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## A Project Manager's Guide to E-Discovery

ZL TECHNOLOGIES | White Paper



**ZL TECHNOLOGIES INC.**

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In civil litigation, the parties in a dispute are required to provide each other relevant information and records, along with all other evidence related to the case. The term used to represent this activity, which happens early in a litigation case, is "discovery". Electronic discovery, or "E-discovery", refers to discovery of information in electronic format (Electronically Stored Information or ESI). Examples of ESI include Word documents, spreadsheets, and email.

ESI is different from information stored on paper for several reasons. Most importantly from an e-discovery perspective, ESI is accompanied by metadata: for example, the date and time a document was created, or last opened. Metadata plays an important part as evidence, and as such must be preserved.

An e-discovery project represents all efforts required to collect, preserve, and analyze large volumes of ESI when the prospect of litigation arises, carried accordingly so that the whole process is defensible. As with any project, e-discovery is subject to constraints and risks regarding cost, schedule and performance. As a project manager, you are responsible to organize the project and bring it to a successful outcome. Project management represents the discipline of planning, organizing, securing and managing resources to bring about the successful completion of the e-discovery project.

Many in the e-discovery industry today recognize the need for "project management". The Sedona Conference® acknowledges project management as an integral part of creating a defensible e-discovery process:

*"In cases involving ESI of increasing scope and complexity, the attorney in charge should utilize project management and exercise leadership to ensure that a reasonable process has been followed by his or her legal team to locate responsive material."*<sup>1</sup>

This paper will introduce you to the process of e-discovery from the perspective of the Project Manager, and will provide you with a checklist that you can use throughout your project. Use this paper to familiarize yourself with the stakeholders and processes needed, and to get insight into new advanced tools that you could use.

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1 The Sedona Conference®, "Commentary on Achieving Quality in the E-Discovery Process" (2009)

### Who are the e-discovery stakeholders?

A successful e-discovery project requires several parties to collaborate effectively. At a high level, three different entities will partner as part of the process: the corporation, a law firm, and an e-discovery vendor. Within each entity there will be multiple groups, with different roles and skill sets that will be participating. The following diagram depicts the three main organizations working together as part of the Integrated Project Management Team:

