

The Right Tools: Litigation Project Management (LPM)¹

The Right Tools aspect of the R⁶ FrameworkTM focuses both on processes (often borrowed from manufacturing, business, engineering and other disciplines) and on innovative technologies for implementing those processes to improve excellence, effectiveness and efficiency in the management of litigation.

The specific tools employed will vary depending on the kind of litigation being served, but potential tools include both Litigation Project Management and Process Improvement. Litigation Project Management encompasses the correct scoping, planning, pricing and costing, executing, monitoring, and evaluating of a specific litigation project. Process Improvement focuses more broadly on the system or processes serving a litigation docket, and involves identifying and defining any problem issues, identifying potential causes, developing practical solutions, and both implementing and evaluating the solutions. Process Improvement is evolutionary and can be used for every aspect of litigation management.

The Right Tools category also includes assessing the potential use of advancing technologies such as data analytics, artificial intelligence, machine learning, automation and robotics for specific litigation tasks, and various evolving processes and technologies for handling e-discovery, case and practice management, crisis management and cybersecurity.

This paper provides a broad overview of the Litigation Project Management (“LPM”) tool and some of the key areas of LPM that help to manage litigation with excellence, effectiveness and efficiency.

I. LPM Defined, the “Why?” Answered, and the Benefits of LPM

A. Litigation is a Project

A project is any undertaking that has a beginning, a middle and an end that produces some expected deliverable with a measurable outcome² and of some value. Projects have multiple phases (or stages) and each phase may seem like,

¹ The phrase Legal Project Management is often used and generally means Project Management for any legal project. The focus here is on Project Management principles in Litigation, ergo Litigation Project Management.

² See Steven G. Levy, *Legal Project Management Field Guide: Five Tools for Busy Professionals* (hereinafter “Field Guide”), Day Pack Books (2014) @ 14

and probably is, a project in and of itself. Project phases are made up of activities and tasks – necessary different discreet activities to complete a phase.³ Phases tend to build on one another through to completion. At the end, a project produces something expected, measurable and valuable to the customer.⁴ Given this understanding, litigation is a project. It is client requested with a desired measurable end result that hopefully produces something of value to the client. Litigation involves phases, subphases, activities and tasks. A litigation project can include a single matter, an aspect of a matter, groups of matters, and an entire portfolio of matters. A litigation project can be simple or complex, short or long, and there is always a beginning, middle and end. Project success is largely dependent on some set of procedures to see the project through from start to finish.

B. Project Management

Project Management is the tool to bring about project “success,” and has been defined by the Project Management Institute as “the process and activity of planning, organizing, motivating, controlling resources, procedures and protocols to achieve some project expectation, goal or objective.”⁵

Given this definition, Litigation Project Management is perhaps best defined as a process that involves the disciplined application of knowledge, skills and techniques to execute litigation projects excellently, effectively, efficiently and predictably by properly planning, organizing, communicating, and controlling resources, processes and procedures with the goal of meeting clearly defined expectations of the client.⁶ LPM is NOT about the practice of law, thinking like a lawyer, or trial skills. It is instead focused on the effective and efficient “mechanics”⁷ of litigation.

³ Pamela H. Woldow and Douglas Richardson, *Legal Project Management in One Hour for Lawyers* (Am. Bar Assn. 2014) (hereinafter “Woldow”) @ 4.

⁴ *Id.*

⁵ www.pmi.org

⁶ Lambreth @ 35; see also Barbara Drake and James Wilber, *Legal Project Management: A Value Triple Play for Law Departments*, www.AltmanWeil.com @ 1. LPM is a “disciplined, rational, task management approach to any project based upon clear prioritization, effective communication and systematic implementation.”

⁷ Steven B. Levy, *Legal Project Management (Second Edition)* (Am. Bar. Assc. 2015) (hereinafter, Levy) @ 40.

C. LPM and Other Forms of Project Management

LPM and other forms of project management are not necessarily the same. All forms of project management encourage planning before execution, provide methods of communication, identify resources, have budget constraints and draw on methods for executing tasks to clearly defined objectives. To this extent they are alike.⁸

Manufacturing project management, however, is about improving repeatable processes and ensuring that each product meets standards and/or exceeds certain objective measures. In information technology and construction, project management tends to be linear. In other words, phase 2 generally does not start until phase 1 ends, and project management focuses on clearly defined phases and adherence to providing the desired result on time and within budget. LPM includes phases, but the phases do not typically advance linearly because there are just too many varied and uncontrollable circumstances.⁹ Even so, LPM demands the delivery of litigation tasks on time and within agreed upon cost parameters.¹⁰

D. Why use LPM?

Steven B. Levy in his book *Legal Project Management* answers the question “Why ... use Legal Project Management?” with three simple, but true statements:

- The business of every case, every legal matter, is a project.
- All projects are managed in some way, consciously or not.
- Conscious management is better.¹¹

The practice of law, including a litigation practice, is a business. The objective of any business is to make money, and businesses make money by providing a product or service that purchasers value.¹² Businesses recognize that efficiency and effectiveness make a product or service better or more valuable. More value

⁸ *Id.* @ 42.

