

LEGAL PROJECT MANAGEMENT

A better way for lawyers to work
with landlord and tenant clients.

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Itkowitz PLLC
itkowitz.com

LEGAL PROJECT MANAGEMENT

A better way for lawyers and clients to work together.

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CHAPTER 1: LEGAL PROJECT MANAGEMENT

A. Legal Project Management -- Introduction and Definition

I wrote this book to teach Legal Project Management to three groups of people:

- (1) My clients, and potential clients;
- (2) The lawyers who work with me; and
- (3) The legal profession in general.

In some chapters, I am obviously speaking to the client. In other chapters, I am obviously speaking to the lawyers. It doesn't really matter which way I am directing my instructions and arguments, all chapters are relevant for both clients and lawyers. Legal Project Management is an inherently collaborative way of working and its success depends upon the buy-in of both lawyer and client.

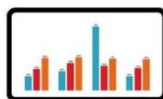
Project management is classically the stuff of manufacturing, construction, technology development, and other fields. When project management principles are imposed upon the practice of law, you get **Legal Project Management**.

The definition that we have developed at Itkowitz PLLC for Legal Project Management is:

Legal Project Management is the discipline of managing resources (people and technology) to bring about the successful completion of the specific goals of a legal case (the client's goals), while honoring the constraints of the matter (time, money, relevant law).

Legal Project Management

The discipline of managing resources (*people and technology*) to bring about the successful completion of the specific goals of a legal case (*goals, as carefully determined by the client*), while honoring the constraints of the matter (*such as time, money, and the status of relevant law*).



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Why don't more lawyers utilize Legal Project Management? Your guess is as good as mine, at this point. The below graphic takes a stab at the answer.

Why Don't More Lawyers Use Project Management?

Project Management =
Manufacturing.
Construction.
Tech.
...but seldom Law.
(Why???)

- Attorneys tend toward independent thought and action, they are competitive, not collaborative.
- Lawyers are often not business people. (That's why they're lawyers.)
- Practicing law is a less objective endeavor than these other fields – it's hard to build a house if there is always an opponent trying to knock it down.
- Lawyers resist change.

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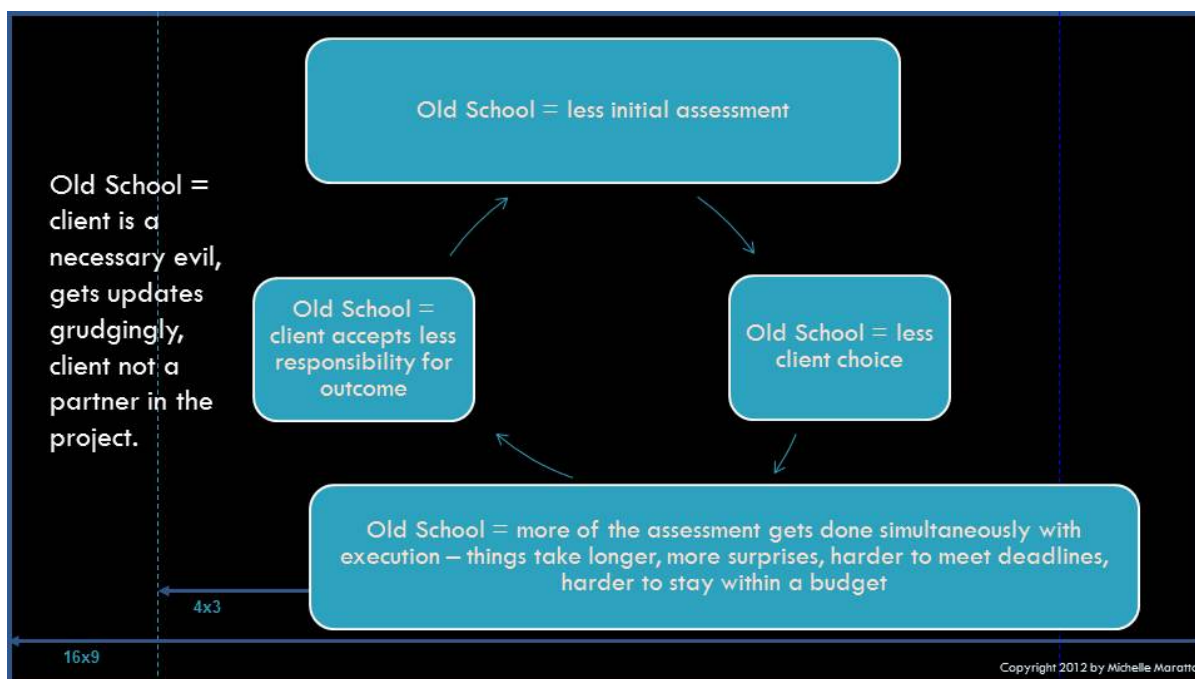
B. Why LPM is a Better Way for Lawyers and Clients to Work Together

Legal Project Management (“**LPM**”) is a better way for lawyers and clients to work together, as compared with the vast dynamic that exists between attorneys and their clients today.

