Business' Data and Domain

PRE-INTERVIEW STEP 4:
Understand the Business

STEP 5:
Perform Custodian Interview

STEP
1

PRE-INTERVIEW STEP 1:

Assess Case Scope

- [x] Examine cause of action, claims and issues
- [x] Consider company size, complexity of issues, amount in controversy and number of potential custodians
- [x] Use meet and confer to delineate a path, like considering proportionality to weigh the costs of e-discovery against the controversy amount

> Tackling these issues early in the case will make meeting the preservation obligation less risk filled and help create a more systemized, defensible and cost-effective e-discovery process.
>
> - Jack Halprin, former head of e-discovery for Google

STEP
2

PRE-INTERVIEW STEP 2:

Identify the Business' Custodians

- [x] Know that key players can include current and former employees, IT department and third-party service providers
- [x] Issue legal holds carefully considering "benefit versus the burden"
- [x] Use informed date thresholds to include or exclude the appropriate custodians

> "Costs can add up quickly, and placing an employee on hold unnecessarily increases the risk that data may be preserved unnecessarily and making it discoverable in future cases.
>
> - Jack Halprin

STEP
3

PRE-INTERVIEW STEP 3:

Identify the Business' Data and Domain

As part of learning more about the business, it's necessary to gather information from groups like business leaders, IT, inside counsel and more in order to know the most pertinent questions.

- Identify key electronically stored information (ESI)
- Learn where ESI resides, confer with IT dept. for data map
- Evaluate SaaS tools used by employees in the cloud
- Learn how custodians store information: archived or deleted regularly, removable or not removable, digital or paper
- Identify files and computers of personnel who process documents on behalf of custodians

A company's data infrastructure provides key insight into company policies on business and personal locations where data can be stored.

STEP 4

PRE-INTERVIEW STEP 4:

Understand the Business

Use in-house counsel, department heads, IT and other resources to get a grasp on the language of the business, for example, specific keywords.

This information will feed into case strategy, collection and searches for culling as well as building the right vocabulary for querying custodians during interviews. The interviews themselves may serve to further expand this knowledge.

EXAMPLE A:

Counsel

"Do you store data on shared drives?"

Custodian

"No."

EXAMPLE B:

Counsel

"Do you store data on a Z drive?"

Custodian

"Yes!"

STEP 5:

Perform Custodian Interview

After going through the steps for early matter identification and preparation, it's time to perform the actual custodian interviews.

As mentioned earlier, custodian interviews help to ensure a defensible process by identifying what data your custodians have. It also will clarify the scope of your overall collection and the resources needed for review.

To implement a successful defensible custodian interview, there are key components to consider.

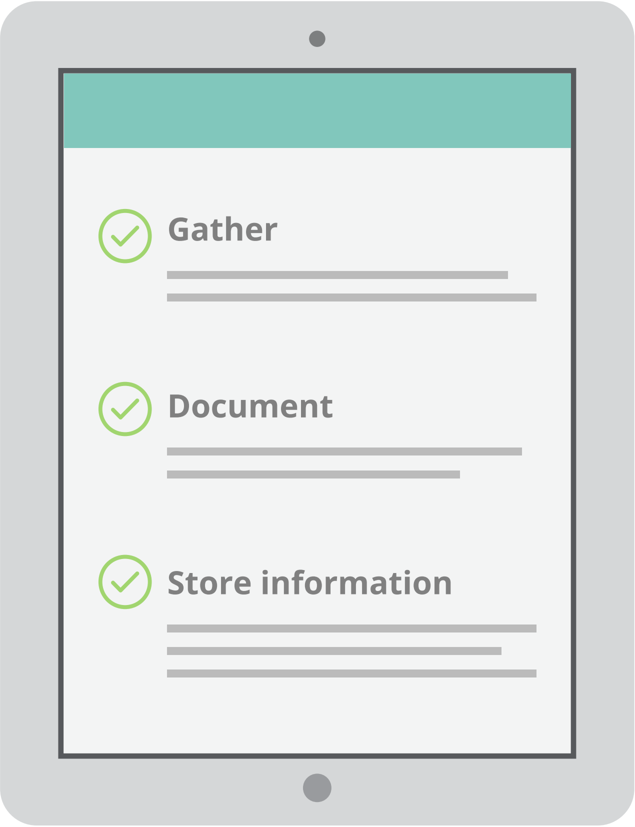
TECHNOLOGY TIP

The right software can simplify the custodian interview process. For example, it can help identify what relevant data sources exist, how that data is structured and the details surrounding the legal holds issue and place them in one centralized, comprehensive location for greater user efficiency and effectiveness.

STEP
5

Starting Point: Digital Questionnaire

Digital questionnaires allow for ease of collection and provide defensible documentation, a crucial component of keeping with a sound preservation process. They allow you to clearly organize the questions and, if using a software system, allow you to track status and create a template for future interviews.



COMPONENTS OF SUCCESSFUL INTERVIEWS

Deeper Point of Contact: In-Person Interviews

Not all custodians warrant in-person interviews. Consider which custodians require additional contact based on initial digital feedback, are a key custodian of the matter, or other concerns.

- An in-depth discussion helps remind a custodian of work product and communications' details. This could also prompt info that wasn't considered during the digital interview.
- In-person interviews can further clarify relevant and non-relevant data.
- Counsel involved in case prep should also be present for the interview to help ensure that the correct information is being gathered and to identify privileged communications.

Additionally, in investigations, direct interviews may not be ideal as data may need to be preserved without witness knowledge or interference.

COMPONENTS OF SUCCESSFUL INTERVIEWS

Get Settled and Acquainted

- Put the custodian at ease by taking time to properly explain the process and describe the issue/complaint and preservation obligation.
- Thoroughly document the custodian’s name, alternate spellings or previous aliases, title and work history.

