

Law Firms Get Failing Grade On E-Discovery

By **Megan Leonhardt**

Law360, New York (August 31, 2012, 5:58 PM ET) -- Corporate counsel gave law firms a failing grade on their ability to effectively handle e-discovery, a new study found, with just one in five companies saying they had complete confidence in law firms' approach and preparedness to e-discovery.

Citing poor planning and ineffective legal strategies, companies rated law firms' effectiveness at handling and managing e-discovery as an average of 5.9 out of a possible 10 points, according to the BTI Litigation Outlook 2013 report by The BTI Consulting Group (Wellesley, Mass.).

"Firms and clients think about e-discovery differently," BTI President Michael Rynowecer said. "Clients want a streamlined, systematic approach that embraces a highly individualized approach to each matter."

More than 40 percent of corporate counsel surveyed said they wanted to see firms manage e-discovery more effectively and aggressively, with more than one-third citing the drain on time and resources as a major area of concern.

According to the survey, corporate counsel felt that law firms needed to do more to provide expertise on e-discovery rules and approaches for best practices. Companies' in-house counsel also frequently expressed a belief that there was a lack of oversight by firms of third-party document reviewers.

Companies want law firms to find cheaper and more efficient ways to complete e-discovery, Rynowecer said, noting that technology was one tool firms could use to drive down costs.

But there's a perception that the legal profession is resistant to using many aspects of technology, Rynowecer noted, saying that firms had a big opportunity to differentiate themselves by making improvements in this area.

But the survey did find that corporate counsel said that just more than 16 percent of law firms excelled in e-discovery, Rynowecer said — one being Morgan Lewis & Bockius LLP.

Morgan Lewis established its reputation as a leader in e-discovery early on, forming its eData practice group in 2004. Today the practice group has four discovery management centers, records management systems and proprietary technology, according to the firm.

Stephanie “Tess” Blair, leader of the firm’s eData practice, said Friday that a few years ago she would have agreed the profession was resistant to technology in this area, but that there’s been a real change.

“The embrace of predictive coding and computer assisted review ... has been pushed forward primarily by our clients,” Blair said, echoing BTI’s findings that clients would like to see more firms actively engaging in streamlined e-discovery.

Technologies such as predictive coding and computer assisted review go a long way to reducing risk and improving quality, Blair added, noting that in the past, discovery presented companies with extraordinary high costs and quality issues.

Law firms should not only consider using technologies such as predictive coding and computer assisted review to aid clients during e-discovery, but also proactively implement records management systems, Blair said. This step is another way to help provide more value to corporate clients, allowing them to then respond to litigation “efficiently and effectively,” she said.

And while Morgan Lewis has created a hybrid practice group that employs both attorneys and nonlegal personnel to work with clients on e-discovery needs, Blair said that not all firms need that level of investment to satisfy their corporate clients.

More than 10 percent of corporate clients said that to improve, law firms simply need to brush up on their knowledge of e-discovery, according to BTI’s survey. Even small steps by law firms, such as holding training sessions and attending conferences, can translate into more attorney certainty and overall cost-savings for clients, Blair added.

Blair said that clients these days expected lawyers to be well-versed in e-discovery and to be able to call on a strong knowledge base to navigate rules and technologies of the discovery process.

“There’s no question that every law firm ... needs to have a familiarity with e-discovery,” Blair said.

The BTI report is based on more than 3,400 interviews conducted over 12 years, the consulting group said. The analysis contained in the 2013 outlook study is based on more than 350 new interviews with top legal counsel at major companies conducted between late March and early August of this year.

--Editing by Eydie Cubarrubia.