In what I call “*the old school model of delivery of legal services*” (see below graphic), because initial assessment is expensive, lawyers tend to do less of it. Less in-depth initial assessment necessarily leads to a lawyer and a client with a lesser understanding of the issues in the case, and a lesser understanding of the meaningful choices that exist. Less in-depth initial assessment also means that more of the assessment is done simultaneously with the execution, and, thus:

- things take longer;
- there are more surprises;
- it is harder to meet deadlines; and
- it is harder to stay within a budget.

Further, because the client was offered less choice, he has a smaller role in deciding on a course of action. Therefore, the client accepts less responsibility for the ultimate outcome of such action. If the outcome is not one expected by and/or welcomed by the client, then tension develops between lawyer and client. Under the old-school approach, the client becomes a necessary evil, gets updates grudgingly, and is not viewed as a partner in the legal project.



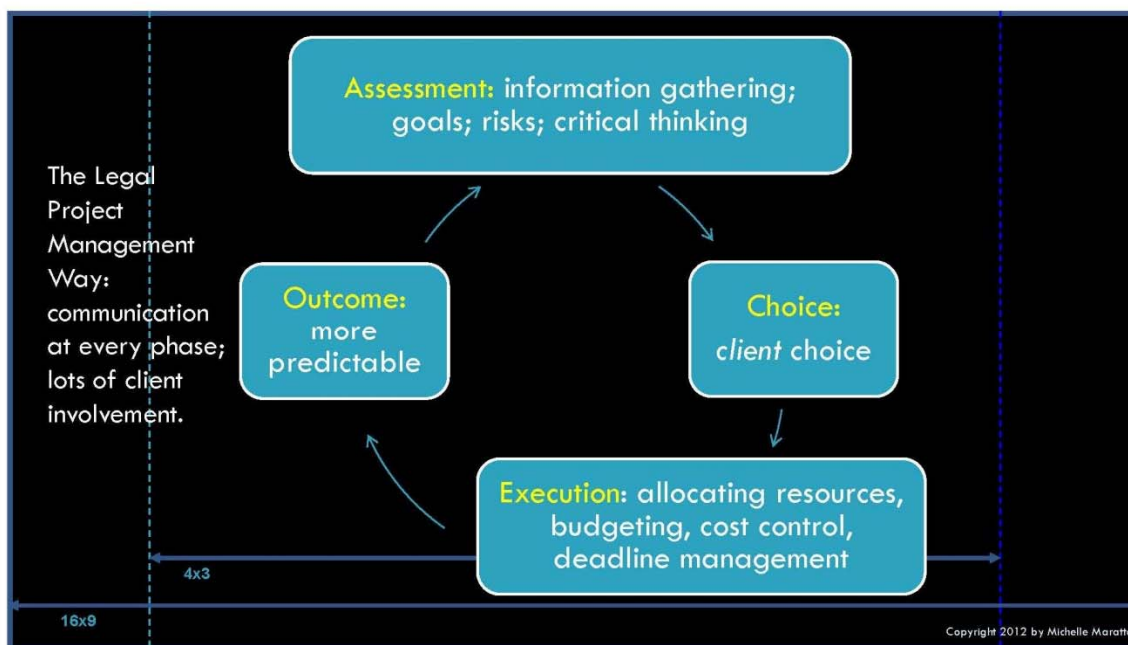
In Itkowitz PLLC's Legal Project Management system, the case is comprehended as a series of manageable stages (or "**Scopes of Work**"). For each **Scope of Work** there is a cycle of:

- **Assessment**
- **Client Choice**
- **Execution, and**
- **Outcome.**

After an **Outcome** is reached, the information gathered during the **Scope of Work** feeds right back into the next stage of the case, and **Assessment** begins all over again for the next **Scope of Work**.

With Legal Project Management (see below graphic), the **Assessment** phase is in-depth. By focusing the client and the firm on information gathering, risk assessment, and critical thinking from the inception of each stage, the client is better able to make choices. Thereafter, in the **Execution** phase there is more room for allocating resources, budgeting, cost control, and deadline management. The client is, thereafter, not surprised by the **Outcome** of the **Scope of Work** and owns the results, because the

client is making educated, informed choices. Again, after an **Outcome** is reached, the information gathered during the **Scope of Work** feeds right back into the next stage of the case, and **Assessment** begins all over again for the next **Scope of Work**. With the Legal Project Management approach, there is communication at every phase, and lots of client involvement.



C. Principals of Legal Project Management

How does LPM work specifically? For Itkowitz PLLC, Legal Project Management is a unique, systematic, and stimulating approach to practicing law that stresses heightened attention to the following:

1. Information Gathering

We seek to attain a deep understanding of your business model and your legal matter.

2. Understanding and Defining the Client's Goals

We constantly seek to clarify your goals for the engagement, even as they evolve. We document and circulate those goals in a project charter.

