

# Legal Service Management

## Appendix

### Process and Project Management

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# Legal Service Management

## The Nifty Tech Acquisition

It is a drizzly, cool day. You settle at your desk with a mug of steaming tea next to a large stack of folders each with a project requiring your attention. For some strange reason, you do not have any meetings scheduled for the day. You finally have time to focus on those projects. The next Board meeting is two months away. You should have several hours of quiet time to make a serious dent in the project stack. The moment lasts about five minutes.

The CEO and CFO stride into your office and, glancing at their faces, you know the day has changed. The CEO tells you about the call she received early that morning.

A small competitor, Nifty Tech, has nearly exhausted its financial options. Unless it can find a buyer and close a sale of some or all of Nifty Tech in 120 days, Nifty Tech will file a Chapter 11 reorganization case. The CEO wants Omnivore Corporation, your company, to be that buyer. The CEO, assuming Omnivore would acquire all of Nifty Tech, says that she will not spend more than \$68 million (which, you note, means you would not need pre-clearance of the transaction under the Hart-Scott-Rodino Antitrust Improvements Act).

Why such a high price for a company ready to go into Chapter 11 proceedings? Nifty Tech is in a financial bind, not because of an unsound business model, but because Nifty Tech's owners greatly overextended the company through bad acquisitions to grow the business into areas outside of its core strength.

Trying to manage the core business and the ancillary acquisitions stretched Nifty Tech's management team too thin. They lost focus and the core business suffered. The ancillary businesses pulled capital away from investing in the core business and became turnaround businesses rather than the cash generators Nifty Tech had hoped for. Nifty Tech's owners and management team realized the problem, and shut down or sold off pieces of the ancillary businesses. But their actions were the classic "too little, too late." The damage was done and Nifty Tech's owners ran out of money to keep the business going.

For Omnivore, the Nifty Tech acquisition presents a great opportunity. Omnivore Corporation has had to battle Nifty Tech using some workaround technology. It avoided intellectual property issues, but Omnivore Corporation's alternative was not as flexible and was a bit more costly than Nifty Tech's solution. Still, Omnivore had a loyal customer base and it managed to build in some features to its product that Nifty Tech's product did not include.

The Nifty Tech opportunity gives Omnivore the chance to acquire the patents Nifty Tech used to force Omnivore to use a workaround. While the first patent is nearing the end of its lifespan, Nifty Tech filed many additional patents. The portfolio would protect Omnivore Corporation's product, now enhanced by the Nifty Tech technology, for at least a decade. New technologies are in the pipeline, but changing over the enormous installed base using Omnivore's technology and Nifty Tech's technology (assuming the acquisition goes through), will be costly and take many years.

Nifty Tech offers a second opportunity - its sales and technical employees. The sales employees have close relationships with key accounts. It takes years to build these relationships. These sales employees would play a crucial role in keeping customers calm during the transition and assuring them that Nifty Tech's technology would not be abandoned. The technical employees would save Omnivore three to four years of development work and avoid much of the cost of building a market base from scratch. They would speed the integration of Nifty Tech's technology with Omnivore's technology. They also know the ins-and-outs of integrating Nifty Tech technology with other software packages. Many of them have spent months at customer offices working through installations.

Nifty Tech has a patent portfolio of roughly 500 U.S. and foreign utility patents. Nifty Tech also has about 100 trademarks, a similar number of domain names, and trade secret technology. You do not have a way to define the scope of the trade secrets, but you know those trade secrets are important. Nifty Tech owns all of its intellectual property through its U.S. entity. Because Omnivore competes with Nifty Tech and has had to be very careful about infringement issues, the engineers in Omnivore are familiar with Nifty Tech's patents.

Nifty Tech has the usual other business assets, including computer systems, software licenses, office leases, office equipment, etc. Combined, these assets do not have much value, but Omnivore Corporation wants to acquire them. Omnivore does not have enough space for the Nifty Tech employees, so for a period of at least one year Omnivore Corporation will have the Nifty Tech employees continue working out of their existing offices. Omnivore Corporation's and Nifty Tech's offices are about 10 miles apart, so your CEO does not think this will be a big issue.