⁹ Lambreth @ 41.

¹⁰ See R6™ Right Cost.

¹¹ Levy @ 15; These statements are true and not limited to one side of a litigation docket.

¹² *Id.*

means better profit for the law firm and client business.¹³ Businesses also understand it is the purchaser that drives business, not the other way around.¹⁴ LPM starts and ends with the client, and if used correctly, adds value to both the law firm and client.¹⁵

The R⁶ FrameworkTM has three overall objectives for Litigation Management: Excellence, Effectiveness and Efficiency. LPM is a useful tool to achieve all three because it guides effectiveness (doing the right things), efficiency (doing the right things in the right way), and excellence (providing value that satisfies client expectations).¹⁶ The overall goal of LPM is to drive effectiveness and efficiency into every decision and judgment in response to a wide variety of often adverse litigation circumstances. LPM recognizes that circumstances are not always controllable despite the best of efforts. Therefore, LPM focuses on delivering value as consistently and predictably as possible under an array of different circumstances.¹⁷

LPM is a tool that satisfies most current client objectives,¹⁸ including:

- Controlling litigation cost;
- Controlling time spent (cumulative and running time);
- Better preparation for all planned and unplanned circumstances;
- Delivering only the specific work necessary to meet client needs, expectations and objectives;
- Employing the correct resources to do the work best suited for those resources; and
- Improving team and client communication throughout.¹⁹

Some lawyers, however, believe litigation is far too unpredictable to manage like a project because courts control the flow of litigation and lawyer destiny, opposing counsel are always unpredictable and clients routinely change or are, at times, contradictory in their demands. There is, they say, no way to plan for and

¹³ *Id.* @ 16.

¹⁴ *Id.* @ 16.

¹⁵ *Id.* @ 17.

¹⁶ Field Guide @ 24.

¹⁷ Woldow @ ix

¹⁸ Some say clients want value, efficiency, predictability, communication, understanding and alignment. Woldow @ ix.

¹⁹ Levy @ 20-21.

execute on matters outside of their control. They argue LPM has nothing to do with the law and is inconsistent with what they learned in law school and in the practice of law.²⁰ Some have been taught, learned through practice and are wedded to the idea that “successful,” “profitable” lawyers:

- Do whatever it takes for the client;
- Do whatever the client asks (if it is legal);
- Understand that partner profit is a function of one variable -- hours billed and collected;²¹
- Solve the client’s legal problems, not their business problems.²²

Given these convictions, it is no surprise that they conclude project management in litigation is a waste of time and energy that does not add anything to the bottom line and the way things have always been done works so there is no reason to change. Indeed, many seasoned lawyers choose to keep on doing what they have been doing without disruption until retirement. Change, if any, they say will have to happen with a future generation and not on their watch.

It may prove costly for lawyers and their law firms that hold on to these antiquated unchanging thoughts because one thing is abundantly clear today: clients demand excellence, effectiveness and efficiency. Those who objectively and subjectively demonstrate these qualities through LPM will get the work. Those that don’t, won’t.

LPM is the tool that addresses how work should be done in a manner that “maximizes the efficient delivery of business value to the client”²³ and recognizes certain fundamental present-day truths:

- Lawyers work for clients (in house and outside) so the clients’ expectations are paramount. Therefore, any work performed must be directed at achieving client expectations.²⁴

²⁰ Levy @ 22.

²¹ See R6™ Right Cost.

²² Levy @ 22.

²³ Levy @ 23. Levy’s statement appears directed at the expectations of company clients. The statement holds true if the word business is removed. LPM is a tool for maximum efficiency and available for and should be used by both sides of a litigation docket.

²⁴ Levy @ 24.

- Lawyers should partner with the client in clearly defining and sharing the same goals and objectives.²⁵
- Lawyers are part of the client’s business and, as a partner, must understand that success of the business depends on finding new income and/or reducing costs.²⁶
- Communication tends to increase both client and team satisfaction.²⁷

With an ever-increasing emphasis on delivering value through effectiveness, efficiency, transparency, productivity, predictability and cost reduction, project management skills have become increasingly more important in litigation. Indeed, Mark Cohen predicts project management will be a lawyer/non-lawyer highly coveted skill set.²⁸ These skills are now, and in the future will be, an intricate part of delivering legal services that meet client expectations. LPM addresses the demand because it is “the application of knowledge, skills and techniques to execute legal projects effectively and efficiently, and most importantly achieve the client objectives”²⁹ and “a proactive, disciplined approach to managing legal work that involves defining, planning, budgeting, executing and evaluating. It also is the application of specific knowledge, skills and tools and techniques to achieve client objectives correctly and timely, and it's also the use of an effective means of communication to meet those objectives.”³⁰ It is about managing the project, managing the client, managing time, managing resources, managing cost, and managing the team.³¹

Before proceeding further, it should be understood that a law firm’s use of LPM will not likely be directly client compensated. Instead, LPM will be required and will be part of the lawyer or law firm’s cost of doing business. The benefits of its use, however, far outweigh any cost (i.e. the non-payment for time spent on project management).

²⁵ Levy @ 26.