3. The Utilization of an Evolving Project Charter to Guide the Case

Every significant project needs a Project Charter. And your litigation is a significant project. Your case is of vital importance to you, you are spending a lot of money on it, it is complex, and there are many people

involved both on the client side and on the firm side. Therefore, your case deserves a Project Charter to keep the lawyer-client project team focused on success. At Itkowitz PLLC the Project Charter is expressed through a series of “**Legal Project Management Letters**”.

4. **Communication with the Client**

We communicate with you frequently and preemptively, in a variety of ways, and with absolute clarity.

5. **Allocating Resources, Budgeting, and Cost Control**

We provide you with realistic cost estimates and discounted and capped fees, if appropriate.

6. **Risk Management**

We help you to identify, assess, and prioritize risks in your case, and then coordinate resources to minimize and monitor the probability and/or impact of bad events.

7. **Critical Thinking**

This systematic approach forces one to consider the case methodically and think about it critically.

CHAPTER 2: INFORMATION GATHERING

A. Backstory

At Itkowitz PLLC we spend a great deal of time at the outset of a matter, typically at little or no charge to the client, gathering all types of information and trying to understand what is really going on. It is not always so obvious, even when dealing with a very professional and focused client.

Here is a roofer analogy. If a building owner hired a roofer, certainly one would acknowledge that the roofer needs information before starting to install a new roof on the building. *When was the last time the roof was replaced? Was the upper structure damaged in some way the roofer should know about? Is the owner planning to put heavy loads on this new roof, or only normal stressors? Does the owner want a “Green Roof”? What is the budget? Can the building occupants be relocated during the installation, or must they be worked around?*

Too many lawyers jump in and start doing the legal equivalent of replacing the roof before understanding the big picture. **In order to obtain good results for clients in an economical way, lawyers need more than a few hard facts and marching**

orders from their clients. Lawyers and clients need a deeper understanding of the overall situation that gives rise to the engagement. The sooner this understanding is obtained, the better.

B. Questions to Ask a Client

Below is part of the materials I prepared for a New York City Bar Association CLE on LPM, and it provides an example of LPM in action in a busy, small law firm.

In order to demonstrate some of the concepts that we are covering today, we are going to dissect two routine, introductory conversations between an attorney and a potential new client in a busy, small firm – one that does not employ LPM concepts, and one that seeks to incorporate LPM methods.

No LPM

Client: I am a bookstore in Manhattan and my landlord is evicting me.

Attorney: Don't worry. Come in and give me \$10k and I will fight the landlord and keep you in as long as possible!

With LPM

Client: I am a book store in Manhattan and my landlord is evicting me.

Attorney: Why?

Client: My lease expired.

[ATTORNEY FIGURING OUT HOW CLIENT MAKES MONEY, WHAT'S CLIENT'S BUSINESS MODEL?]

A: What type of bookstore are you?

C: We are a wholesale book company, we sell textbooks.

A: Wholesale? You mean the inventory is there in the store?

C: Yes.

A: No retail, no off-the-street business?

C: No.

A: What is a wholesale business doing paying Manhattan rents?! If you are essentially a warehouse couldn't you be located anywhere? Long Island, for example?

C: Well, not exactly, because what we do is sell more than just books, we sell books as sets, as entire curriculums. So, we have school principals and teachers come in a sit at our tables and wander our shelves for full days, crafting curriculums. We consult with them as these packages are assembled.

[ATTORNEY TRYING TO ASCERTAIN C'S REAL NEEDS AND GOALS.]

A: So you feel you need to be in Manhattan?

C: Yes, it's essential.

A: Business is good?

C: Booming, we are thinking of expanding into adult learning textbooks.

A: Are there parts of your business that you could locate outside of Manhattan to keep the costs down? Does the entire inventory have to be right there with you?

C: Maybe not, interesting suggestion...

A: Have you begun looking for a new space? How close are you? Do you have a broker?

C: Yes, but we haven't been looking very hard. I really love this space, and it will be so disruptive to move. We have been here for years...my dad started this company...

[ATTORNEY ACCESSING NEED TO JUMP RIGHT IN TO LITIGATION.]

- A: How serious is your landlord about displacing you? Why doesn't he renew your lease? Does the Landlord want more money? Does it make sense for you to pay more money? Your rent in a new space will be comparable; rents are going up all over Manhattan.
- C: Well, the Landlord wants my space for her son's business. She seems pretty serious about wanting us out. I guess I have to get more pro-active about our next move.
- A: I can keep you in for a while via litigation, but that costs legal fees. Of course, I need to see your lease and the correspondence from your Landlord. I also want to speak to your broker and architect and figure out how long this move will take, then we need to see if we can get the time from the Landlord, in exchange for legal assurances that you will vacate. If not, you need to plan for the legal fees, which we can estimate.

[ATTORNEY WANTS TO KNOW WHO THE PLAYERS INVOLVED ARE, A DOESN'T JUST ASSUME IT'S WHO IS ON THE OTHER END OF THE PHONE.]

