

Firms Must Spend Big To Enter Crowded E-Discovery Market

By **Megan Leonhardt**

Law360, New York (October 01, 2012, 5:31 PM ET) -- As the market for e-discovery services becomes increasingly crowded with law firms launching in-house programs in an effort to satisfy companies' demands for greater cost-savings, law firm leaders said Friday that the substantial investment in technology and people needed means not every firm should attempt it.

With companies continuing to demand greater value in e-discovery matters, many firms are seeking to set up their own programs to facilitate cost savings, including Drinker Biddle & Reath LLP, which earlier this week officially launched its subsidiary for e-discovery technology services. In June, Troutman Sanders LLP launched a similar initiative in the form of its fully owned e-discovery unit called eMerge, while Saul Ewing LLP recently unveiled a subscription agreement with e-discovery company Daegis Inc. called the "Saul Review Platform."

"If law firms are willing to make the commitment ... I think it can differentiate [them]," said Steve Berrent, managing director of WilmerHale's discovery solutions.

But creating a successful e-discovery program does not happen overnight, law firm leaders said Friday, noting that setting up such a system takes an incredible investment by the firm in both knowledgeable people and ever-changing technological advancements.

"It takes serious resources and willpower," said John Rosenthal, chairman of Winston & Strawn LLP's e-discovery and information management group. When Rosenthal began ramping up Winston & Strawn's e-discovery services more than two years ago, he rebuilt the entire team, spending time retraining lawyers and searching nationwide for experienced personnel, he said.

Additionally, firms must weigh the benefits and value of creating in-house technologies over setting up preferred provider service agreements with outside vendors. With quickly advancing technologies, it is not enough simply to invest in the initial software and technological tools, but firms must also regularly update and maintain those systems.

Faegre Baker Daniels LLP elected to establish its own in-house technology platforms that offer concept clustering, predictive coding and tech-assisted review, after reviewing a number of other software options.

"At the end of the day, it's an expensive proposition," said Deanna E. Blomquist, group leader of Faegre Baker's client technology solutions.

The recent uptick in in-house programs came as many corporate clients were expressing frustration and outrage over runaway e-discovery costs and firms' perceived lack of expertise on the rules and approaches for the best practices.

"I sympathize with clients," said David Cohen, leader of Reed Smith LLP's global records & e-discovery practice group. "Discovery [generally] should be a sideline issue, not the heart of the case."

In the BTI Litigation Outlook 2013 report released in August, companies rated law firms' effectiveness at handling and managing e-discovery as an average of 5.9 out of a possible 10 points, citing firms' poor planning and ineffective legal strategies.

"Law firms and vendors can push the buttons, but their employees don't always understand what is happening on the back end to anticipate or deal with problems" said Freeborn & Peters LLP's director of litigation technology Michael O'Brien.

But corporate counsel did find that 16 percent of law firms excelled in e-discovery, many of which took an early approach to e-discovery, such as Morgan Lewis & Bockius LLP. Not only did the firm form its eData practice group in 2004, but today Morgan Lewis also has four discovery management centers, records management systems and proprietary technology, according to the firm.

So while setting up an in-house e-discovery system can be a daunting task, firms should not necessarily give up trying to handle some aspects of e-discovery for clients. Even simple steps, such as implementing the right tools — including knowledgeable project leaders and a clear game plan — will help firms meet client demands for greater cost-savings.

Having a baseline knowledge of e-discovery is essential, practice heads said. Litigators should be up-to-date on publications on e-discovery topics released by Sedona Conference — a nonprofit research and educational institute dedicated to law and policy — as well as opinions issued by the courts.

"It's not realistic that everyone can become an expert on e-discovery, but ... everyone should know the basics," Cohen said.

Practice heads also stressed that it was not a bad idea for firms to strategically employ several experts to manage e-discovery matters, rather than litigators. By training people to understand how various systems can be used to the best advantage, firms increased efficiency.

"Very rarely are the tools used to their full capacity," said Wendy Butler Curtis, a member of Orrick Herrington & Sutcliffe LLP's e-discovery team.

Further, those experts — either project managers or knowledgeable discovery attorneys — should work to execute a plan that looks at the big picture, rather than each segment of the process individually, according to several practice heads.

Co-chair of Stradley Ronon Stevens & Young LLP's e-discovery task force Jana London noted that without a plan and vigilant early assessment, a firm can inadvertently review thousands of pages of unnecessary and irrelevant data, leading to a much more costly production.

"You'd never go into other areas of litigation without a plan of attack, but that's exactly what firms are doing with e-discovery," added Alison A. Grounds, managing director of Troutman Sanders' eMerge.

But while firms can implement a number of strategies to help handle clients' e-discovery matters, practice leaders said clients must also help themselves by taking a proactive approach by implementing records management systems.

"Proactively helping clients see the importance of having an appropriately tailored and correctly implemented data retention program in place will naturally cut down costs in the long run," said Freeborn & Peters partner Todd J. Ohlms.

--Editing by Elizabeth Bowen and Lindsay Naylor.

All Content © 2003-2012, Portfolio Media, Inc.