²⁶ According to Steven Levy, value is an equation: Value = Benefit – Cost. Value can be increased by adding pure benefit, reducing cost or adding benefit that exceeds cost. See R6 Right Cost.

²⁷ Levy @ 26.

²⁸ Marc A. Cohen, After-Corona Legal Careers: More Choice and Less Practice (May 14, 2020)

<https://www.forbes.com/sites/markcohen1/2020/05/14/after-corona-legal-careers-more-choice-and-less-practice/#fb86b3a36208>

²⁹ Lambreth @ 35.

³⁰ *Id.*

³¹ Levy @ 24.

E. LPM Benefits

Using LPM benefits the client, lawyers and the law firm. For clients, LPM provides any number of positive benefits. Among them:

- Greater productivity;
- Greater predictability;
- Improved communication;
- Minimization of surprise;
- Greater transparency;
- A managed approach;
- Greater likelihood of on-time delivery;
- Greater likelihood of work being performed within cost-constraints;
- Opportunity for process improvements;³²
- Greater consistency;
- Enhanced quality;
- Improved working relationships and trust.³³

For lawyers and their law firms the benefits include:

- Greater client satisfaction;
- Increased revenue;
- Opportunities for internal process improvement;
- Improved law firm profitability;
- Better management of risk;
- Greater differentiation from competitors;
- Consistency across multiple offices and teams;
- Greater team member satisfaction;
- Improved knowledge management or the ability to capture work done for re-use;
- Improved teamwork and enhanced firm communication.³⁴

There are, therefore, strong incentives for client and lawyer (law firm) alike to use LPM and an absence of any legitimate downside.

³² R6™ Right Tools: Process Improvement.

³³ Lambreth @ 37-38.

³⁴ *Id.*

II. LPM Models and Phases

A. The Models

There are several published LPM models. Generally, they all describe different stages or phases that address the beginning, middle and end of any legal project, including litigation projects. Within each stage there are recommended actions, tasks and deliverables. While described as “phases or stages,” they do not generally proceed linearly because in any litigation project there is constant overlap occasioned by the uncontrollables.³⁵

While each model may use a different number of phases, different descriptions for each phase, and within each phase, describe activities, deliverables and tasks differently, most visually depict management of any legal project in a circular pattern emphasizing that projects have a beginning, middle and end, followed by the beginning of the next project.³⁶ LPM is therefore a continuous evolutionary process that should incorporate the use of Process Improvement Methodologies for every aspect of a litigation project.³⁷

The Litigation Project Management Institute (LPMI) describes four phases with the activities, processes, deliverables and work product separated for each phase.³⁸

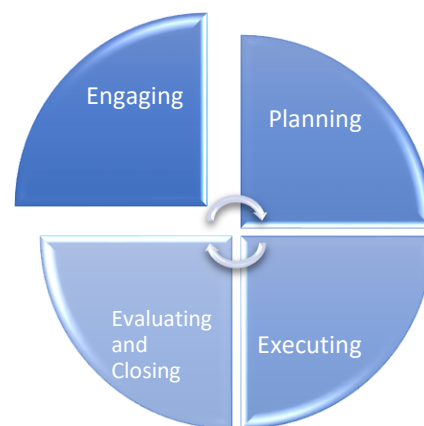
The Engaging Phase:³⁹

Activities & Processes

- Identify stakeholders
- Set matter expectations & parameters
- Establish initial objectives

Deliverables & Work Product

- Stakeholder analysis
- High-level matter timeline/schedule
- Scope of work agreement



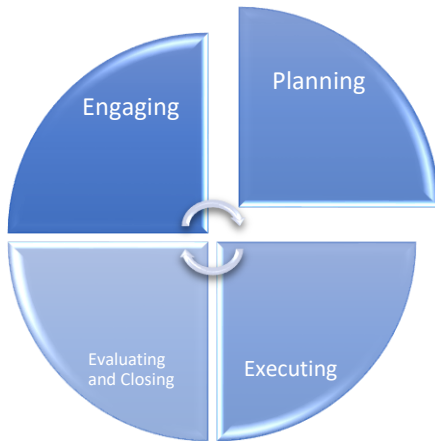
³⁵ *Id.* @ 41.

³⁶ Field Guide @ 35.

³⁷ See R6™ Right Tools Process Improvement.

³⁸ Lambreth @ 39.

³⁹ Lambreth @49.



The Planning Phase:⁴⁰

Activities & Processes

- Determine deliverables/work product
- Establish work assignments and other resources needed
- Determine budget
- Develop detailed matter schedule
- Develop communication plan

Deliverables & Work Product

- Deliverable/work product list
- Work assignments (task plan)
- Approved budget
- Updated matter timeline
- Project plan



The Executing Phase:⁴¹

Activities & Processes

- Monitor work completion, adherence to matter strategy
- Acquire resources to perform work assignments (tasks)
- Modify matter timeline
- Communicate with stakeholders early and throughout the matter
- Manage scope changes with client and other key stakeholders
- Monitor against budget

Deliverables & Work Product

- Updated matter timeline
- Updated deliverable lists and budget
- Change requests

⁴⁰ Lambreth @ 71.