Nifty Tech has about 600 employees in its U.S. office. In addition, around 100 employees work in a Bangalore, India office and another 50 work in a Dublin, Ireland office. Those employees work for separately incorporated subsidiaries of Nifty Tech. It is not clear whether Nifty Tech will file the equivalent of Chapter 11 proceedings for the Indian and Irish subsidiaries. Four stockholders own Nifty Tech, but today with the company (a Delaware corporation) in "zone of insolvency" the bank controls the situation more than the stockholders.

This would be a large acquisition for Omnivore, the largest in its history. Your job, of course, is to work with the CFO and make this acquisition happen before the 120-day deadline expires.

The CEO reminds you and the CFO there is one other thing you both should consider (and there always is one other thing). A competitor, In Your Face Enterprises, has made thinly veiled threats over the years about what would happen if Omnivore Corporation and Nifty Tech should join forces. In Your Face has said it would sue to block any deal. In fact, your CEO mentions, just one week before at an industry conference In Your Face's CEO repeated his company's position. If you are going to pursue this deal, you must prepare to defend against a challenge by In Your Face. Nifty Tech is almost out of operating funds and has no money to fight a challenge from In Your Face. You know that Nifty Tech has no in-house counsel. You must assume that Nifty Tech and your CEO will look to you to lead the defense team. Omnivore Corporation will bear the bulk of any defense costs.

You will, of course, take In Your Face's threat seriously. But, since this isn't the first time the issue has come up you had outside competition law counsel look at the question briefly about six months ago. As you recall, there was some risk. You remember that assignment well, because you received

an enormous invoice for the work – about four times what you expected. That was when you started looking for another law firm.

The CEO scheduled a meeting for late this afternoon. By then, you need to have outside counsel retained and a preliminary action plan in place.

The CEO leaves, but the CFO sticks around to have a chat. She shares with you that, while the deal will be great for Omnivore, it most likely will have a negative impact on earnings for the year. She is concerned about the near-term impact on Omnivore Corporation's stock price (Omnivore Corporation is listed on the NYSE).

In addition, of course, there are no guarantees that Omnivore Corporation will be the only bidder, close the deal or win the litigation. She needs your help. The costs of the acquisition and the litigation could get quite high. Anything you can do to keep those costs down, without losing the deal or the lawsuit, would help significantly. The CFO leaves.

Alone again in your office, you plan what to do. Fortunately, you entered into a working relationship with a firm, Friendly & Wise Ltd., six months ago after you dropped the firm that did the antitrust work for overbilling you. You are comfortable F&W will do an excellent job in this situation. You have used F&W for some corporate projects and they were creative and completed the projects within budget. One of the many reasons you selected them was their eagerness to embrace legal project management, and pursue alternative staffing arrangements and value fee structures.

Your internal staff is small: four attorneys, including yourself, and an equal number of paralegals. Everyone already is busy. This project will push all but the essential work off the desk of each person on your team. While your team cannot spend all of their time working on the acquisition, there are many things they can do.

The lawsuit is another matter. You need to gear up for rapid discovery and injunction hearings. There may even be a trial. In Your Face uses aggressive litigation tactics. Your Associate General Counsel is a seasoned litigator from one of the large firms, so she can lead the strategy for the defense efforts. But, defending the litigation will be resource intensive and costly. Comforted by your visionary instincts in selecting outside counsel, you know you can use F&W to defend the litigation as well as handle the corporate work.

You think about the other players who will need to be involved in preparing for and closing the deal and in the litigation, and who will need to be kept in the loop. Some of them are in other departments of Omnivore Corporation and some are external.

Given the short time frame and the number of moving pieces, it will be especially important to manage all the details of the acquisition and litigation without dropping any balls. Congratulating yourself for recently implementing project management within your department, you think about who will be the best project manager (or managers) for the acquisition and litigation. Should you take on that role? Should it be another attorney in your department? Someone from outside counsel? A business person?

