

# How to Recapture the Discovery Fees Your Law Firm Used to Earn

## Increasing Revenue and Reducing Overhead in the Era of Electronic Discovery

By Kristin Branson

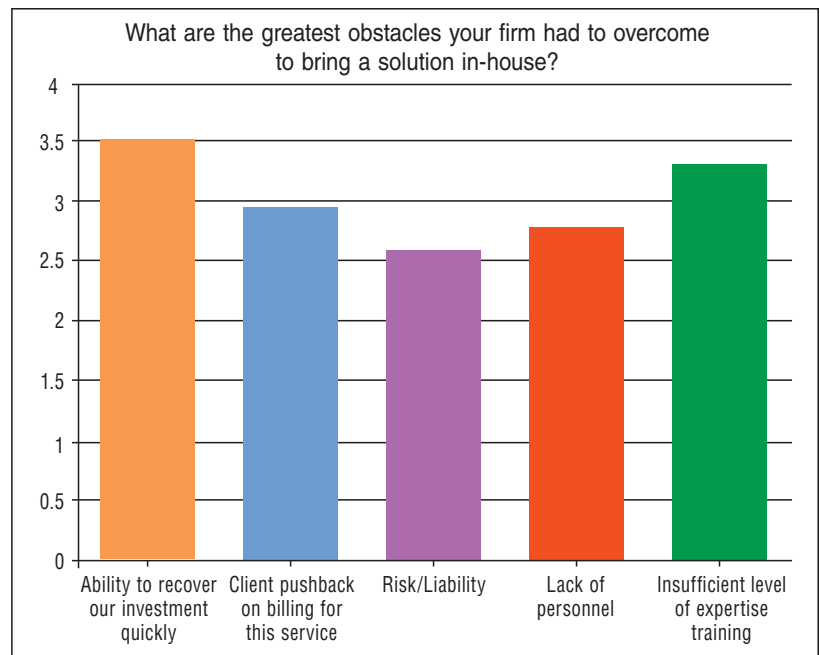
E-discovery has grown from an atypical procedure required in special cases in the late 90s to one enveloping almost every litigation matter. It adds significant costs to almost every case. Without the experience or knowledge to better understand the processes involved in e-discovery, litigators and their teams have necessarily surrendered the preparation of electronically stored information or ESI (processing) to outside providers and consultants, often absorbing the cost as overhead or passing the final invoices back to their clients for payment.

Processing involves using sophisticated software to cull the raw ESI collected from hard drives and servers, removing duplicate and obviously irrelevant documents (e.g., personal email and memos about the office holiday party). The service provider then transforms the remaining documents into a load file for document review software (e.g., Concordance® software), preserving metadata and collating email and attachments, so that lawyers like you can begin your relevancy review.

The whole process can seem like an impenetrable mystery to many lawyers. But it need not be. It's simply the modern equivalent of billable work that firms like yours used to perform when documents existed on paper.

As e-discovery processing becomes a common procedure, processing software has become increasingly easy to use (all software follows this path—think back to the early word processors).

The pool of technologically experienced litigation support personnel has likewise grown to meet the demands of e-discovery. In keeping with these developments, more and more law firms now handle this intermediate step between document collection and review internally. These firms not only eliminate the cost of outsourcing the job, but also recapture a lost revenue stream by using their own litigation support teams to prepare the ESI for attorney review.



***Greatest obstacles to bringing e-discovery in-house according to 2012 LexisNexis® survey: Law Firm E-Discovery Billing and Cost Recovery Trends. Obstacles rated on a scale of 1-5 with 5 being perceived as the greatest obstacle. Bar chart displays average based on all responses.***

## Processing E-Discovery in Your Firm Reduces Costs and Increases Revenue

Traditionally, law firms derived significant revenue from the *entire* discovery process. When lawyers reviewed paper copies of client files, weeding out duplicates and irrelevant documents while flagging the relevant documents, they generated revenue for the firm in the form of billable hours. Revenue can be captured in the same way by processing ESI in-house versus outsourcing it.