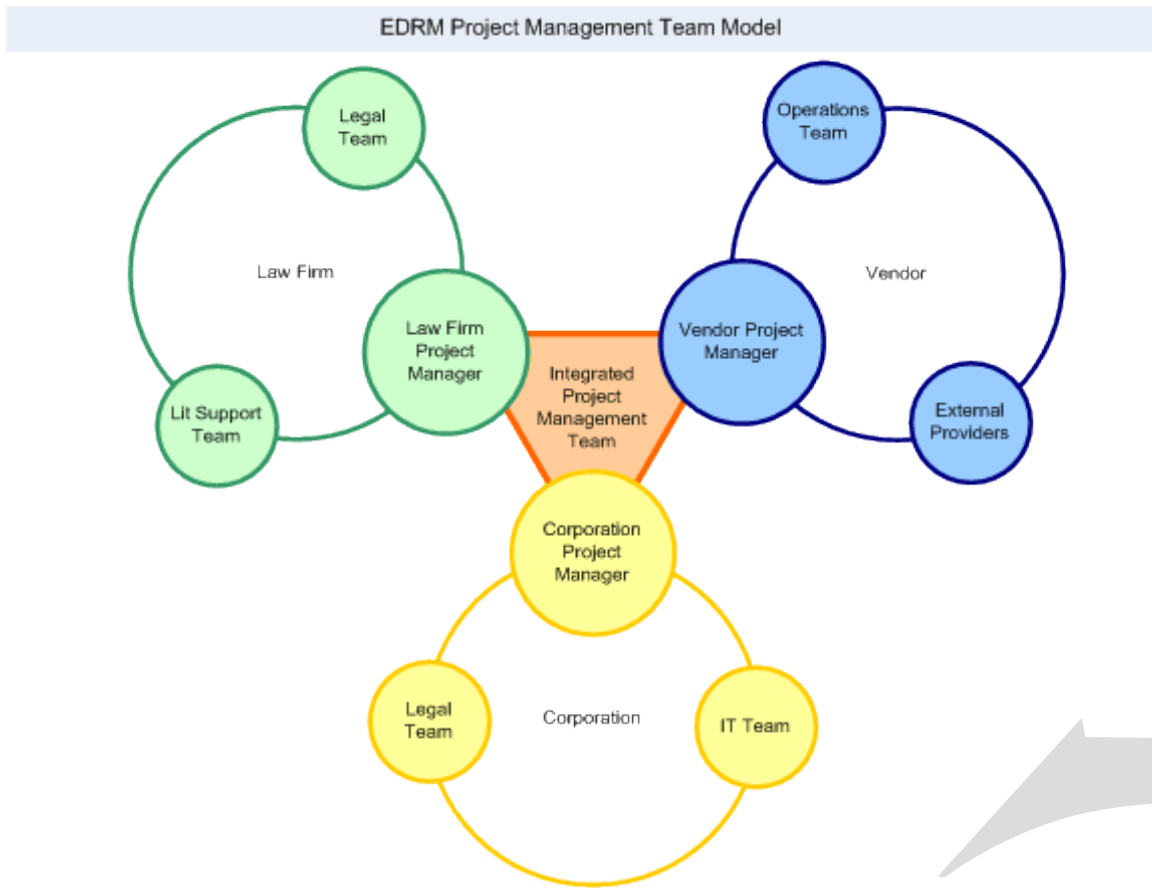


Figure 1: EPMF Project Management Team Model<sup>2</sup>

2 EPMF Project Management Team Model , <http://edrm.net/resources/guides/edrm-framework->

The Integrated Project Management Team is responsible to set the e-discovery strategy, and guide the expanded set of participants throughout the e-discovery process. The most well-known way of representing e-discovery activities is the EDRM (Electronic Discovery Reference Model), which represents e-discovery as set of nine distinct but interrelated processes: Information management, Identification, Preservation, Collection, Processing, Review, Analysis, Production, and Presentation<sup>3</sup>. The next diagram depicts the Electronic Discovery Reference Model:

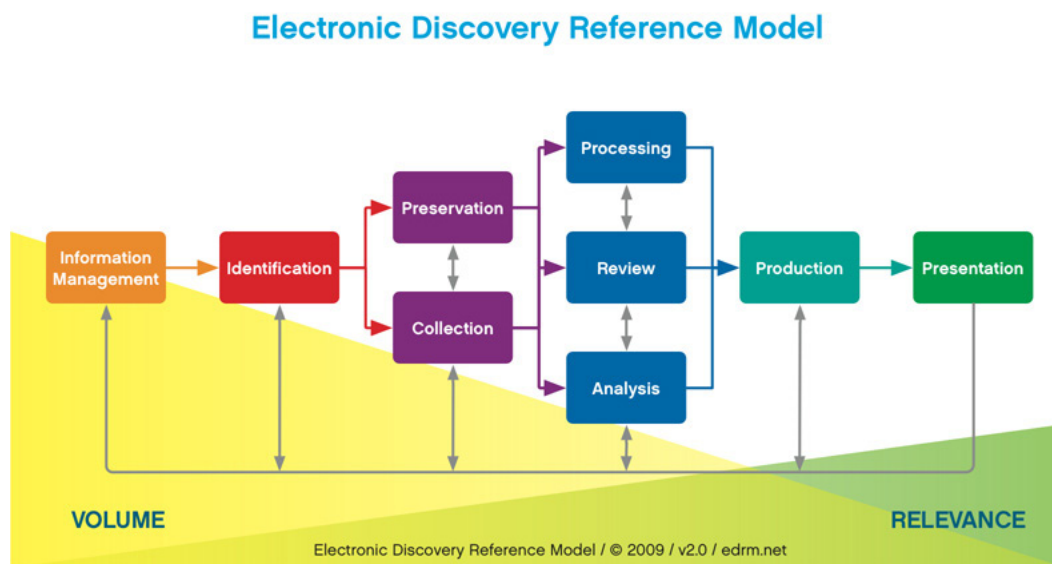


Figure 2: Electronic Discovery Reference Model

Above and beyond EDRM though, the principles guiding successful e-discovery projects require in depth quality control in every phase. Also, for a complete and defensible process, you must have a full audit log describing all e-discovery activities carried by the team.