⁴¹ Lambreth @ 139.

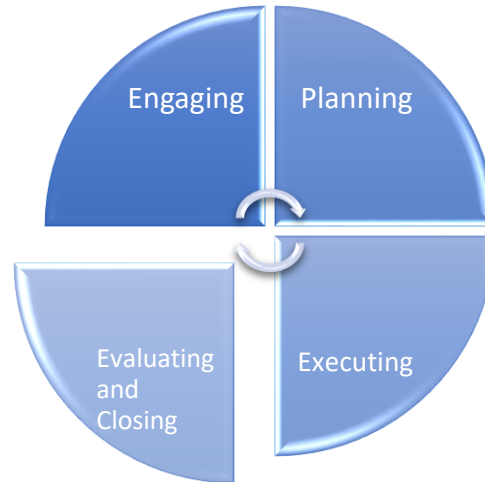
The Evaluating and Closing Phase:⁴²

Activities & Processes

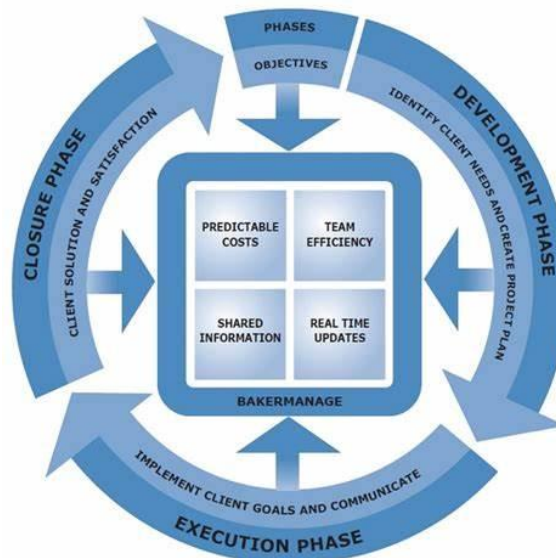
- Monitor scope, budget and relationships throughout executing phase and after
- Meeting of the matter team (end of matter briefing or “after action review”)
- Revise matter strategy for future similar matters
- Administrative close
- Deliver final work product
- Archive reusable work product/create “reusable” assets
- Obtain final payment

Deliverables & Work Product

- Update plan and budget
- Change orders
- Final budget-to-actual
- Exemplars, templates and model documents saved to knowledge management system



The BakerManage™ Model uses three major phases with similar recommended activities and deliverables.⁴³



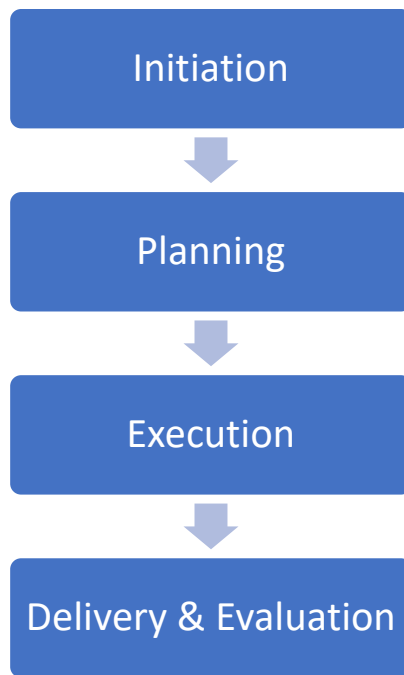
⁴² Lambreth @ 179.

⁴³ Lambreth @41; The BakerManage Model was developed by David Rueff, a Baker Donelson shareholder and certified Project Manager Professional (PMP), along with William Painter, Baker Donalson’s Chief Strategic Planning Officer.

The American Bar Association's (ABA's) law practice division uses the following:⁴⁴



Steven Levy recommends the following stages:⁴⁵



⁴⁴ Pamela H. Woldow and Douglas B. Richardson Legal Project Management in One Hour for Lawyers (Am. Bar. Assc. 2013) 13.

⁴⁵ Levy @ 145. Levy does not depict the phases in a circular pattern.

Whether described as four, five, six or more phases, there are, in reality, only three that really matter for most litigation projects and they can be stated simply:

- Plan it;
- Do it;
- Review it.

B. Key Areas Addressed by LPM

Regardless how the phases are labeled and regardless how the specific activities, tasks and deliverables are described, every LPM model includes certain key areas.⁴⁶ They are as follows:

Client Expectations. Development of a more thorough understanding of the litigation prospect at the outset, especially the client’s issues and expectations. This includes an understanding of what success looks like to the client. It necessarily involves an analysis of the key client stakeholders, including their level of interest in and influence over a project. This analysis drives the understanding of the client’s expectations, individuals who will affect the direction or approach to the matter, the types of communications that will be needed during the project, the budget, and more.⁴⁷

Better Communication. A focus on better communication with the client and within the law firm project team throughout.⁴⁸

A Scope of Work. Development of a “scope of work” collaborative agreement that defines what is “in” and “out” of scope for the project. The scope of work includes an analysis of risks that can affect the ability to meet client objectives and assumptions upon which the scope of work is based.⁴⁹

A Plan (called Work Breakdown Structure or Playbook). Development of a specific game plan for how the work will be done by activity and task, and the

⁴⁶ It is beyond the scope of this paper to go into further detail about each activity, task or deliverable for each phase. Instead the focus is on the key areas addressed by any effective LPM model.