- A: Are you the only decision maker in your business?
- C: I handle most day-to-day stuff, but my brother and his wife are part owners, they may want to be in on this. I also have my regular business lawyer who doesn't do the real estate stuff, he is interested in this litigation.
- A: Well, I am going to prepare what we call a LPM Letter, where I apprise you of your options, their costs, and their likelihood of each course of action helping to achieve your goals. Then you can review it with your team and we can go from there.

In the firm that doesn't approach its work with LPM:

- The Attorney was responding robotically.
- The Attorney was making assumptions about the client's goals and needs.
- The Attorney provided assurances he probably should not have, without having more facts.

- The Attorney was grabbing a retainer quickly, seeking to protect his chance at a fee.

In the firm that practices using an LPM framework:

- The Attorney was trying to figure out how the client makes money. Who is this company?
- The Attorney was trying to ascertain the client's goals and needs. And trying to get the client to articulate them.
- The Attorney wanted to know who the players are, who her audience is, who the decision makers are.
- The Attorney was trying to be part of a solution for this client.
- The Attorney was being curious – an important attribute in our profession!

C. Deeper Questions

Here are examples of some even deeper questions that we at Itkowitz PLLC will likely seek answers to when representing a new client.

- (1) What battlefields will the engagement be fought on - in the courts, at an administrative agency, in an arbitration, in the press?
- (2) What is really at stake for this client? Is this a routine matter, or an existential litigation?
- (3) Are there personal as well as business related motivations involved in the case?
- (4) What is the back-story between the parties, the history?
- (5) What is the client not telling me yet?
- (6) What is really going on here?

D. Who are the Players?

It is important to understand all of the players that are involved in the matter, whether those players are immediately apparent or not.

WHO ARE THE PLAYERS IN THIS ENGAGEMENT,
HIDDEN AND OTHERWISE? WHO IS THE "CLIENT AUDIENCE"?

- ❑ The lawyer who sent the matter.
- ❑ Everyone on the board.
- ❑ The incoming board.
- ❑ The managing agent – everyone there.
- ❑ A board member is a lawyer – their law firm.
- ❑ Corporate counsel.
- ❑ A client's spouse or partner.

Scenario: Bob at Law Firm A interfaces with Raj at Client B. Bob and Raj have a very friendly relationship. Bob handles Raj's requests, and Raj is happy with Bob's work. Bob updates Raj periodically about the matters that Firm A is handling for Client B via brief phone calls or informal emails. But note that Bob is just one mid-level lawyer at Firm A, and there are many other people at Firm A involved in the actual work to service Client B. Similarly, while Raj is a mid-level manager at Client B, there are many other decision makers behind Raj at Client B. In fact, Raj only makes routine decisions.

The Problem: Bob and Raj are two tips of two icebergs. To Raj, Bob FEELS like the lawyer. What is worse is that to Bob, Raj FEELS like the client. But this is not really the case. There are many people -- who we like to call "hidden players" -- on each side. And those people matter.

A New Wrinkle: Now let us add in that Client B is a large property management firm, representing a building owned by a limited partnership. Client B brings the partnership to Firm A for an important engagement.

Analysis of what is Wrong with this Picture: First of all, Client B is not really the client - the partnership is. What follows is a list of people that the law firm, in this example, should seek to identify and learn as much about as possible:

- (1) The property manager, who is Firm B's contact at "the client".
- (2) More senior property managers, who are the contact's superiors.

- (3) The real client, namely the partners in the limited partnership.
- (4) The people who work for the limited partnership.
- (5) The partners' spouses, siblings or other close advisers.
- (6) Future partners, i.e. the next generation of the partnership, if they are imminently on their way in.
- (7) General Counsel for the partnership.

Why are we thinking about this?

Too many lawyer-client relationships, even between larger firms and bigger companies, are based on discrete personal relationships between one lawyer at a firm and one contact at the client-company. But when considering how to best represent a client, a law firm has to consider who all the players, hidden and revealed, are.

I recently represented a client, a sophisticated business person, in a real estate related litigation. The matter was well underway when the phone rang. Who was it? The client's son, an attorney, someone I had never met, barely heard about, and wasn't even sure that I had authorization from the real client to be speaking to. Once I confirmed that I was authorized by the client to speak to his son, I gladly did so. Fortunately, I had sent the client a series of **Legal Project Management Letters**, a type of communication that we will talk about in a subsequent chapter, and the client's son knew exactly what was going on. It was a good starting point for our conversation, and a good reminder that I was being closely watched by more people than just the client. I like to refer to all the people on our side of a litigation caption who are concerned with our work as our client audience.

Law often feels like a very personal business, and a lawyer handling the day-to-day aspects of a matter can come to feel like the client audience is one person, i.e. his contact on the end of the phone. With even the simplest matters, however, that is often not the case. **A lawyer has to first understand that the client audience is filled with people who are giving the matter different degrees of their attention, many of whom may be sitting in the shadows.** The second thing the lawyer has to do is to try to understand as much about the client audience as possible.



