



TAMING THE LITIGATION BEAST WITH LEGAL PROJECT MANAGEMENT TECHNOLOGY

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Being in-house counsel charged with managing complex litigation must be a lot like being a lion tamer. Armed with just a chair and a whip, you are surrounded by snarling beasts, each of which seems intent on making a meal out of you. First, there is the opposing party and its counsel. No surprise there. You expected to have to take them on. Second, however, is your own counsel who can't seem to deliver much of anything on budget; who doesn't understand that winning at all costs can be almost as bad as losing; whose definition of a "win" doesn't always square with your goals; and who too frequently tells you about tactical and strategic decisions after they are made. Unexpectedly large bills appear without warning and reflect substantial activities that were not first cleared with you. Then there's the most dangerous lion of all lurking right behind you, i.e., your boss, who is more than a little dismayed by the cost overruns and the lack of meaningful progress, not to mention your inability to give instantaneous up-to-the-minute detailed status reports on demand. You must be wondering how you got into this fix and, more importantly, how you can avoid it the next time around.

HOW DID YOU GET INTO THIS MESS?

There are several answers to that question. First, you are experiencing budget overruns because lawyers aren't very good at making budget estimates in complex cases. Even experienced litigators tend to think in big picture terms of their last two or three litigation experiences when giving budget estimates, without detailed analysis or fine tuning to fit the facts and circumstances of the case at hand, which they likely don't have a firm grasp of at inception anyway. Would a general contractor ever price a skyscraper that way? Of course not; this building may have some similarities to the last one, but at the micro-level it's likely to have an awful lot of differences that can dramatically affect the cost and time to complete. What the general contractor does, after developing an in-depth understanding of the owner's needs, is to break the new skyscraper down into its smallest components and then, using years of experience, prices each of those components as uniquely configured for this project. Second, the disconnect between the client and the lawyer's definitions of a "win" is often caused by lack of communication all along the way. Litigation is frequently a high-speed fire drill to get the Complaint or Answer filed, and then, once the ball is in play, the process can become reactive rather than proactive. All too often, the game is well underway before client and lawyer have taken the opportunity to reflect together on what constitutes a victory and exactly how that can be most efficiently achieved. Third, in the heat of the litigation battle, outside counsel is sometimes moving too fast to take the time to get important tactical and strategic input and sign-off from the client who, after all, really knows best what he or she wants to achieve and at what cost. Outside counsel many times report on events after the fact when queried by in-house counsel who were caught flatfooted by a request for information from management. Not to belabor the obvious, but efficiency, transparency, and accountability are not always concepts embraced by law firms.

Perhaps that is why a study published this year by BTI Consulting Group, Inc. out of Massachusetts reflected that only 30 percent of general counsels nationwide were satisfied with their primary law firms in 2005. If 70 percent of those GCs are unhappy, you can rest assured it is in some measure due to litigation costs for work that, unlike transactional work, no client wants to undertake to begin with.

HOW CAN YOU TAME THE UNCONTROLLABLE LITIGATION BEAST?

So what would it take to tame the beast? I submit that a system combining processes and technology that would ensure the following would go a long way towards that end: (1) vigorous early case assessment; (2) a rigorous and detailed budgeting process with a mechanism for mid-course modifications and regular periodic updates; (3) a cooperative partnership between in-house and

outside counsel in establishing tactics, strategies, and overall goals at inception and formally updating them as required throughout the litigation; (4) greater transparency into the day-to-day activities of outside counsel and greater accountability with respect to achieving short-term and long-term litigation goals on budget and on time.

Believe it or not, the system needed to soothe the litigation beast is at our fingertips and is used every day in corporate America, although like so many valuable business concepts, law firms have ignored it. The system is called Project Management. If you've interacted with the construction industry, you may have seen computerized Project Management in action since it has been used for years by general contractors to track the progress and costs of large construction projects. Project Management is not a catch phrase dreamed up by some marketing director. It is a well-developed body of science with its own processes, technologies, certified professionals, trade associations, and body of literature. So far, lawyers have not been a part of that world, but that is about to change.

Chances are that the company you work for uses Project Management in running its business. If it embarks on developing a new product, opening a new plant, launching a new marketing campaign or starting some other significant project, you can almost be assured that Project Management processes and technology are put to work. A project team will be established that will determine the project's scope, objectives and requirements. The team will prepare a plan, with timelines and milestones, and get buy-in from the relevant team members. That plan will be inputted into one of several popular Project Management software applications. Project status will be continuously communicated electronically within the project team and to other interested parties. Project risks will be identified and managed. Once the project is completed, its results and effectiveness will be reviewed and process improvements will be identified. In fact, your company, like many, may have its own Project Management Office which supplies this service across the company to many constituencies.