⁴⁷ Lambreth @36.

⁴⁸ *Id.*

⁴⁹ *Id.*

resources (people and technology) that will be used for each such activity or task. The Plan is the foundation for the accurate price and cost structure.⁵⁰

Monitoring. Ongoing monitoring and measuring of performance throughout the project, including a continuous assessment of the price and cost, key milestones, progress and changes that occur in scope, resources, risks, assumptions, and constraints.⁵¹

Evaluations/Lessons Learned. Evaluating a project at the end to identify “lessons learned” and how similar matters with the same or different clients can be improved in the future, resulting in future efficiencies and/or improved results. No aspect of project performance is immune to this analysis.⁵²

Each of these key areas address the ABA’s Law Practice Division’s three core principles that support the use of LPM:

- Front-end planning is better than damage control;
- Keep all crucial stakeholders in the loop all the time; and
- If it can’t be measured, it can’t be managed.⁵³

A slightly deeper dive into each area should be helpful.

C. Client Expectations

An early and clear understanding of the client expectations for any litigation project is essential, and these expectations generally come from key client stakeholders. Therefore, it is important to overall litigation project success to identify and analyze key client stakeholders early.

A stakeholder is anyone who is affected by or who can affect a particular project.⁵⁴ In litigation, stakeholders include the client, in-house legal departments, the court, opposing counsel, other members of the project team and a host of others having the ability to affect or alter the progress of any litigation project.⁵⁵ The focus here, however, is on identifying key client stakeholders who define,

⁵⁰ *Id.* @ 37.

⁵¹ *Id.*

⁵² *Id.*

⁵³ Woldow @ 1

⁵⁴ Lambreth@52; also Woldow @ 16; Levy @ 146-147.

⁵⁵ Lambreth@52-53.

approve, monitor, review matter success and are instrumental in determining whether “value” has been added.⁵⁶ They must be identified because they should also be kept “in the loop all of the time.”⁵⁷ Therefore, the stakeholder identification guides how important information about a project should be communicated. How often? To whom? What? Where? When? How?⁵⁸

Key client stakeholders provide a comprehensive understanding of the real-world problem that needs resolution. Because they are in positions of authority, they define “success” and set parameters around acceptable and unacceptable risk, what is included in and excluded from the scope of work, and what is and what is not an acceptable client cost.⁵⁹

Finally, because stakeholders define “success” and must be satisfied, an early identification and analysis lessens the potential for dissatisfied clients at project conclusion.⁶⁰

D. Scope of Work

The scope of work is typically done early because clarity is necessary before a game plan or “playbook” can be assembled. The scope of work should be a collaborative effort that ultimately results in a specific agreement about the project and a clear understanding of “success.”⁶¹ It should be the end result of a series of iterative discussions that determines desired outcomes, phases, feasibility, timing and cost.⁶² Most believe an effective LPM scope of work is a collaborative agreement that should include at least the following elements.⁶³

1. Matter Description

A definition and description of the project, and its purpose.⁶⁴ What is the client trying to do in this litigation? What is the issue or problem the client is having to address in this litigation? The purpose is not simply “winning” the litigation

⁵⁶ *Id.* @53; see also Levy @ 146-147.

⁵⁷ Woldrow @1; Key client stakeholder analysis is continuous because change in leadership can, and often does, occur.

⁵⁸ Lambreth@58.

⁵⁹ Lambreth@56.

⁶⁰ Lambreth@58; Levy @ 146-147, 194.

⁶¹ Lambreth@63.

⁶² Levy@16.

⁶³ Lambreth @ 63-67; Levy @ 152-153; Woldow @ 20-21.

⁶⁴ Lambreth@63.

because the purpose is usually broader. For businesses, it is often a business outcome – avoiding negative publicity, minimizing business interruption or some other non-trial related result. In other words, what does a “win” look like?⁶⁵ Every aspect of client defined “success” should be included.⁶⁶ Some suggest listing two or three “critical success factors” (CSFs) with an understanding that if the CSFs are achieved the matter is “done” and successful.⁶⁷

2. Key deliverables, both legal work and project deliverables.

A deliverable is any tangible or quantifiable item, document, product or service that will be provided. Key deliverables include early case assessments, status reports, and other similar deliverables that the client expects to receive in a timely fashion.⁶⁸

3. “In” and “Out” of Scope.

What is “in” and “out” of scope should be spelled out.⁶⁹ In-scope work is that work needed to accomplish delivery of the expected result⁷⁰ and a detailed description should be included. Similarly, and equally important, is a specific description of what is not included. The latter helps minimize the risk of future issues and difficult conversations.⁷¹

4. Key milestones/dates.

“Key milestones” means those dates that are particularly important to the client. For business clients, it includes such things as the end of a fiscal year and board of director’s meetings. It means anything of substance, including key trial related deadlines, that is important from a scheduling standpoint to any client.⁷²

⁶⁵ Levy@152.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Lambreth@64.

