

Change is Good: E-Discovery and the Modern Practice of Law

By Nina Millman, FTI Consulting

Many attorneys dread the incorporation of e-discovery into their practice, viewing it as a necessary evil in modern law. Contrary to this opinion, embracing e-discovery can actually make a law office more efficient, competitive and valuable to clients.

Before trying to understand e-discovery methodology, change agents within the firm should equip themselves with a solid understanding of change management techniques. By following a structured, step-by-step outline, law firms will be more successful in winning over internal stakeholders and achieving a timely, efficient implementation.

One of the most widely accepted methods is the Kotter Eight-Step Change Model. After 30 years of teaching at Harvard Business School, Professor John Kotter developed this approach to help organizations avoid failure and become adept at change. The following is an adaptation of Kotter's Change Model, designed to help implement e-discovery within your law firm.

1. **Create urgency:** Champions must introduce the issue to the group. It is important to hold multiple meetings to discuss new legislation, case law and regulatory requirements that impact the e-discovery landscape and the law firm as a whole.
2. **Build a team:** The team responsible for managing the implementation — often the litigation support group — must be educated and passionate about it. Ensure there is no internal resistance.
3. **Create a vision:** Solidify the benefits of the change, such as increase in productivity, better client satisfaction and profitability, creating a broader vision that justifies the work involved.
4. **Communicate the vision:** Reiterate the need for change and communicate the benefits. Help attorneys understand specifically how this will impact their legal practice for the better.
5. **Remove obstacles:** A critical component is empowering the staff to move forward and providing them with the tools they need (such as software, training, education, etc.) to be successful.
6. **Set goals:** Set realistic, short-term milestones, such as timelines for getting all cases uploaded into the new software and completing staff training on the new tools.

7. **Build on the change:** Check in periodically to make sure goals are being met and set new benchmarks as progress is made.

8. **Make it permanent:** Solidify the change by closing the loop with any remaining opposition and not backing down. Continue to provide support, but from the perspective that the change is in place and part of the firm's standard practice moving forward.

A key step in identifying and overcoming obstacles throughout the process is to understand the audience. Some attorneys may feel that the success they have built in a more traditional setting is threatened by modernizing their practice. It is important for change agents to be sensitive to this reaction, and provide examples of how e-discovery can enhance and build upon the success of the firm.

A common practice for establishing trust among stakeholders is to bring in an e-discovery thought leader as part of the change process; this person should have a thorough knowledge of the subject, be technically proficient and able to communicate this knowledge in a manner that gains the respect of those resisting change. This thought leader can also demonstrate how other firms have used e-discovery expertise to increase their value with clients — a powerful supporting point in winning approval and enthusiastic cooperation.

Leveraging the vast technology, information and workflows that are available with e-discovery can increase efficiencies and profitability, as well as increase the firm's overall competitive advantage. By following the step-by-step model outlined above, a dedicated firm can reach the goal-setting step within six months, and fully implement the new practice within 12 months.

About the Author

Nina Millman is responsible for managing large teams of review attorneys for FTI's Acuity offering. She has more than 14 years of experience in the legal profession and legal technology industry. Her background includes working as attorney in Australia, where she undertook varied tasks for the Department of Aboriginal Affairs, and managing a litigation support team at Fasken Martineau LLP, the largest law firm in Vancouver, Canada.