

The Emerging Field of Electronic Discovery Project Management

By Brett Burney

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Many litigators consider themselves “project managers” because they constantly juggle deadlines, people, tasks, and documents. But formal project management is a professional, technical discipline that has become indispensable in litigation matters, especially electronic discovery projects. In this TechnoFeature article, eDiscovery consultant and project manager Brett Burney explains what eDiscovery project management entails, and summarizes the latest advice and knowledge from this emerging field.

INTRODUCTION

Lawyers are not trained to manage projects. By nature, lawyers are visionary; they are trained to analyze and strategize. Lawyers can effortlessly drill deep into the legal logic they brew, but they rarely have the time or patience to rake through each logistical detail involved in supporting a litigation matter.

Electronic discovery permeates every litigation matter today, and an intricate level of detail and planning is crucial for balancing the time, costs, and scope involved with each project.

In their [latest report](#) on the eDiscovery industry, [George Socha](#) and [Tom Gelbmann](#) declare that “project management has grown in prominence as a means to minimize missteps and deliver more predictable, reliable, and cost-effective results.”

MANAGEMENT SCHMANAGEMENT

The term “project management” seems innocent enough. After all, most lawyers “manage” an overwhelming deluge of tasks, people, and paper every day, which means that many lawyers consider themselves to be “project managers” by default.

Formal project management, however, is a recognized professional discipline, complete with educational requirements ([Project Management Professional](#) or PMP) and an oversight body called the [Project Management Institute](#) (PMI).

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A lawyer who claims to be a “project manager” is like someone who claims to be an accountant without a CPA license — maybe they can balance a checkbook, but it takes much more skill, education, and experience to be a professional accountant.

[Grant Collingsworth](#), a partner at Morris, Manning & Martin, LLP, [refers to lawyers](#) as “accidental project managers.” After all, he affirms, “the project does get managed, does it not?”

There is a distinction, however, between managing a project and managing a process. [The Guide to the Project Management Body of Knowledge](#) (published by the PMI and referred to as the [PMBOK](#)) defines a project as a “temporary endeavor undertaken to create a unique product or service.” A project has a defined beginning and end.

In contrast, a process, or an ongoing business operation, has no end date and continues indefinitely driven by vague general purposes such as “generating income.” The practice of law is an ongoing process of gaining and retaining clients, so it is important for lawyers to recognize that each litigation matter is a project with a defined beginning and end.

While the overall goal of litigation is usually to obtain a favorable result for your client, eDiscovery work comprises many sub-projects and tasks such as “obtain PST files from client IT department” or “collect pricing quotes and decide on vendor.”

[Conrad Jacoby](#), in his article [Applying Project Management Techniques to Litigation Discovery](#), points out that the litigation team leadership “often only has time to focus on the highest priority projects and problems.”

The litigation lawyer provides the overall strategy for a litigation matter and is responsible for the critical decisions. The project manager is responsible for the progression of tasks and the vital balance between time, cost, and scope. Conrad rec-

ognizes that “the same person may sometimes serve in two roles, [but] project management is separate from strategic case management.”

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PHASED AND CONFUSED

A conventional project follows an [established set of phases](#):

- Initiate — define objectives and workflow process.
- Plan — establish timelines and activities.
- Execute — the actual “doing”.
- Monitor and Control — review and quality checks.
- Close — conclusion and assessments.

[Bryan Melchionda](#), Director of Service Design at [Daticon EED](#), authored a white paper entitled [A Project Management Approach to eDiscovery](#) which describes how the generalized project management framework above can optimize the approach to an eDiscovery project.

The [Electronic Discovery Reference Model](#) (EDRM) provides a visual for the general eDiscovery workflow from data collection to production. Bryan postures that this workflow can be treated as a single overall project with sub-projects representing each phase such as collection, processing, and

review. “Each phase is systematically designed with its respective work elements, tasks, milestones, and interdependencies. By breaking down the overall project into incremental phases, it becomes easier to forecast and plan for the work, fully understand the resource requirements of each phase, and create deadlines.”

So if the lawyer is not the best person positioned to “forecast and plan, ... and fully understand the resource requirements of each phase,” then who should shoulder this burden?

STANDING ON THE EDGE OF A TERABYTE

Most of the larger law firms today have the capacity to hire experienced litigation support professionals. The management of complex eDiscovery projects usually lands on their task list.