In the 2012 LexisNexis survey: *Law Firm E-Discovery Billing and Cost Recovery Trends*, nearly 75 percent of law firms in that survey responded that they considered e-discovery to be an “important revenue stream.” According to a 2011 survey by the Cowen Group®, revenue from litigation support is estimated to grow from \$275 million in 2011 to \$535 million in 2012. In an attempt to capture a piece of this rapidly growing market, almost 80 percent of the responders from the LexisNexis survey derive revenue from in-house e-discovery by assigning e-discovery processing fees as billable hours.

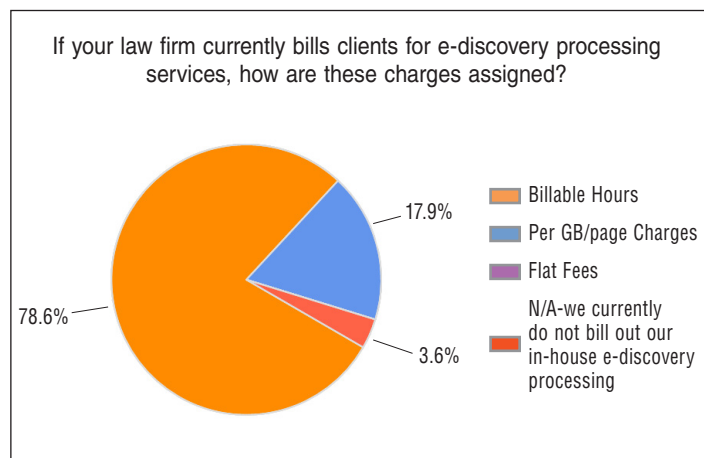
Instead of paying a vendor to process e-discovery material, lawyers and their clients can both win when law firms handle at least some processing (clients win because law firms can charge less than a service provider would cost).

### Putting the Pieces into Place

Creating a new source of revenue, of course, requires an initial investment. To perform the procedures that you currently outsource to vendors, you need to invest in trained staff, software and equipment. The potential rewards, however, far outweigh these costs.

In the 2012 LexisNexis survey, respondents cited lack of personnel as one of the most significant obstacles to handling e-discovery processing. But it’s not insurmountable. Half of the respondents reported

adding at least one employee to their litigation support staff in the previous three years. And more than half of them recovered their software investment in less than a year. Look for a software vendor that offers free training along with their e-discovery processing software so you may not need to invest additional resources in staff training.



**How e-discovery charges are assigned according to a 2012 LexisNexis survey: Law Firm E-Discovery Billing and Cost Recovery Trends**

### A Trendsetting Law Firm Offers Some Guidelines

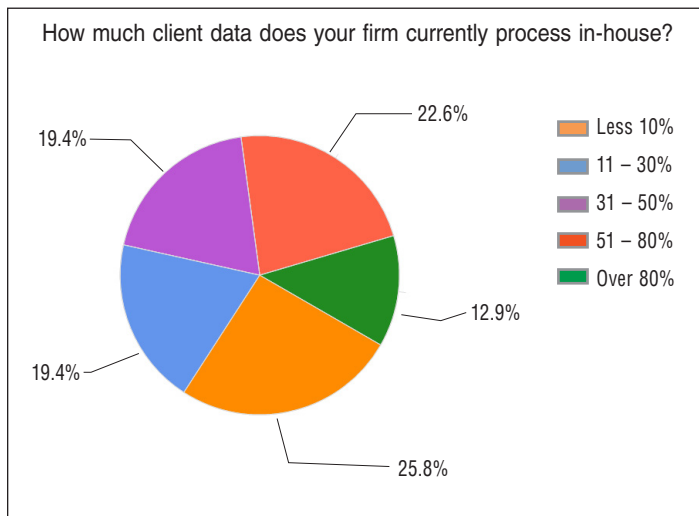
After your firm has all the pieces in place, it can begin processing its own e-discovery material in many cases. Not every case, however, is appropriate for in-house processing. You may likely require outside assistance for cases with large volumes of data or tricky privilege and confidentiality requirements.