⁶⁹ Lambreth@64; Levy @ 152; Woldow @ 22-23..

⁷⁰ Lambreth@64.

⁷¹ Lambreth@64; Woldow @ 22-23.

⁷² Lambreth@65; Levy @ 152.

5. **Cost/Fee Agreement.**

For all of the in-scope work, it is important to specify the cost (client perspective) or price (law firm perspective) and a detailed structure for exactly how the cost/price will be managed and paid.⁷³

6. **Key resources.**

Key members of the entire project team, including those from the law firm, legal department, client organization, vendors, and other collaboratives (including other firms) should be identified. What is this team going to look like? Is it made up of only people within the firm? Does it include outside vendors, and if so, what will they be doing? Does it include local counsel? What technology will be used and for what purpose? A description of what each team member will be doing should also be included.⁷⁴

7. **Risks.**

Risks to project success should be clearly identified. A project risk is any factor that could affect the ability to have the project meet the expectations of key client stakeholders. Project risk includes not only legal risks but also broader risks, such as an aggressive opposing counsel, a difficult judge, failure to obtain necessary financing or regulatory approvals and bad facts that could be uncovered during discovery.⁷⁵ Recognizing risks early demonstrates a level of comprehension of the total problem and minimizes dissatisfaction that often comes with later surprise.⁷⁶

8. **Assumptions and constraints.**

Assumptions are factors assumed to be true that must be proven through project execution.⁷⁷ They can be assumptions regarding the facts that, if proved untrue, could result in expansion of the project scope accompanied by the need for more resources and additional work (added client cost).⁷⁸ They can also include

⁷³ Lambreth@66. Business client cost is usually a Critical Success Factor. Levy@153. See also R6™ Right Cost.

⁷⁴ Lambreth@66; Levy @ 152.

⁷⁵ Lambreth@66.

⁷⁶ Lambreth@66; Levy @ 153; Woldow @ 21 fn7 (They use “uncertainty” to refer to unexpected events and their consequences because risks suggest dangers rather than factors that could force a change in action.)

⁷⁷ Lambreth@66; Woldow @ 15 fn6 (They use the words “project drivers” instead of assumptions.)

⁷⁸ Lambreth@66.

procedural or strategic assumptions like an opposing party's litigation or negotiation tactics.⁷⁹ A preliminary decision tree analysis can be used to delineate the likelihood of procedural or strategic assumptions and included within the scope of work.⁸⁰

Constraints are anything that can limit the ability to do certain work. Constraints are found in client litigation guidelines, but any constraint should be stated in the scope of work.⁸¹

A collaborative scope of work sets expectations on the front end, anticipates obstacles and contingencies, and creates a more realistic expectation and understanding from differing perspectives. It provides an enhanced understanding of the client's present situation, objectives and expectations, defines those items that are in and out of scope at the outset and easier to manage throughout.⁸² From a law firm perspective, the scope of work makes it easier to integrate new members to the team because the baseline information is largely spelled out in a written document which can be misinterpreted if handed down verbally.⁸³ It can help the law firm staff projects effectively because resource and staffing considerations are undertaken early. It also creates processes and information for current and future matters. Importantly, it helps prevent client dissatisfaction and reduces the risk of relationship fall-out if something goes awry.⁸⁴

E. Planning – The Playbook.

The central focus of any "planning" phase is the construction of an effective game plan to achieve the "success" or CSF's stated in the scope of work collaborative agreement. The Playbook is that game plan.⁸⁵

An Effective LPM Playbook includes several important elements.

⁷⁹ Lambreth@66.

⁸⁰ Lambreth@66.

⁸¹ Lambreth@67; Levy @ 41.

⁸² Lambreth@69.

⁸³ *Id.* @70.

⁸⁴ *Id.*

⁸⁵ *Id.* @ 73-106; Woldow @ 39-70; Levy @ 238-239.

1. Schedule.

A schedule is simply a listing of key dates, milestones, activities, and deliverables that have an intended start and finish date. The playbook schedule breaks down real-time deliverables, activities, tasks, and resource estimates for each task, and is used to lay the groundwork for resources (people and technology) and cost (client) or price (law firm). It is used to manage the team and ensure that no tasks are missed and, likewise, that there is no redundancy or other unnecessary work.⁸⁶

2. Work Breakdown Structure.

Once the phases and tasks are identified as part of setting a schedule, each phase or task should be broken down into sub-phases, tasks and sub-tasks as needed for the project.⁸⁷ This deconstruction is repeated until each phase has reached its lowest level and cannot be broken down further.⁸⁸

Phases, subphases and tasks can be done by using the Uniform Task Based Management System⁸⁹ phase of Investigation, Discovery, Pretrial, Trial and Appellate. Within each phase there are sub-phases, and then within each sub-phase there are tasks.⁹⁰

At the task level, the work breakdown acts as the foundation necessary to arrive at reliable estimates of law firm cost which affects its pricing because the time and resources to accomplish tasks have been identified.⁹¹

3. Cost/Price Plan.

The work breakdown helps the law firm generate a reliable estimate of law firm cost to do the “in scope” work, which affects the price, and the price affects client cost.⁹² All direct costs, equity partner costs and allocated costs, and total estimated allocated costs can be determined based on the anticipated time for all resources at the task level up through the entire plan. In other words, all of the

⁸⁶ Lambreth@73-74.