You send a quick email outlining the situation to the engagement partner at F&W. In the email, you request his participation in a meeting or call to begin developing the project plan. He responds that his prior lunch meeting has been canceled and he is available to meet in your office for a working lunch.

He promises to have key partners at this firm available by phone to answer any questions. You, your Associate General Counsel, the partner from F&W, and the project manager gather in a conference room. (You asked one of Omnivore Corporation's project managers to sit in on the initial discussion and help out until you decide who will be the full-time project manager for the transaction.) You open the white board, take out the markers, and start sketching some ideas about ways to handle and pay for the work ahead.

## Process & Project Management

### Project Management

1. Draft a project charter for the acquisition and related litigation.
2. Develop a preliminary budget based upon experience in macro level/big bucket categories.
3. Develop a process map.
4. Develop a communications plan for the project.
5. Begin to develop the project plan.
  - a. Identify the phases and tasks to be accomplished for the project
  - b. Develop a schedule, including start/end dates for the phases and tasks.
  - c. Give preliminary thought to the lead resource responsible for each task. Please keep it general (e.g., outside counsel, other company departments, other outside entities), since you will give more detailed consideration to staffing in the next session.
6. Begin developing the project budget – allocate your targeted total between the acquisition and litigation, and among project phases.

A **project charter** is a key document within project management and includes the issues addressed when defining the scope. The charter identifies the team members and leadership and lays out the overall project description, the goals and scope of the project, key assumptions and risks, and timeline and dates for key deliverables.

A good **communication plan** identifies the goal of each communication; the target audience for that communication; and how the communication will be made, whether by meeting, email, report, or other. The plan should also identify the parties responsible for initiating and tracking each type of communication and should state the desired frequency of each communication. Finally, the communication plan should identify the expected outcomes of the communication and specify responsibility for following up on any action items.

A **project plan** is the master document that integrates the project scope, milestones, schedule, responsibilities, and estimated cost. The project plan becomes the primary tool for managing the project.

## Exercise: Create a Project Charter

The definition of the project's scope is the starting point for effective project management. The scope identifies what the project will encompass and what it will accomplish. The scope should be specific and realistic, and should be divisible into discrete tasks. It serves as the basis for all further planning and execution. A project charter is a key document within project management that helps with defining the project scope, time and costs involved with the projects. The charter identifies the team members and leadership, and lays out the overall project description, the goals and scope of the project, the key assumptions and risks, and the timeline and dates for key deliverables. Below is a sample of a project charter for reference.

### Project Charter Sample

<b>Date:</b>	01/31/2012	<b>Executive Sponsor:</b>	<ul style="list-style-type: none"> <li>George Washington</li> </ul>
<b>Overall Project Description:</b>	Project Sunset	<b>Team Lead:</b>	<ul style="list-style-type: none"> <li>Thomas Jefferson</li> </ul>
		<b>Team Members:</b>	<ul style="list-style-type: none"> <li>John Adams</li> <li>Abe Lincoln</li> <li>Attorney - TBD</li> <li>Paralegal – TBD</li> </ul>
<b>Goals:</b>	To complete acquisition of Company B by October 2012	<b>Benefits:</b>	Enhancement of current business portfolio for Company A and to potentially increase stockholder share value by projected 20%.
<b>Scope:</b>		<b>Key Assumptions:</b>	TBD
<b>Exclusions from Scope:</b>		<b>Risks:</b>	Scope may be too complex for the allocated resources and investments. Working with tight, accelerated deadline for October 2012 completion.
<b>Key Deliverables</b>			
<b>Key Project Dates:</b>	<ul style="list-style-type: none"> <li>February 20th, 2012 – Public Announcement</li> <li>March 1st, 2012 – Anticipated HSR</li> <li>June 1st, 2012 – Board Meeting</li> </ul>		

Assignment:

Your task will be to develop a Project Charter for Nifty Tech Acquisition Scenario.