Litigation support is slowly becoming recognized as its own profession. Today, it is not enough for a litigation support professional to simply know how to import a delimited load file into a review platform; they must also be aware of current case law affecting eDiscovery, and better comprehend the overall legal strategy of the litigation team they support. They must also possess the “people skills” necessary to communicate effectively with their team, the attorneys, outside vendors, and the firm’s clients.

The litigation support professional is essential in firms with major litigation practices. Experienced litigation support professionals have a comprehensive understanding of the technical limitations involved with collecting electronic data, as well as the features and constraints

involved with the processing and review of the data. As a result, litigation support professionals are in the best position to manage the tedious but necessary tasks required to achieve the goals and objectives of an eDiscovery project.

In his article, [Jacoby](#) discusses the extent to which an eDiscovery project manager must also have subject matter knowledge. “One school of thought is that project management serves a purely logistical function” that only requires good communication skills and the menial ability to track complex tasks. “An opposing school of thought holds that deep subject matter expertise is more important than learned management expertise.” [Conrad](#) continues, “ideally, of course, a good [eDiscovery] project manager has both subject matter expertise and the ability to accurately track simultaneous projects.”

Many firms do not have the luxury of hiring a full-time, dedicated litigation support professional. In those cases, the project management responsibility falls to a partner, a junior associate, a paralegal, or an IT administrator.

While these folks have sufficient capacity to organize a list of tasks, they have many other duties and demands on their time that prohibit them from accurately managing an eDiscovery project. In those cases, the client will suffer because of a lack of resources, increased time frames, and higher costs.

PLANNING TO FAIL

A key component to successful project management is planning. Unfortunately, planning takes time. And as [Debbie Westwood](#) points

out in her article [eDiscovery's Greatest Challenge to Lawyers](#), planning is boring. Most of us would rather just start doing something.

Debbie observes that "litigators are not known for being proactive. The litigation process as a whole is traditionally one that involves reaction." Debbie then drops the unheralded truth: "reactive litigating is not the way to handle eDiscovery."

While a lead litigator may draft or compose a high-level, timeline strategy at the beginning of a matter, it will rarely include such detailed tasks as "TIFF conversion and quality checks," or the "burn-in process for redactions and production numbers."

Jacoby explains in his article: "Working backwards from the case deadlines and the stated goals, ... a project manager works with appropriate members of the litigation team to break those large deadlines into smaller tasks, each with its own set of deadlines." This is formally known as a "[work breakdown structure](#)" (WBS).

An eDiscovery project manager will frequently modify the WBS as the case develops and the need arises to make adjustments in the time, costs, and scope of the project. These three constraints come from the [venerable project management triangle](#) which illustrates the competing burdens on a project.

Time is always an elusive factor in a project, something that all legal professionals can relate to. A project manager must continually check the required work and tasks against the looming deadlines for a litigation matter.

The cost constraint is not only the choke-inducing dollar signs from eDiscovery vendors, it includes the resources and support personnel required to complete the project.

Lastly, scope specifies the intended goals of a project but also drives the quality of the final product or service.

While a lawyer is certainly capable of learning how to logistically manage a project, many would be better served by working with an experienced project manager.

Whenever a change is requested to the project, such as the lead litigator requiring data to be produced three days earlier than originally planned, the project manager must attempt to balance the decreased time frame with the cost and scope. In order to achieve the new deadline, the project manager

may require more people to review documents, which will increase the cost. Or perhaps the scope and quality of relevant documents must be limited in order to make the new deadline.

There are many ways to measure the impact of a change request on a project, and tools and models like the project management triangle help the project manager to analytically weigh the options.

CONCLUDING THE PROJECT

Formal project management techniques are not commonly found in the practice of law, but as eDiscovery projects become the norm, lawyers must realize that they need logistical assistance if they are to deliver quality litigation work to clients at reasonable rates.

A simple list of tasks is a good start in parsing out the often overwhelming number of tasks involved in an eDiscovery project. But only an experienced project manager can read between the lines of that list and precisely insert the time, resources, and expenses required for each task.

While a lawyer is certainly capable of learning how to logistically manage a project, many would be better served by working with an experienced project manager who can implement the technical discipline required for a successful result.

Brett Burney is the Principal of [Burney Consultants LLC](#) where he focuses his time on bridging the chasm between the legal and technical frontiers of electronic discovery. Burney Consultants also provides exceptional support for litigation databases, document review projects, and trial technology. Visit his blog, [ediscoveryinfo](#).

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