⁸⁷ Lambreth@76.

⁸⁸ Lambreth@76; Woldow @ 45-49.

⁸⁹ www.utmb.com

⁹⁰ *Id.*

⁹¹ Lambreth@77; R6™ Right Cost.

⁹² R6™ Right Cost.

resource costs can be summed up for the tasks into the sub-phases, into the phases, into the totality of the law firm cost for purposes of pricing the work.⁹³

4. Resource Plan.

A resource plan means a candid analysis, about, among other things, whether the right people are doing the work (recognizing for every person there is a cost) given a realistic assessment of experience needed for each phase or task. It also includes the analysis of available technology that can be effectively and efficiently used. After confirming the availability of a complete team of people that meet client initiatives and confirming that the law firm cost for those people meet the client cost objectives, all resources for each task, sub-phase and phase are written into the playbook so that there is no confusion about responsibility and certainly no duplication of effort.⁹⁴

The result is really a master plan document that shows all of the steps or tasks in the matter, who's handling each one, the due dates, the dependency relationships between tasks, and much more. A primary purpose of this aspect of the plan is to keep the project team on track to meet all of the objectives. It is also a living document that is the foundation for after project review.⁹⁵

In addition, while not necessarily part of the specific game plan, three other plans are necessary to complete a total game plan playbook. They are a communication plan, risk management plan and change management plan.⁹⁶

5. Communication Plan.

A communication plan defines the external communication approach that meets stakeholder needs and expectations.⁹⁷ It involves considering what needs to be communicated and the type of communication necessary.⁹⁸ A communication plan ensures that all of key stakeholders are involved, and that the communication is the appropriate type and level for each.⁹⁹

⁹³ Lambreth@74; Levy @ 216-220.

⁹⁴ Lambreth@74.

⁹⁵ Lambreth@74.

⁹⁶ Lambreth@88-100.

⁹⁷ Id. @ 88; Levy @ 208-209.

⁹⁸ Id.

⁹⁹ Id. @ 88.

A communication plan also defines the internal law firm communication approach to keep all team members up to speed and working to achieve the same client driven expectations.¹⁰⁰

6. Risk Management Plan.

A project risk is “an uncertain event that if it occurs has a positive or negative effect on the prospects of achieving client expectations of success”.¹⁰¹ Any uncertainty also includes anything that could affect client cost expectations.

There are numerous potential risks from varied sources. There are client associated risks, turnover in key personnel, client governance, or client politics. Financial issues can arise from time to time. External non-client issues can arise like a judge change or change in opposing counsel or their tactics. Internal law firm issues can arise like personnel turnover, finances, turf issues, and lack of information.¹⁰²

Each potential risk should be identified and analyzed in terms of its likelihood and its potential impact on or consequence to the execution of the overall game plan. Moreover, any means to mitigate or minimize any potential risk should also be addressed.¹⁰³

Consequences of some risks, should they come to pass, may include the need for additional resources (added cost). Understand, clients expect their outside counsel to assume some or all of the risks associated with external non-client and internal law firm risk. Therefore, it is incumbent upon any law firm to analyze the risks and determine which cost consequence risks it will assume, and which ones it will not, early, as part of the scoping process.¹⁰⁴

7. Dealing with Change/Management.

There are three types of change that regularly occur in litigation. Change in scope, timing, and resource availability. There should be a plan of action to address all three to swift conclusion.¹⁰⁵

¹⁰⁰ *Id.* @ 90; Levy @ 209.

¹⁰¹ Lambreth@ 92.

¹⁰² *Id.*

¹⁰³ *Id.* @ 93.

¹⁰⁴ *Id.*

¹⁰⁵ Lambreth @ 97-98; Levy @ 254-255.

F. Managing and Monitoring

Another important area addressed by LPM is the ongoing ability, during execution, to both manage and monitor the progress of work compared to what is spelled out in the playbook. Three areas of managing and monitoring are important.

- Managing the scope.
- Managing the project team.
- Monitoring or managing the actual cost.¹⁰⁶

1. Managing the scope

In the litigation context the potential for some change exists and is probably inevitable. Contingency planning – exercising sound legal and business judgment – during the scoping and planning phase is perhaps the best mechanism to manage potential change.¹⁰⁷ Most, circumstances are foreseeable to any experienced litigation practitioner and managing the change in direction should be spelled out in the plan, using a decision tree analysis, and followed through on execution.¹⁰⁸

“Scope creep” on the other hand is different. It is the gradual, uncontrolled, unapproved, incremental expansion or continuous growth in a project's scope.¹⁰⁹ Scope creep is difficult because it often leads to troubling, awkward conversations with clients regarding changes in project terms, particularly those that concern resources and cost.¹¹⁰ The risk of scope creep serves as a reminder of the importance attached to a clear definition of what is “in” and “out” scope.¹¹¹

When there are truly unforeseen changes or when scope creep occurs there are a handful of available choices.¹¹² One possibility: Do the additional work even though it may cost more and cannot be charged. If this is the choice, it is important to let clients know additional resource costs have been absorbed so

¹⁰⁶ Lambreth@ 139-164.