The best e-discovery project managers follow the guidelines recommended by the Project Management Body of Knowledge<sup>4</sup>, and divide the work into five processes: initiation, planning, execution, monitoring, and finally closing.

<sup>3</sup> EDRM <http://edrm.net/>

<sup>4</sup> Project Management Body Of Knowledge, Project Management Institute, <http://www.pmi.org>

As Bryan Melchionda of Daticon EED explains in "A Project Management Approach to eDiscovery"<sup>5</sup>:

*"This generalized project management approach, along with suggested tools, optimizes the process. The entire eDiscovery process—from collection to production—can be treated as single project with subprojects representing each significant discovery phase: collection, process, review and production. Each phase is then systematically designed with its respective work elements, tasks, milestones and interdependencies. By breaking the overall project down into incremental phases, it becomes easier to forecast and plan for the work, fully understand the resource requirements of each phase and create deadlines. This approach also provides greater transparency and accountability for all parties involved."*

### Project Initiation

First, you need to define the project. What is the business objective? What are some of the interim goals? What are the major milestones, like the court dates, or the set meetings?

Next, you need to review the main activities needed to cover the project. A useful starting point is the EDRM. By closely analyzing each of EDRM's nine processes, you can derive the skills and the partners needed to accomplish each of them.

However, a successful e-discovery project will require further planning and refinement. Your ability to steer the project depends on identifying early on who must participate in the project. For example:

- Who are the internal stakeholders in charge of managing the enterprise data?
- Which processes can or will be kept in-house, and which will require working with outside vendors?
- Will there be an Outside Counsel firm involved in the project?
- Are there preferred vendors for the company?
- Who are the key custodians known at this early stage?
- Who are the sources of privileged information?

5 Bryan Melchionda, "A Project Management Approach to eDiscovery" (2008)

It is important to identify the structure of the project team for each of the main activities. Define the team members and their roles and responsibilities.

Finally, complete the initiation phase by having all team members and executive sponsors sign off on the goals and the resources that will be required. You are now ready to start the real work!

### Project Planning

At this point you should know who your main partners are, and have access to early resources such as an attorney, a paralegal, and an IT representative. Start the planning by defining the scope of the project, including "documenting the actions necessary to define, prepare, integrate, and coordinate all subsidiary plans into a project management plan"<sup>6</sup>. You will need to forecast the requirements at the project level, in terms of:

- Scope of information
- Resourcing and availability
- Budget
- Roles and responsibilities
- Governance and decision making
- Risk identification and mitigation strategies
- Milestones and clear strategies to reach each milestone

Do not forget to plan for communication – a key component of a large team project. How will progress be tracked and reported? How will exceptions be dealt with? How will problems be tracked and resolved?

Initially, you may not have all the data available to you. Therefore, you will need to make educated assumptions about expected volumes from sources, rates of collection, processing and review, availability of internal resources, and time required for tool acquisition, among others.

As your understanding about the scope of the project improves, establish

6 PMBOK, <http://www.pmi.org>

schedules and milestones for interim goals, such as collection of data, processing, first and second order review. Define the tasks required to reach each milestone, their dependencies, and resources and owners assigned, and make sure everyone understands their role in the project.

If the project requires a large, diverse team, and several handoffs, it is best to determine how communication and transfer of knowledge will happen. What documentation needs to be developed? (coding and processing manuals, instructions for review for relevance and privilege, etc. ).

For every phase, count the resources required for quality controls, both for the process and data.

As you work your way through the planning phase, there are several tools that you can use. GANTT charts are a popular choice among project managers. A basic GANTT chart will help you plan out the tasks that need to be completed, and give you a basis for scheduling when these tasks will be carried out. A more advanced chart allows you to incorporate resource management, and plan the allocation of resources needed to complete the project. Once all the information has been included, a GANTT chart will help you to work out the critical path for a project that has a hard deadline.

GANTT charts are included in many software packages, including Microsoft Project. Below is an example of a chart.