### Project Charter Template

Date:		Executive Sponsor:	
Overall Project Description:		Team Lead:	
		Team Members:	
Goals:		Benefits:	
Scope:		Key Assumptions:	
Exclusions from Scope:		Risks:	
Key Deliverables:			
Key Project Dates:			



## Exercise: Experience-based Macro Level Budget

When discussing the Project Charter, we covered defining the scope and time for your project. Before jumping into developing your project plan, it is important to now think more about the **cost** and **people** for your matter.

### Cost

Budget information should be an integral part of the resulting project plan. By using three budgeting techniques you can triangulate into the most-likely scenario.

1. Experience-based (macro-level/big buckets)
2. Project Plan-based
3. Duration/Resource-based

First, begin by sketching out the budget based on estimates for the categories of work that will be required for the project. The drivers for your budget include hours, rates, and expenses, and the level of budget detail will depend on the scope of the project. For major projects, the budget may even be detailed down to the task and individual resource level, as well as estimating the budget amounts by Month or Quarter (i.e., budgets for the finance department are typically in periods such as Quarters and Years). Knowing your constraints before diving into the project plan will help with building a more solid project plan.

### Experienced-based (macro-level/big buckets) Sample

Category	Low Estimate	High Estimate
Outside Counsel	\$750,000	\$1,250,000
Discovery Costs	300,000	550,000
Experts	125,000	150,000
Filing Fees	25,000	30,000
Expenses	75,000	125,000
Other	25,000	50,000
<b>Total</b>	<b>\$1,300,000</b>	<b>\$2,155,000</b>

Macro Level Budget Experienced-based (macro-level/big buckets) Template

Category	Low Estimate	High Estimate
<b>Total</b>		

## Exercise: Macro Level Resource Planning

### Resources

Developing the project plan also includes determining who will be responsible for completing specific tasks and activities for the projects. Take into consideration all of the people who could contribute to the project: attorneys, paralegals, support staff, other resources within the company, outside counsel, and vendors. A helpful tool with determining the roles and responsibilities for your team is a RACI diagram. The RACI describes the roles of various teams or people involved in delivering a project, and provide structure and clarity to cross-functional roles on a project. The RACI diagram splits tasks into four key responsibilities, which are then assigned to different roles in the project or process. These responsibility types make up the acronym RACI:

(R) Responsible	(A) Accountable	(C) Consulted	(I) Informed
Those who do work to achieve the task. There can be multiple responsible persons or groups.	The resource ultimately answerable for the correct and thorough completion of the task. There should be exactly one "A" (accountable person) specified for each task.	Those whose opinions are sought. Consulting implies a two-way communication.	Those who are kept up-to-date on progress of the progress. These are recipients of one-way communication.

### RACI Sample





T a s k s	Task Description	Project Leader	Litigation Support Coordinator	In House Attorney	Lead External Attorney
	Manage project sub-teams	R	C	I	A
	Lead Communications Planning	R	I	A	C
	Provide status to Steering Committee	R	C	C	A
	Manage budget for project phases	R	R	A	R
	Develop document review protocols	I	C	R	A
	Coordinate with litigation support for production	A	R	C	C
	Determine scope/collection universe w/in house	I	C	A	R
	Draft search criteria and keywords	I	C	R	A
Interview custodians for data gathering	I	C	A	R	

Assignment:

Your task will be to develop a RACI diagram based on the Nifty Tech Acquisition Scenario. Remember to think about and define the following roles of the RACI and who best fits each role(s). Use the template that follows.

**RACI Template for Macro Level Resource Planning**



Task Description							

- (R) Responsible*
- (A) Accountable*
- (C) Consulted*
- (I) Informed*

### Exercise: Determine Communication Plans — Stakeholder Awareness, Action Plan

How, to whom, and how often will you communicate the progress of the project? It is important to define and develop a plan for communication at the time the project is begun, to make sure that all stakeholders are sufficiently informed and aware of developments.