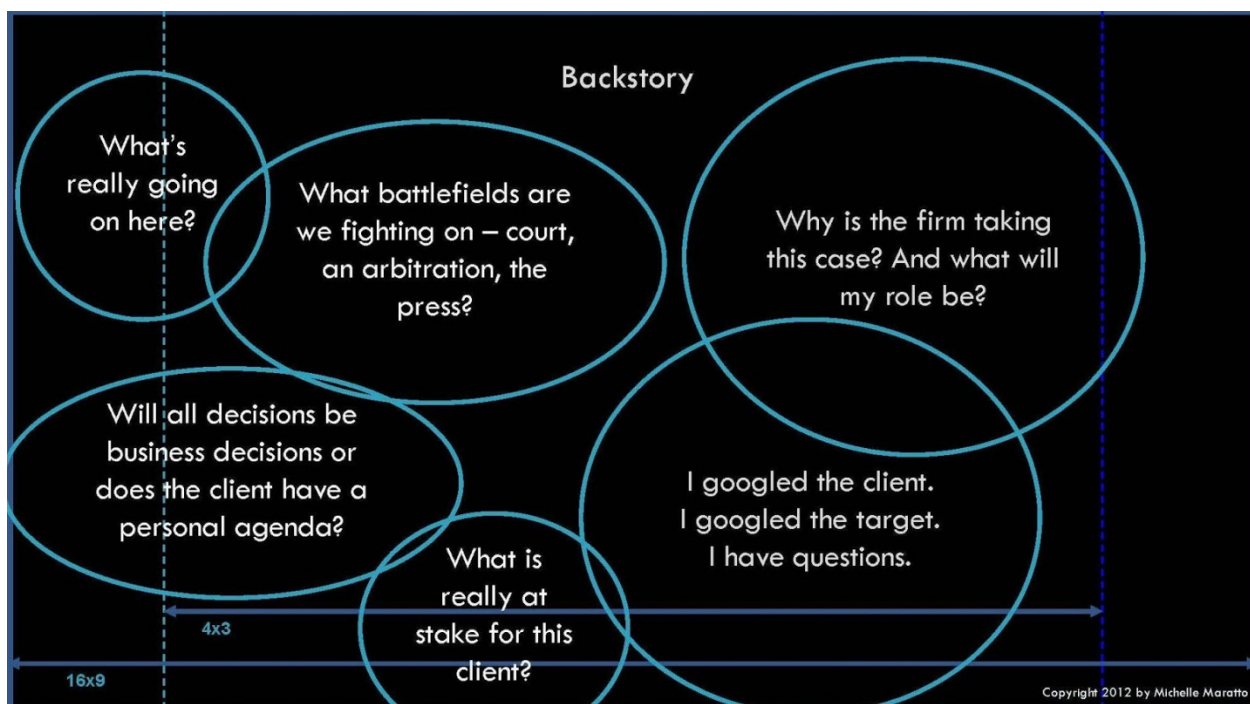
A good way to look at your client is as an audience. When you are on stage, you can only see the people in the first row. The auditorium is often filled, however, with people many rows back, who you can't see. You need to be documenting your work for those hidden players as well as for your main client contact.

We start by simply Googling a new client and everyone attached to them. Another thing that a lawyer can and should do at the outset of a new relationship when gathering information and trying to figure out who is out there in his client audience, is simply ask the main contact. A lawyer should not be afraid to ask his client about client's inner workings.

- *Who will be making the decisions here?*
- *Will those people be interfacing directly with the firm?*
- *What are they like?*
- *Do I have your permission to communicate directly with corporate counsel?*

The big picture matters a great deal, and it is shocking how many attorneys ignore it.

Michelle Tip: Let your curiosity guide you when gathering information during a client interview. If you are wondering about something, it is probably a good question.



CHAPTER 3: UNDERSTANDING AND DEFINING THE CLIENT'S GOALS

Understanding and Defining the Client's Goals

- I want to sue the board.
- I want Mr. X deposed.
- I want to expose her fraud.
- I want to control the building.
- I want to go all the way to the Court of Appeals.
- I want to make an example of him.

- These are NOT goals.
- This is venting.
- And clients do it all the time, even the pros.
- At Itkowitz PLLC we learn how to cut through the noise and ascertain the client's real goals.
- And document the goals.
- And get the client's buy in.
- So the firm and the client are on the same page and working toward the same thing from Day One.

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"I want to sue the board!" "I want Mr. X deposed!" "I want to expose her fraud!" These, and the other statements in the above list of client statements shown in the graphic -- these are NOT goals. This is ranting. And most clients do it when they first call their lawyer up, even the pros. The problem is that all too often, zealous lawyers, especially those who are delighted at the billing opportunity, shoot first and ask the really important questions later.

At Itkowitz PLLC, as part of our Legal Project Management protocols, we work very hard to identify realistic client goals at the outset of a matter, and to make sure that we and the client are in absolute agreement thereon. Inasmuch as goals sometimes change as a matter unfolds, we seek to make sure that we all remain on the same page.