¹⁰⁷ *Infra*.

¹⁰⁸ *Id.* @ 140.

¹⁰⁹ Woldow @22.

¹¹⁰ Lambreth@140-141.

¹¹¹ Lambreth@_____.

¹¹² Lambreth@141.

they can appreciate the added value for no additional cost.¹¹³ A second possibility: Fully discuss the resource and cost changes required and the impact the changes will have on the matter, and hopefully reach agreement about how the work and cost will be allocated. In other words, have an open line of communication supportive of a collaborative, cooperative resolution.¹¹⁴ Finally, a third possibility: Refuse to do the work and risk client alienation.¹¹⁵

2. Managing the Project Team

There are three parts to managing a project team.

- Regular communication with the project team;
- Keeping everyone on track regarding assignments; and,
- Effective delegation and supervision of the project team.¹¹⁶

Regular communications impact project control. Control can be accomplished if there is regular communication with the project team to ensure that they are adhering to the project requirements, demands and deadlines, and that they are timely advised on changes in direction. Regular communication can help minimize scope creep, work duplication and other things that diminish effectiveness and efficiency.¹¹⁷

There are a variety of matters that can be discussed as part of a regular project team meeting. The status of the project, timelines and deliverables, costs, changes, action items and issues, changes to the stakeholder analysis, change to the risk management plan, and updates to the communications plan.¹¹⁸ These meetings should be structured in a way that minimizes time waste and maximizes productivity.

Regular meetings can eliminate duplicate work through use of available tools like a Resource Assignment Matrix (RACI chart). A RACI chart is used to manage work flow and helps everyone on the project team know who is responsible for each task or deliverable and about everyone's role relative to that task or

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.* @ 146-147; Levy @ 260-265.

¹¹⁷ Lambreth@ 146.

¹¹⁸ *Id.*

deliverable.¹¹⁹ In other words, the chart itself is an advisory of who is doing the work, when they are doing the work, how they're doing the work and the timing of all of the work, so that no one steps over into the wrong area.¹²⁰

A Project Management Information System (PMIS) is a useful tool for managing and monitoring a project.¹²¹ It is a technological system used to collect and capture project related information that is accessible and useable by the entire project team.¹²² A truly functional system allows all team members to use it in a shared environment for team calendar integration, access to task status and responsibility, and controlled communication. It can also be used to monitor time, resources and cost.¹²³

3. Monitoring the Cost

For law firms, while executing a project it is important to constantly manage and monitor resources and their cost to the law firm compared to the agreed upon fee or budget. Time and number of resources must be managed to correctly meet the agreed upon cost. Every additional resource is an additional cost and every resource that spends more time than anticipated is an additional cost.¹²⁴

Therefore, to meet the expected target for the firm, resources and time must be closely managed and monitored without compromising other project expectations.

G. Evaluation/Lessons Learned

LPM is evolutionary and intended as a mechanism for continuous improvement. Evaluating throughout and evaluating lessons learned at the end are important to this evolutionary process. It is critical that the project be monitored and managed throughout, but at the end of a project it is important to understand what worked well and what worked not so well, what factors affected project outcomes, and what can be done better in the future.¹²⁵

¹¹⁹ *Id.* @ 148; Levy @ 294-295; Woldow @ 64.

¹²⁰ Lambreth @ 148.

¹²¹ *Id.*

¹²² Lambreth @ 158-159; Levy @ 298-299.

¹²³ Lambreth@158.

¹²⁴ R6™ Right Cost.

¹²⁵ *Id.*

At the conclusion of a matter it is also important to identify documents and other information that can be turned into best practices for use in similar future matters. These are called reusable assets and organizational process assets.¹²⁶ It includes talking about what information was developed or gathered during the matter that needs to be captured, categorized or otherwise made accessible to those who will work on similar matters in the future.¹²⁷

One of the best ways to increase efficiency is to “not reinvent the wheel.” The evaluation process at the end of a particular project is an important tool in the continuous evolutionary process of litigation project management. In the evaluating or review phase process, improvement methods can be used for various phases, subphases, tasks and subtasks to make the next go-around even more efficient and effective, without compromising the success, results or client expectations.¹²⁸

III. Scalability

LPM is scalable.¹²⁹ LPM is a “flexible, common-sense framework whose design and application can be adjusted to fit “a wide range of projects of difference durations and complexities.”¹³⁰ In other words, for more routine, less complex litigation matters, LPM should be kept simple while not eliminating any area.¹³¹ On the other hand, when a matter is complex and or long in duration, the finer and more distinct LPM phases, activities, tasks and deliverables should prove very useful.

¹²⁶ Lambreth @ 185.

¹²⁷ *Id.*

¹²⁸ R6™ Right Tools: Process Improvement

¹²⁹ Woldow @8.

¹³⁰ Woldow @8.

¹³¹ Woldow @9.