An important area of consideration when developing a communication plan is to remember that different audiences need different levels of communication. In an effort to engage stakeholders within the appropriate levels, their current awareness should be identified during working sessions, along with their desired level of awareness. To this end, it is the goal of the activities within the communication plan to move stakeholders along the awareness continuum to ensure they are adequately informed according to their project impact level. Levels of awareness have been defined as:

Unaware	Awareness	Understanding	Commitment	Advocacy
Stakeholders are not aware the project is occurring	Stakeholders are aware the project is underway	Stakeholders have a sound understanding of project purpose and progress	Stakeholders support the project, believe it is worthwhile, and would act if prompted	Stakeholders proactively communicate, take action required in support of project

Additionally as with all projects, communication plans are especially important for projects where there are a number of disparate groups involved. For example, M&A projects typically involve most corporate business groups including finance, tax, HR, IT, compliance, audit, and legal. Depending on the nature of the transaction, they also typically involve a number of outside parties such as the buyer's and seller's outside counsel, the buyer's lender and lender's counsel, investment banker or broker, independent accounting and tax advisors, and also may involve other service providers. The communication plan for an M&A project would need to take into consideration all these groups and specify which players should receive which communications and when. Because of the sensitive nature of the project, the plan would also need to specify who has access to what level of information.

A good communication plan identifies the goal of each communication; the target audience for that communication; and how the communication will be made, whether by meeting, email, report, or other. The plan should also identify the parties responsible for initiating and tracking each type of communication and should state the desired frequency of each communication. Finally, the communication plan should identify the expected outcomes of the communication and specify responsibility for following up on any action items.

### Stakeholder Awareness Sample

Stakeholder Group	Unaware	Awareness	Understanding	Commitment	Advocacy
MM Steering Committee				○	▲
Law Practice Area Reps					▲
General Counsel			○	▲	
Law VP's		○		▲	
Attorneys		○		▲	
Paralegals		○		▲	
ACS		○	▲		
Europe Law	○		▲		
Corp Compliance		▲			
Tax	○		▲		
CIO & ISLT		○		▲	
IS Law Steering Committee				▲	
BIS Mgmt		○			▲
Europe BIS	○		▲		
Corp Audit		○	▲		
Accounts Payable Mgmt		○	▲		
FP&A		○	▲		
SS&P Mgmt		○	▲		
Outside Counsel		○		▲	

▲ Target Awareness Level  
○ Current Awareness Level

Assignment:

Your task will be to develop a Communication Plan based on the Nifty Tech Acquisition Scenario. Templates for a communication plan and stakeholder awareness matrix are available in the Appendix of this handout for use during this exercise.

### Stakeholder Awareness Template for Communication Action Plan

Stakeholder Group	Unaware	Awareness	Understanding	Commitment	Advocacy

### Communication Action Plan Sample

Communication Event / Type	Due Date / Freq	Purpose of Communication	Message Content	Communication Vehicle	Author	Reviewer(s)	Sender	Target Audience	Status
Project Status Meetings	Every Thurs.	Discuss risks, issues, and status for communication to sponsorship	Business decision, Risk, Issues, Budget and status	Meeting Status Report	Bill	Project Team	Bill	Steering Committee	Ongoing
Project Team Meetings	Recurring	Inform all areas on status and future expectations	Provide overall project scope, timeline, milestones	Meeting Status Report	John	Jane	Jane	Attorneys Paralegals	Ongoing
Outside Counsel / In House Attorney Meetings	Recurring	Inform all attorneys on status and future expectations	Provide overall project scope, timeline, milestones	Meeting Status Report	John	Jane	Jane	Attorneys	Ongoing
Paralegals / Support Staff Meetings	Recurring	Inform all paralegals on status and future expectations	Provide overall project scope, timeline, milestones	Meeting Status Report	John	Jane	Jane	Paralegals	Ongoing
Project Kickoff	02/01/12	Inform stakeholders of program	Org Chart, roles and resp, what we need from stakeholder, enrollment in program objective	Meeting Project Charter	Bill	Project Team	Bill	Steering Committee	Completed 02/01/2012
Acquisition Announcement (Internal)	2/01/2012 (anticipated date)	Inform all internal BU's about the acquisition	Alert the staff to business decisions relating to acquisition with Company B	Email	Robin	Bill John	Bill	C-Suite Execs General Counsel Law VPs Attorneys BU Line Leads	Not Started
Legal Hold Notice	02/07/12	Inform of obligations to preserve materials pertaining	Preserve hard copy and electronic data for anticipated HSR/2nd Request needs	Email	Robin	Bill John	Discovery Counsel	Identified Recipients	Not Started