Sometimes, the goals of an engagement are obvious. But so often in today's complex world there are so many possible outcomes for a matter, that a lawyer is crazy to make any assumptions about a client's goals and priorities.

I recently got a real estate partnership as a new client. The principal at the partnership is a very, very smart person, who owns many buildings, and understands real estate litigation. She gave me a series of cases to work on - commercial tenants, behind in their rent.

My first question -- *What is your goal here? Do you want these tenants to get into compliance and pay on time from now on? Or do you want these spaces back to do something else with? Or some combination thereof?*

Her answer, "Keep the pressure on!"

OK, I said, I am happy to keep the pressure on, but pressure for what? What are we going after here?

Again, she told me in no uncertain terms, "Keep the pressure on!"

Again I asked what the goals were. At that point, she seemed annoyed with me. Why couldn't I understand that she wanted me to "keep the pressure on"?

A day later, she called back and, as if the first conversation had never happened, and calmly told me that with three of the tenants she wanted them to catch up on payment, and stay caught up, and she had payment plans worked out with them already. For two others, she wanted the spaces back. But only one of the two was urgent, because she had something else lined up for the space that was quite imminent. She and the other tenant had a long relationship, and she wanted to allow them to relocate successfully.

This client is a pro, and gets that a lawyer needs to understand the client's goals. It just took her a day to focus on, and answer, my question.

The scary thought is how many lawyers fail to ask these questions, and instead just grab the "Keep the Pressure on!" banner and run with it. When this happens, six months, and six very high legal bills into a representation, the client calls up and asks why the bills are so high. The lawyer then answers, "Well, you said to keep the pressure on." This is not a good answer.

But it isn't always a thirst for a billing frenzy that keeps a lawyer from asking questions to discern the client's goals. Some lawyers just never really learned how, or somehow do not feel that they have the right to challenge their clients.

Lawyers need to learn how to talk to clients about client goals. It is amazing how many clients want to run into the wind and fight an adversary "because of the principal". That is, until they get a realistic time and cost estimate for the epic battle they are planning.

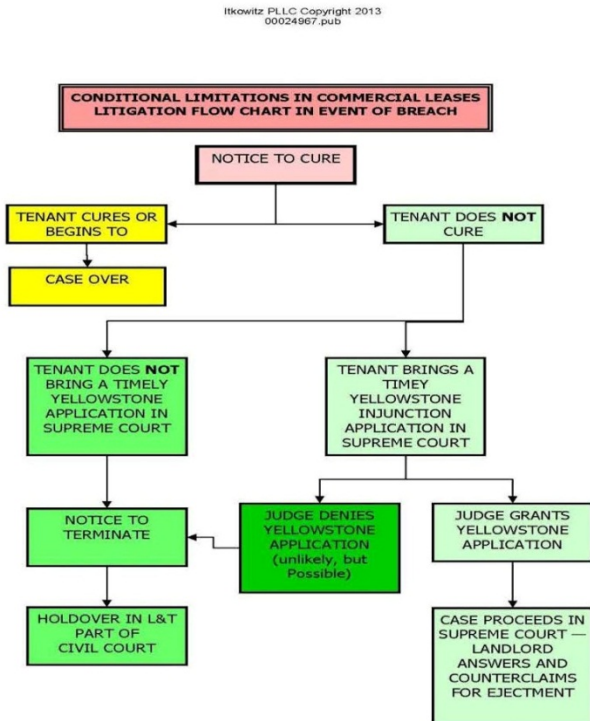
At Itkowitz PLLC we use the Information Gathering steps mentioned in earlier chapters -- "**Backstory**", "**Questions to Ask a Client**", and "**Who are the Players?**" to help us understand who to have frank conversations with about the client's goals for the engagement, and what factors should be brought into that discussion. Thereafter, we repeatedly re-confirm client goals in **Legal Project Management Letters**, which are key tools in our LPM system, which we will discuss below.

CHAPTER 4: PROJECT CHARTERS – LEGAL PROJECT MANAGEMENT LETTERS

Legal Project Management begins with a detailed and formal analysis of your case, and out of that analysis, a project charter is forged. Thus, I begin every engagement with what I call a **Legal Project Management (“LPM”) Letter**.

A Legal Project Management Letter contains the Following Sections:

- (1) **Facts.** A review of the facts and a synthesis of the "hard" data (such as dates and names, contract provisions, summaries of substantive emails, etc.) with the "soft" information that was elicited in the **Information Gathering** phase.
- (2) **Status.** An update on the exact status of the matter, taking into account the relevant developments since the case came to the firm, and/or the accumulated procedural history. The Client needs to really understand the procedural posture of the case, even if it is complicated. We find that clients often like to see a road map - a diagram, showing them where the case has been, where it is now, and what is coming next. Clients need to know where the detours might be, and where they might lead. A simple graphic can take the place of, or at least illuminate, pages of text. See the sample graphic at the top of this chapter.