Now, when your corporate legal department undertakes a major project, be it litigation or transactional in nature, do you employ Project Management? Do any law firms you use offer to employ Project Management processes and technology in providing you legal services? I didn't think so.

Project Management is a growing force in the business community. Most Fortune 500 companies have a Project Management Office somewhere in their organizations. The Project Management Institute (PMI) now boasts more than 160,000 active members. In a recent survey of 250 senior executives conducted by PMI, 94 percent said they considered project management to be a valuable company asset, and 92 percent agreed that "utilizing professional project managers is an effective way to ensure success." Of those companies with \$500 million or more in revenue, 87 percent have used professional project managers. Project Management is now a required course in many MBA programs. Despite the evident importance of Project Management for successful companies, law firms seem to remain blissfully unaware of Project Management and its potential to increase the effectiveness and efficiency of legal services.

LEGAL PROJECT MANAGEMENT FOR LITIGATION MATTERS -- WHAT IS IT AND DOES IT EXIST?

Project Management has two pieces - processes and technology. Processes are the human activities involved in (i) defining the project and its scope, (ii) establishing short-term and long-term goals, (iii) creating a detailed comprehensive task-by-task action plan, budget and time frame for achieving those goals, (iv) measuring progress and actual versus budgeted time and expense as the project moves forward, and (v) amending the project plan and budget as circumstances dictate. The technology brings discipline, structure, and automation to the processes and provides a critical communication tool for sharing project information among the various participants. There are a number of project management software applications which can be used across industry lines and tailored by the users for the particular kind of project being undertaken. We are not aware of any software applications designed for Legal Project Management, let alone for litigation, with all of the twists and turns and hundreds of individual tasks that are involved in any given lawsuit. Accordingly, what our law firm has done is to build a computerized Litigation Project Management system from the ground up -- a system itemizing virtually every task involved in litigation from the first attorney-client conference through the trial of the case. When a new case is undertaken, each task line that is likely to apply to the case is then populated with

information concerning the personnel who will handle it, their hourly rates, and the number of hours budgeted for the task as well as start-finish dates. The project management system imposes the discipline required to perform vigorous early case assessment, short-term and long-term goal setting, a budget for time and expenses, and an overall game plan for conducting the litigation, all of which is then approved by the client and outside counsel, and updated and modified as the case progresses and the inevitable vagaries of litigation set in.

The Litigation Project Management system generates Gantt charts, progress reports, and executive summaries which provide the client with complete up-to-the-minute electronic information on the status and progress of the case including actual costs versus budgeted costs and task completion. Not only does this impose a tremendous planning and communication discipline to case management, but it is a terrific organizational tool and provides transparency and accountability which removes the mystery and cost efficiency fears that make litigation so painful for clients.

Our broader Legal Project Management tool, for which we have a patent pending, formalizes and systematizes the following essential activities:

- establishing project objectives;
- identifying requirements and risks for achieving those objectives;
- identifying stakeholders, team members and responsibilities;
- developing a project plan;
- managing project risks to achieve objectives;
- adapting project plan for changes in circumstances;
- reporting progress to team members and stakeholders; and
- reviewing and analyzing project results.

Just about any client or litigator would acknowledge the need for and value of these activities in connection with complex litigation, but it takes discipline and structure to accomplish them all in each case as we know we should.

Litigation Project Management may not solve all of your litigation control problems, but there are some great things it will do. It will replace the old seat-of-the-pants Kentucky windage budgeting process with a vigorous task-by-task analysis that is likely to be far more accurate and result in a budget which is realistic and which minimizes unpleasant surprises. It will force the client and its outside counsel to engage in an early case assessment, which is a huge advantage when mapping out tactics and strategy for both conducting the case and resolving it. The system also provides in-house counsel with virtual real time reporting on case events, progress, and costs so that status reports can be provided to management on demand. It brings added accountability to outside counsel in terms of delivering work on time, within budget, and with client approval. It lays out the assumptions on which budgeting and case strategy are built so that all participants can identify when and where those assumptions change and what effect they are likely to have on costs and results. All of these advantages of Litigation Project Management serve to enhance good relations between in-house and outside counsel and between in-house counsel and their clients. Then, the only lion left to tame is the opposing party, and that is how it should be.