

Applying Project Management Principles in Litigation and Discovery Management

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Is this you?

You always adhere to your discovery schedule and budget. You are prepared for the duties under the proposed amendments to the Federal Rules of Civil Procedure concerning electronic discovery that will likely become effective December 1, 2006. You feel as though you have an understanding of the technology available to you to manage discovery. You have great communication and oversight in the discovery process to reduce the potential for inadvertent disclosure of privileged material or other error. If this is you, pat yourself on the back. If not, read on.

Why Not Use Project Management?

By using project management principles, law firms can better manage their discovery obligations, adhere to budgets, and meet deadlines. Project management principles are widely practiced in each area of business except the law. Because it encourages attorney autonomy and the focus is on billable hours, the practice of law has been slow to adopt these principles. But in increasing numbers, general counsel are starting to adopt legal project management principles to increase the efficiency of their in-house legal departments and to hold outside counsel more accountable to budgets and timelines. More firms are turning to project managers, whether in house or at litigation support vendors, to help manage their cases as project managers have legal and technology skills for discovery solutions.

What is Project Management

Project management is the application of knowledge, skills, tools, and techniques to the different activities in a project to achieve the project's objectives. A typical project includes: establishing the objectives; identifying the requirements and risks; identifying the stakeholders, the team members, and responsibilities; developing the plan for the project; adapting a plan for any changes to the project; reporting of progress to the stakeholders and the team members; and reviewing the results of the project. Projects have competing demands that can affect the project's budget, scope, or timeline. In

project management, this theory is referred to as triple constraint and is frequently depicted as a triangle with each side representing budget, scope, or timeline. A change to one aspect will affect one or both of the other aspects. For instance, if you change the scope of data to be reviewed, you will affect the time involved to review the documents and possibly the cost of the review. Project management keeps projects within timelines and budgets by planning ahead, staying on course with the plan, and avoiding or handling changes.

What To Look For In a Project Manager

The fundamental prerequisites should include an understanding of legal principles to help you strategize, as well as the technical skills to bring the latest technology to your discovery process. Many project managers have credentials including a J.D. and a Project Management Professional (PMP) certification from the Project Management Institute. The best project managers stay on top of changes to technology and case law affecting discovery, particularly electronic discovery, because of its evolving status.

What Project Management Offers

The discovery phase of a case is just like any other project, it requires proper management to stay on schedule and on budget. Electronic discovery is a great example of an evolving and complex field-with legal and technical implications-and is perfect for project management principles. The new amendments to the Federal Rules will complicate electronic discovery and impose new requirements. Project managers can help you stay afloat in this area. Some duties the amendments address include:

- Early Action - Under proposed F.R.C.P. 26(f), parties need to meet and confer, at least 21 days before a scheduling conference is held or a scheduling order is due, to discuss issues relating to preserving discoverable information, developing a proposed discovery plan, inadvertent disclosure, and form of production.
- Discovery of Reasonably Accessible Electronically Stored Information - Proposed amendment F.R.C.P. 26(b)(2)(B) distinguishes between accessible and inaccessible data categories and provides that you only need to produce reasonably accessible data.

Project management skills can help you meet the obligations under the new Federal Rules by, for example:

- Providing technical experience and developing a plan to work with your IT staff to get your arms around your data.
- Determining what data categories the data falls in and whether the data is accessible, and, consequently, whether you have a duty to produce the data.
- Helping you understand the implications of different forms of production and recommending the best forms of production for your case to avoid pitfalls such as inadvertent production of privileged material.

Commentators and judges are indicating specific details will be required to resolve a discovery dispute. Project managers can develop a plan and track the specifics to understand:

- The scope of your data
- How to collect your data to avoid spoliation
- How to preserve your data
- What terms, and variations of the terms, can be used to cull your document collection to only relevant documents
- How effective your search terms are - for example, do you have missed detections or false positives?
- How to remove your duplicates effectively from the document collection
- Your relevancy and privilege review rates
- Which forms of production capture the relevant data

Project managers will also track these terms, provide metrics to you, enhance communication, and provide the important oversight necessary to keep your discovery schedule on track.

Conclusion

Utilizing project management principles leads to increased efficiency and better control of costs. The billable hour will always rule, but this can be balanced by disciplined budgeting, mapped-out timelines, better defined roles and responsibilities, and greater communication on your case. Good project managers leverage project management

principles along with legal and technical skills to help you traverse the minefields of discovery, while staying on schedule and within budget.

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