I had the asset manager of a major real estate firm once tell me, in response to a diagram like this – “I have been sending cases to attorneys for years, but I never understood the process until you sent me this diagram.”

- (3) **Goals.** A clear restatement of the client's goals, so that we can be sure that the client and the firm have an identical understanding of what success looks like for the client. See our earlier chapter on **Defining Client's Goals.**
- (4) **Law and Analysis.** A survey of the law relevant to the case, with particular attention to the elements of each cause of action, so that the client understands exactly what needs to be proven or dis-proven, and who has the burden of proof for each element. This is also the section where we apply the law to the facts and analyze the strength of several aspects of the case.
- (5) **Options.** A presentation of available options. For each option, we provide:
 - (a) Pros
 - (b) Cons
 - (c) Time
 - (d) Cost
 - (e) Risks
 - (f) Percentage chance of the option advancing the goals
- (6) **Out-of-Scope Statement.** We define and clarify the scope of the engagement and explicitly state what is not being done and why.
- (7) **Legal Fees.** A frank discussion about the case's budgetary constraints and of legal fees, and suggestions for fee arrangements that are alternatives to hourly billing.

- (8) **Communications Plan.** We establish a communications plan. Especially if there are many people involved in the case at the firm, at corporate counsel, at the client company, etc.

Typical LPM Letter Communications Plan Section:

COMMUNICATIONS PLAN

Is it acceptable for me to assume that when our firm wants to communicate with the Board that we communicate directly with Mr. X, who will then decide which of our communications should be forwarded? Or do you all prefer that we always communicate with everyone on the Board simultaneously?

- (9) **Recommendation.** A recommendation for a course of action.

When the initial **LPM Letter** is complete, we discuss it. Then, for no extra charge, I make changes or additions to the letter, if necessary. Your lawyer should not be a disembodied voice pontificating on the phone. When you get one of my **lengthy LPM Letters**, you can *read* my analysis, your options, and my recommendation, at your own pace and as many times as you like, and you can share it with your team. Everyone has a team, even if it is unofficial – your partners, transactional attorney, spouse, in-house counsel, accountant, adult children, broker, friend who is a lawyer, public relations people, etc. The team can read what I am saying, as opposed to my contact person at the client having to relay what I am saying, which is often complicated, to a whole bunch of people.

At key points in a matter, when there are decisions to be made about next steps, I repeat the **LPM Letter** process. Taken together, the series of **Legal Project Management Letters** form the Project Charter.

I charge a flat rate for the **LPM Letter** and it must be paid up front. The rate will be lower than what I would make if I charged you hourly, but more than you will pay to get a case stated at just about any of the other landlord and tenant firms.

This is how I roll. This is not an optional part of working with me. There is no, *“Oh, Michelle, that Legal Project Management thing sounds so great, but I think I’ll skip it.”* There are very few engagements I am willing to take on that do not begin with an LPM analysis.

CHAPTER 5: COMMUNICATION WITH THE CLIENT

A. Sharing Information with the Client

Other than the detailed and comprehensive **Legal Project Management Letter** that we discussed in detail in an earlier chapter, there are many natural opportunities for a lawyer to update a client. For clients for whom we handle multiple matters, we provide a free, weekly or monthly status report on all cases. But below I share a less intuitive example of an opportunities for client communication.

I am often responsible for commencing new landlord and tenant lawsuits, and I train and supervise an in-house New York State licensed process server. My servers is equipped with (Global Positioning Satellite) GPS technology that records where she is when she serves papers. The process server is also trained to take photographs of where she is when she serves process. With each attempt at process service, even if the attempt is unsuccessful, I send my clients a report on the attempt, an email with the GPS confirmation that the server was where she said she would be, and pictures.

B. "A Fighting Chance" – Speaking in Terms of Numerical Percentages as opposed to Catch Phrases

I attended an excellent online seminar where the instructor asked a virtual classroom full of attorneys to ascribe a percentage likelihood of success to the words "fighting chance". In other words, if a lawyer told you that you had a "*fighting chance of winning*" what percentage of winning would you think you had?

The fascinating online results poll revealed (and remember these are attorneys answering these questions) that a quarter of the audience thought that a "*fighting chance of winning*" meant a 75% chance or better of winning. Half of the audience thought that "*a fighting chance of winning*" meant between a 25% and a 75% chance of winning. And the final quarter of the audience thought that a "*fighting chance of winning*" meant only a 25% chance or less of winning.

The Merriam-Webster Dictionary definition of "*a fighting chance*" is, "*a chance that may be realized by a struggle.*" Which is not very much help! Because depending on the context that the phrase is used in, the tone of voice of the lawyer saying it, and the hopes and needs of the client-listener -- "*a fighting chance*" can mean almost anything to anybody.

This is why I speak to clients in terms of numerical percentages.

Colleagues have criticized me, asking, "*Michelle, how can you know that the client has a 35% likelihood of winning the motion?*" The answer is that after 20 years of experience, consulting with the other lawyers in my firm, considering the history of the case, and researching the judge's general disposition to similar issues -- 35% is my best guess.