**Communication Action Plan Template**

Communication Event / Type	Due Date / Freq	Purpose of Communication	Message Content	Communication Vehicle	Author	Reviewer(s)	Sender	Target Audience	Status

## Exercise: Develop a Project Plan-based Budget

After defining the scope of the project and determining the resources and budget needed for the project, it's time to identify the tasks and activities required to achieve the specified outcome. Begin with the major divisions of the project (i.e., the project phases and milestones), and don't forget to include planning and administration as a specific phase. Planning and administration involve resources and cost, but many novice project planners fail to account for them when developing the plan and budget. The project should also have identifiable milestones – specific events demonstrating progress or completion of a phase. For example, some milestones in a government investigation might include initial case assessment, document review, case and document preparation, interviews, court appearances, discovery, negotiation, and settlement.

Once the major phases are determined, drill down to itemize specific tasks and activities within that phase, and the sequence in which those tasks must be done. For example, tasks in the document review phase of a legal case might include defining and developing a protocol for reviewers, training reviewers, and the reviewers conducting the actual review of the documents. Defining these phases, milestones, and tasks is the first step in developing the project plan.

The project plan will become the primary tool for managing the project, and should identify the phases and tasks to be accomplished for the project; include the schedule for the project's phases – including the start and end dates for each phase and task; and give preliminary thought to the lead resource responsible for each task.

Earlier, we discussed creating a budget on a macro level for your project. A budget is, by definition, a living document and likely “wrong” at the outset of any project because it is based on assumptions and predictions. As the project progresses, more information will become available to enable a more precise project plan and budget. More accurate information about the scope, required tasks and available people may necessitate adjustments to the budget. Budget variances should be discussed with the responsible team members with attention to the reasons for the variance, the likelihood of it continuing, and alternatives for getting back on track or, if appropriate, a budget adjustment. Budget variances should be analyzed in concert with progress on the project plan, as they may be symptomatic of an incomplete or overly optimistic plan.

If outside counsel is involved in the project, it is critical to work with them to develop the project budget. It is also important to consult with any outside vendors. As to internal costs, think of the law department team members' time as currency: what is the best way to spend their time, and what is the opportunity cost for other things they could be doing? Other company personnel may have actual dollars associated with their time, e.g., IT personnel or a trained project manager. Both the law department and outside counsel should be comfortable with the final budget and confident in their ability to work within the budget's parameters.

Assignment:

Your task will be to develop a Project Plan-based Budget on the Nifty Tech Acquisition Scenario. A template for a project plan is available in the Appendix of this handout for use during this exercise.

### Project-Plan Based Budget Template

Task	Start Date	End Date	Internal Resources			External Resources			Assumptions
			Total Hours			Total Hours			
Total Hours									
Rates									
Total Fees									

### Duration/Resource-based Budget Template

(Internal and External)	Total Hours	# of Days	(Hrs/# Days)	Expected Daily Working Hours	(Avg Hrs/Expt)	Assumptions
Total Hours						
Rates						
Total Fees						

Legal Service Management




## Legal Service Management

“After Action” Review Template (aka “Lessons Learned,” “Hot Wash”, etc.)

What Went Well

Special Recognition

What We Could Have Done More of/Less of

What Should Have Been Done Differently

Next Steps / Action Item	Suggested Timeframe	Responsible Person / Team	Action Taken