LeClairRyan, a firm with about 340 attorneys plus support staff and 22 offices in the United States, conducts about 25 percent of its e-discovery processing and hosting in-house. Partner Dennis R. Kiker notes that the firm’s cases tend to be either small or large, with

few in the mid-range. Accordingly, his firm outsources most e-discovery processing for the large cases, while retaining smaller ones in-house.

What's small and what's large? LeClairRyan often handles processing and hosting for matters with up to 25 GB of electronically stored information in-house, sometimes extending that range to 50 – 100 GB in cases with a long deadline. "There's no defined threshold," says Kiker. "Multiple factors go into the decision [whether to keep e-discovery processing in-house]. You need to look at the data volume, the amount of time available for processing, and how many people will be reviewing the documents."

Tom O'Connor, an e-discovery consultant and co-author of the ABA book, *Electronic Discovery for Small Cases: Managing Digital Evidence and ESI*, feels that most law firms can process up to 10 GB of raw electronic data. As your firm gains experience and refines its workflow, you will likely develop sufficient expertise to exceed this beginner's benchmark as LeClairRyan has.



**Volume of data currently processed in-house according to 2012 LexisNexis survey: Law Firm E-Discovery Billing and Cost Recovery Trends**

## E-Discovery Processing Billing Models

You can choose from several business models to recoup and earn profits on your investment in e-discovery processing software.

### Billable Hours

Just as in the old days of paper document review, your firm can charge for processing by the hour. More than 78 percent of the firms surveyed by LexisNexis use this tried- and-true business model.

### Charge Per Gigabyte or Page

Service providers generally charge by volume. You can adopt this established fee structure. Clients, however, may not perceive the benefit of processing in-house if the charges mirror those of service providers unless you offer a lower rate. Trends show that those firms that are charging per gigabyte are generally charging 30 percent less than an outside vendor.

### Alternative Fee Arrangements

You can offer a flat-rate fee for an entire matter, basing the fee on the volume of material and hours necessary for processing. Charging a flat rate up front may reduce client resistance.

Alternatively, you can include e-discovery services as a value-add for clients, increasing goodwill and potentially generating additional business. Also, if you currently absorb e-discovery processing costs as overhead, handling processing yourself will reduce your costs, as it eliminates the need to use an outside company.

According to Kiker, large companies with big cases understand the necessity of e-discovery and its costs. Smaller clients with smaller cases, however, "are not accustomed to spending money on e-discovery. It's not in their case budgets, so they're very reluctant to pay for these services and put pressure on their lawyers to write the cost off."

The key question identified by Kiker is “how do we educate our lawyers to generate more small-case business and capture the huge value to clients in e-discovery [as compared to printing electronic discovery material and reviewing hard copies]? We need to set up the procedures and processes to generate value for clients and capture that value as revenue.” Kiker sees the need for “a paradigm shift in getting attorneys to recognize the value-add these processes provide and capturing the revenue.”

### **Beyond Revenue: Additional Benefits for Law Firms and Their Clients**

Revenue is not the only benefit of moving e-discovery processing in-house.

Instead of relying on an outside vendor, you work with your own litigation support team, becoming familiar with both the people and the workflow over the course of not just one but many matters. Your team is on site and more readily available to answer questions and respond to requests than a service provider.

Control and standardization is another benefit. Different service providers use different processing software, which means extra work for you to ensure that the work is properly performed to prevent charges of spoliation by opposing counsel. With an internal workflow, your team will develop expertise with a single software system, learning its features in depth. This control and knowledge will enable you to determine how best to approach each matter and work as efficiently as possible while minimizing risk.

Finally, most corporations are fed up with ballooning e-discovery costs. By failing to reduce these costs for them by processing smaller matters in-house, your clients may purchase processing software and put their own workflow into place. The LexisNexis survey found that some law firms promote their in-house processing services on their website to raise clients’ awareness about this service.

In sum, by handling e-discovery processing in your firm when possible, your lawyers will become experts in e-discovery, giving them a competitive advantage that will enable them to better serve your existing clients and win new clients.

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