

# Increasing Value for In-House Counsel with External Discovery Expertise



Corporate law departments are at a watershed. A decade ago, hiring outside counsel meant outsourcing many of the ancillary services associated with litigation, such as photocopying and court reporting, among others. Those expenses were tolerable until the arrival of eDiscovery, which irrevocably transformed the cost structure of a lawsuit.

Initially, law firms managed electronic discovery for their clients in the same manner as traditional pre-trial activities. They controlled the timeline, data and vendor alliances. Many struggled, however, to predict and address the associated costs.

After they were amended in 2006, the Federal Rules of Civil Procedure made eDiscovery a necessary element of the conversation between parties, counsel and clients. There is now established case law with which all participants should be familiar. Yet still today many participants contemplate a resolution prior to investing in any particular matter due to the ever-increasing cost of discovery.

## Value Challenge Inspires Change

These cost pressures mean corporate legal teams are more committed than ever to maximizing the value of the services they receive from their outside counsel. In-house teams also typically have limited desire to build functions internally for ancillary tasks. Inspired by the Association of Corporate Counsel's Value Challenge, in-house leaders are adapting quickly to this new environment, for example by applying alternative fee arrangements or implementing advanced project management techniques.

Discovery complexities, including new information types, global privacy restrictions, security limitations and growing data volumes, as well as dynamic advancements in review technology, are all evolving more rapidly than most law firms can manage. For that reason, corporations that leverage outside expertise at an organizational level can gain a competitive advantage.

## The Science of eDiscovery

Niche advisors have become an essential element in any material litigation. In fact, eDiscovery is such a prominent specialty that almost every AmLaw 200 firm now has a lawyer with extensive knowledge of legal technology. They lead groups of practitioners and support staff members tasked with offering valued-added services to clients with complex discovery challenges.

Allied to law firm experts, third party expert consultants can add significant horsepower given the depth of technical skill they possess. After all, eDiscovery consulting is the core function for top tier service providers, whose partnerships with corporations result in a powerful institutional familiarity that yields tremendous business value.

## Balancing Perspectives for Better Decisions

The value of eDiscovery consultants and expert service providers is distinct from that of outside legal counsel, who are hired to mitigate risk within a particular legal matter, and in-house litigators, who evaluate organizational risk on behalf of the business. Since perspectives on basic discovery principles like reasonableness vary, it is essential to formulate client-approved standards.

As this formulation may be the result of some debate, engaging an external expert can balance divergent opinions. An outside service provider solely focused on technology, discovery and litigation support can frequently bring equilibrium to a conversation about strategy, costs and potential outcomes. Regardless of the size of the matter, this approach can offer a consistent level of feedback with a full understanding of a company's data map, internal resource constraints and technical limitations.

## The True Cost Calculation for the Organization

Electronic discovery is typically the largest expense funded by a litigation budget, particularly when factoring in the cost of document review. Yet outside lawyers frequently evaluate culling strategies without an adequate understanding of the company's data types and management practices. They must also spend time assessing service providers, even though they might not be ideally suited to gauge such criteria as historical accuracy ratings, security credentials, suitability of tools and experience.

In addition, pricing negotiations are generally focused on the procurement of services for an individual matter, rather than organizational buying power. This approach is fraught with risk and inefficiency. Instead, corporations should select service providers directly to: (1) control spending; (2) minimize their risk; and (3) alleviate business disruption. They should also limit selection to those with critical security credentials like an ISO 27001 certification.

Of course, buyers beware: the lowest cost service provider is generally not the solution since accuracy, security and experience could be sacrificed.



## The Winning Approach

To harmonize all of the competing factors, corporate legal teams should seek the expertise and guidance of service providers capable of partnering with their in-house attorneys and outside counsel to guide the organization in the development of standard, repeatable discovery processes. They can help maximize potential efficiencies by establishing protocols based on actual data, rather than assumptions from industry standards.

There is proof abound that a higher-level outlook on identifying key proficiencies makes a difference. Law firms evaluate data sets from a myriad of clients and struggle to effectively leverage that experience in a single matter for a corporation. On the other hand, a managed services provider becomes intimately familiar with a corporation's data. They take a consistent approach that maximizes efficiency over the course of the relationship.

In addition to risk management and cost control, this approach will significantly reduce outside counsel fees related to eDiscovery. A consultative service provider will partner with outside counsel to efficiently separate the junk from the gems in discovery thereby limiting the volume of data outside counsel need to analyze.

An established process and outside experts can also effectively guide law firm partners through a standard corporate procedure that minimizes business disruption for the organization, ensures consistency among all matters and allows counsel to focus on the merits of the case, which is generally the job they were hired to do.



### About Discovia

Discovia is the first provider of electronic discovery services to deliver a fixed-price, managed service, enabling corporate legal departments and law firms to gain a world-class eDiscovery function without building it internally and with cost predictability. We are one of the only providers of eDiscovery services to achieve both ISO 27001 certification for data security and HIPAA compliance.\* We are the first company to publish our operational accuracy rate – 99.8 percent in 2015, and typically achieve data cull rates of more than 95 percent for repeat clients. Our team expertly handles case load spikes, delivers defensible results and mitigates risks. Our repeatable processes and technology shrink the amount of data requiring attorney review, thus reducing litigation costs by over 50 percent. And, the National Law Journal ranks us the #1 Corporate Investigations Provider. Find out why.



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