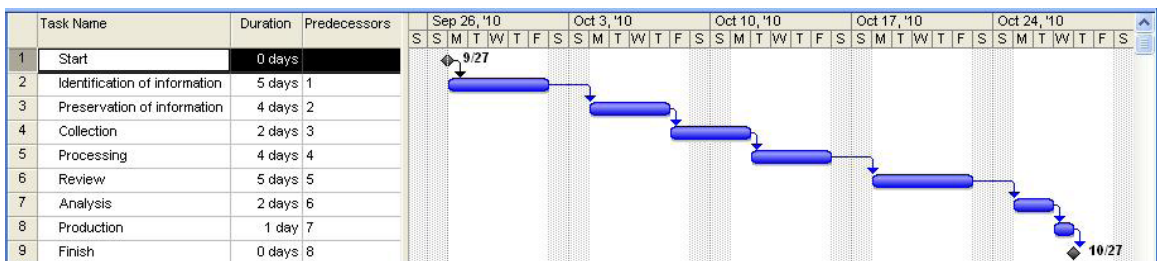


Figure 3: Sample GANTT chart [http://en.wikipedia.org/wiki/Gantt\\_chart](http://en.wikipedia.org/wiki/Gantt_chart)

When it comes down to e-discovery specifics, once again, the EDRM framework is a great starting point. Let's go over each of them, starting with Information Management:

### Information management:

In a nutshell, the challenge of information management in an e-discovery case is to figure out where various types of enterprise information and data are located. You will create an inventory of all the data sources. Getting answers for these questions will start you on your way:

- Who are the corporate contacts, the key IT personnel, and the key records managers in charge of information management?
- Which email systems are involved? How long does email remain on the system? How is email archived and backed-up?
- What key legacy systems are involved?
- Which voice mail systems, instant messaging systems, and other communication systems (Blackberry, Bloomberg, etc.) are involved?
- Is there a Data Map (or data survey) available for the Enterprise? Where does information live, where is it stored, and in which format (paper, ESI)?
- Does the enterprise have a centralized archive for ESI? (centralized archive, decentralized archive, IT backups, no policies)
- What Record Retention policies does the enterprise have?(enterprise, business unit, different geographies, different jurisdictions). Are there any imminent spoliation issues that must be addressed at once?
- How can one access and search the information repositories? What permissions are required?
- What will be the costs?

### Identification of Potentially Relevant Information:

Your goal is to identify both the recipients of a hold notice, and all the information that must be retained. You will need to check many places for potentially relevant information. Here are some guiding questions for this phase:

- What are the types of ESI that are involved (Custodian based, Application data, etc.)



- Scope of personal digital devices: do custodians use desktop computers, laptop computers, smartphones, tablet computers, cell phones?
- What are the messaging systems involved? E.g. Email (enterprise and personal accounts), Instant messaging, SMS, Blackberry messaging, Bloomberg, Thomson-Reuters, etc.
- What are the enterprise collaboration systems involved? E.g. Sharepoint sites, wikis, etc.
- Are social media channels involved? E.g. Twitter, LinkedIn, Facebook, etc.
- Are enterprise applications involved? E.g. accounting, CRM, EDRM, ERP systems, etc.
- Where is ESI kept by the enterprise? E.g. online, near-line, offline. Are backup tapes involved? Is there any data stored in the cloud?
- Are home computers or personal email accounts implicated?
- Do any third parties have relevant data?
- What is the projected cost of this phase?

You must coordinate with the Human Resources Department early on to identify any incoming/departing employees who might be subject to hold. Their documents will be required, and preservation of information for any departing employee will require a deviation from normal document deletion policies.

#### Preservation of Potentially Relevant Information:

At this point, you have identified the recipients and the scope of the hold. You must actively preserve all potentially relevant information, and eliminate any chance of spoliation. You should also consider the accessibility of the data. Requiring access to certain information can be considered an unreasonable request, based on FRCP 26(b)(2)(B). Some applicable questions are:

- Is Litigation Hold Management software integrated with the enterprise archive for seamless preservation?
- Have you issued litigation hold notices to all custodians, and to third parties

as needed? Was confirmation received from all parties? Are periodic reminders scheduled to be sent out?

- Have you confirmed that destruction policies have been suspended?
- How much will it cost to preserve all the data required?