Identify Data

Because many custodians don't consider where all the data is located in more complex software applications and databases, it's important to ask questions that lead to them.

- "What reports do you send or receive regularly?"
- "What do these reports contain?"
- "How are they created?"
- "Do you enter data into a system?"
- "How do you do your work that is not captured in email, word-processing documents or spreadsheets?"

All this information can better inform a discussion with IT on how to preserve and collect data for litigation.

COMPONENTS OF SUCCESSFUL INTERVIEWS

Learn the Lingo

Take the time to discuss with the custodian the terminology of their job. These details can inform search term creation to better target collections and reviews.

- What are the naming conventions used for files, projects, etc.?
- What acronyms are involved in your day-to-day work?
- What code or project names are used to reference activities?
- What other keywords or business terminology is used within the company?

Establish Other Locations

While preliminary work with IT should show where custodians are storing documents, further inquiry can help confirm additional locations.

- **MOBILE PHONES**
- **HARD DRIVE/ USB DRIVES**
- **PERSONAL COMPUTERS**
- **DROPBOX**

It's not only about the where of data, but also *how* it's structured. Are project folders within shared drives, cloud space and more? This level of information can help with preservation and culling as well as identify relationships, versioning and timing within the documents preserved.

TECHNOLOGY TIP

A timeline tool not only outlines evidentiary points, but also identifies all involved, helping confirm whom to collect data from.

Discuss Privilege and Communication

Establish if the custodian has communicated with attorneys on this particular matter.

This will determine whether attorney-client privilege must be addressed.

If so, create attorney contact list and identify and isolate potentially privileged documents.

COMPONENTS OF SUCCESSFUL INTERVIEWS

Discover Other Custodians

Because preservation is at stake, it's important to thoroughly identify all who may be in possession of pertinent, possibly responsive documents. A preliminary list of custodians may point to other custodians. Interview questions should include inquiring about other people working on the project and custodians that may not have been considered, for example, vendors, third parties and employees that have departed the company or moved to other projects and departments.

ATTENTION:
LEAVE NO CUSTODIAN UNTURNED!

Compliance and Tech Check

The custodian interview also offers a chance to check how sturdy a company's policies and documents procedures are.

Does a custodian know what a legal hold is? Confirm and emphasize that it supersedes the company's document retention policies.

BEYOND LITIGATION: OTHER USES FOR GATHERED INFO

- Update company data maps
- Provide insight on how employees are using existing technology in a company
- Identify points of data risk

Compliance and Tech Check

START COLLECTING

"The data must be collected in a forensically sound manner with metadata intact and must be preserved as it is maintained in the ordinary course of business.

-Dera J. Nevin,
What Is a "Custodian Interview" and Why Should I Do One?

STAY IN TOUCH

Provide each custodian with contact information in case there are any future questions about data location or compliance.

Hands off!
Remind custodians of their obligation to preserve information. They should never delete or alter documents.

Again and Again:
The Iterative Process

Custodians who were put on hold day one may not end up having any relevant information released, and new custodians may be identified later and added to the hold.

COUNSEL SHOULD STAY NIMBLE

PLUS

Leverage valuable custodian information across multiple cases and e-discovery projects.

Final Words

It can’t be emphasized enough: Custodian interviews are imperative to the e-discovery process.

Proper preparation, conducting and review are essential, especially in order to demonstrate reasonable action was taken.

Plus, the value of info gathered during the interviews goes well beyond the matter. It can inform a company about the present state of compliance and technology use for the future.

Custodian Interviews Checklist

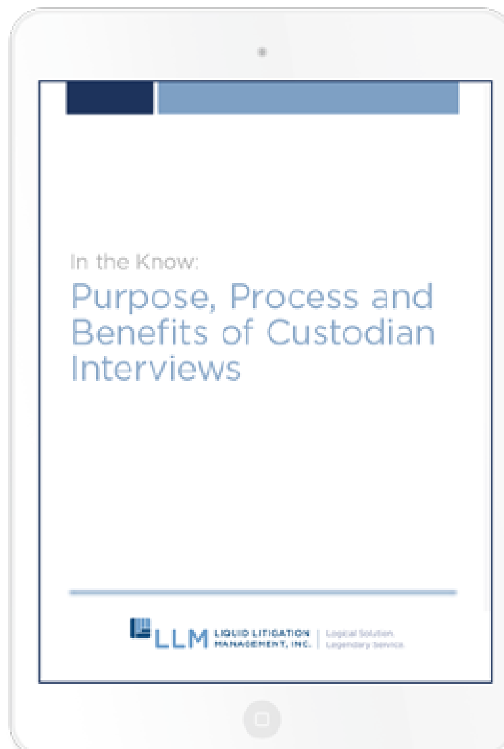
Print this custodian interview checklist and use it as a guide when a case or investigation is imminent.

- [ ] **Pre-Interview Step 1: Assess Case Scope**
- [ ] **Pre-Interview Step 2: Identify the Business' Custodians**
- [ ] **Pre-interview Step 3: Identify the Business' Data and Domain**
- [ ] **Pre-Interview Step 4: Understand the Business**
    - Use in-house counsel, department heads, IT and other resources to get a grasp on language, like keywords.
- [ ] **Pre-Interview Step 5: Perform Custodian Interview**
    - Use digital questionnaire
    - Conduct in-person interview if appropriate
    - Identify data
    - Learn the lingo
    - Establish other locations
    - Discuss privilege and communication
    - Discover other custodians
- [ ] **Compliance and Tech Check**
- [ ] **Begin Data Collection**
- [ ] **Stay in Touch!**

Resources

For more in-depth information on this topic, LLM, Inc offers a white paper.

DOWNLOAD THE WHITE PAPER »



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