#### Collection of Potentially Relevant Information:

Using the inventory of data sources generated during the information identification phase, you now have to collect the documents and store them aside. Use these questions to guide you:

- Does the company have a centralized enterprise archive with integrated legal hold? If yes, a first easy step is to mark all potentially relevant information archived as being on hold. Your centralized archive might have advanced features allowing it to crawl networked devices for non-archived content, retrieve that content and place it in the case.
- Has all non-networked content, along with any other remaining content, been retrieved and added to the case data?
- How much will data collection cost?

#### Processing of Potentially Relevant Information:

At this point you will have safely saved and set aside the bulk of the case data. The next step is to start assessing it, and looking for emerging patterns, other potential custodians and other potential data sources. However – before any of that work can truly start, you need to make sure that all the data collected is in a format suitable for analysis. You need to determine:

- How much time is needed to process data for loading onto an interface for attorney review?
- Who is going to do the Early Case Assessment? What tools will they use, and what format must the data be in?
- How long will Early Case Assessment take? How much will it cost?

- Who will review the documents? What tools will they use, and what format must the data be in?

#### Review considerations:

As opposed to all previous processes, which can (and often are) done in-house, the review process usually requires participation from third party providers (Outside Counsel and reviewers). Often, the review will require physically exporting the data identified and processed so far, and uploading it to a different system (which often is not located on premises). You need to determine:

- What resources are available for review?
- Will there be contract attorney support in addition to in-house support?
- How much data needs to be reviewed?
- How many tiers of review will take place?
- Are there any special circumstances involved in the review (complex data, proprietary data, databases or foreign language data)?
- Will the reviewers log into a system with the documents? Who keeps up the servers?
- Security for the documents?
- How long will Review take? How much will it cost?

#### Analysis considerations:

These days, large cases can involve huge amounts of data and documents. Technology has progressed to offer tools that attorneys can use to manage and interpret large volumes of data. Often, such tools are included as part of the software platforms used during Review. If your company has a centralized data archive with integrated Early Case Assessment and Review functionality, you might be able to improve your Inside Counsel's insight into the case by offering analytics from early on in the process. Some relevant questions are:

- Will specialized tools for data analysis be required, due to the complexity of the case and to the large quantity of data?
- Are these tools available for Early Case Assessment? Are they available during Review?
- Are these tools available in house?
- How much will analysis cost?

#### Production considerations:

Production happens towards the end of an e-discovery project. At this point, the relevant data has been identified, processed, and reviewed. Relevant, non-privileged documents must now be produced for the opposing Counsel. The questions you need to answer are:

- Will the production be done in-house or by the e-discovery vendor?
- If production is done in-house, do you have the required tools, which can export the data in the required formats?
- Who will do the Quality Control?
- What will production cost?

### **Project Execution**

This is exactly what it sounds like: the process in which the necessary actions are performed in order to accomplish the goals that were set in the planning stage. Your role is to coordinate the team. Also, more often than not, you will have multiple roles – in addition to being a project manager, you will also be in charge of executing certain tasks as part of the project.

### **Project Monitoring**

Monitoring happens in parallel with execution: you need to review, measure and

manage the project. As a project manager, your role is to continuously monitor the project's progress, identify tasks on the critical path<sup>7</sup>, make sure resources are available on time, and remove all blocking factors. As part of monitoring, make sure that you communicate the status on a regular basis to the project executive sponsors.

### **Project Closing**

Congratulations! You have reached the end of this project, and hopefully you have build the foundation for a solid e-discovery case, quickly and cost effectively.

As this e-discovery project comes to a close, it is important to reflect on what went well and what can be improved. The lessons learned can make an important difference for the next project. One good way to capture them is to go through a post-mortem analysis and review, where all team members confer and share their perspectives on the project.

### **References**

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4. A Project Management Approach to eDiscovery, 2008, Bryan Melchionda, Daticon EED
5. E-Discovery Project Planning, 2010, Peg Duncan <http://www.slaw.ca/2010/07/13/e-discovery-project-planning/>

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<sup>7</sup> Critical path: see [http://en.wikipedia.org/wiki/Critical\\_path\\_method](http://en.wikipedia.org/wiki/Critical_path_method)