In any event, *"a 35% likelihood of winning the motion"* is simply CLEARER than *"a fighting chance of winning the motion."* *"A fighting chance"* can mean lots of things to lots of people. But "35%" means about one time out of 3 times, to EVERYBODY!

However...what a client *does* with the information that they have a one in three chance, is up to the client. Which is where the decision making belongs - with the client.

Let's look at the problem from the after-the-fact angle. The lawyer tells the client that he has a 35% chance of winning the motion, if the client decides to make the motion. The lawyer also tells the client about the cost of making the motion, the time frame, other pros and cons, and, of course, his alternatives to making the motion. The client takes all the information, consults with his team, thinks about it, and decides to make the motion. Then the motion gets made...and lost.

Let's consider the conversation between lawyer and client after the loss. If the lawyer had told the client, *"You have a fighting chance of winning the motion..."*, the client may very well end up saying to the lawyer (indignantly), *"But you told me we had a fighting chance!"* On the other hand if the lawyer told the client, *"You have a 35% chance of winning the motion..."*, what can the client say then? *"But you told me I had a one in three chance of winning!"* Yeah...and you lost, which you had a two out of three chance of doing!

This is not about a lawyer covering himself with the client. This is about *communication*. This is about clear and precise communication. This is also about *analysis*. Frankly, when a lawyer and his firm colleagues force themselves to think in terms of percentages, rather than in terms of emotionally charged language, they too often end up seeing the case in a clearer light.

CHAPTER 6: MANAGING LEGAL FEES

A. Estimates and Alternative Fees

Litigation is expensive, time consuming, and stressful. Therefore, you should not enter into it lightly. To mitigate the downsides of litigation, Itkowitz PLLC has developed a unique way of working with clients, which grew directly out of our Legal Project Management exploration.

At the beginning, and at all key stages of the engagement, the firm prepares detailed **Legal Project Management Letters** ("LPM Letter") for the client. Itkowitz PLLC usually charges a reduced rate for the preparation of the **LPM letters**. **LPM Letters** are extremely comprehensive case analysis memos directed to the lawyer-client team, which address for the case at that point: the facts, the law, the status, the client goals, current options -- and for each option -- the pros, cons, time., cost, risks, and likelihood of the option advancing the goals, what's out-of-scope, legal fees, a communications plan, legal fees, and a recommendation.

After the client is presented with a **LPM Letter**, the client and the firm review the client's goals and expectations, and the client decides which option to pursue. Thereafter, the client and the firm will review the estimate for the option and agree to the **Scope of Work**. The **Scope of Work** is defined as a set of tasks and/or a period of time upon which the client and the firm agree.

Next, the firm proposes a discounted and capped fee for the **Scope of Work**. Finally, the client pays the discounted capped fee **in full and in advance** of the work commencing. **In other words, the cap and the discount are the *quid pro quo* for the advanced payment.**

Clients love this. And it works well for the firm.

When I first started developing and refining this system, I would run it by other lawyers. I heard two objections over and over. One - *you will never get clients to pay you ahead of time*; and two - *even if you do, you will have great difficulty making a profit when limited by a discount and a cap*. In reality -- these objections have proven very wrong.

From the point of view of our typical client, there is great value in knowing exactly what a stage of litigation will cost ahead of time, and knowing that such fees will not be increased. Many clients' biggest complaints (about any firm) are the way legal fees spiral out of control. This approach prevents that. The advantage to the firm, which is a small business, is improved cash flow and an assurance that we will never have to chase the client around for money.

Suffice it to say, that our rigorous Legal Project Management approach has led to our clients paying less, being happier, and the firm actually making more money.

B. Law is an Apprentice Profession -- Younger Lawyers and Their Role in the Delivery of Legal Services in a Value Driven Model

Law is an apprentice profession. It always has been; it has to be. There is too much to know, with more to know all the time. Experienced lawyers have to teach new lawyers.

Think of it from the client's perspective. Let us use the plumber analogy, another apprentice profession. Would you want to pay \$600 per hour for a guy just out of plumbing school to be there on your job and just stand there holding the tool box? No. Would you want a guy just out of plumbing school to be cutting into your main sewer line with an acetylene torch, even if he only cost you \$10 per hour? No. But, as the client you **SHOULD** want the new plumber somewhere on your team. Entry level associates have a lot to offer.

I had dinner with a partner from a 100-attorney firm the other day, and she asked me, "*How can your firm take entry level associates? Aren't they a hassle?*" And I said, yes it's a lot of work, but laterals often don't know so much anyway, or they know just enough to be dangerous!

New lawyers are an important element in the delivery of legal services in a value-driven model. And not just because they are a cheaper line-item on a client invoice. It is healthy to train someone up to your standards. And the energy and enthusiasm an entry level brings to the table are unmatched. That is -- when entry levels are closely supervised and properly trained, entry levels are an excellent choice. The Itkowitz PLLC Legal Project Management protocol builds training into every phase of the work and encourages young lawyers to think.

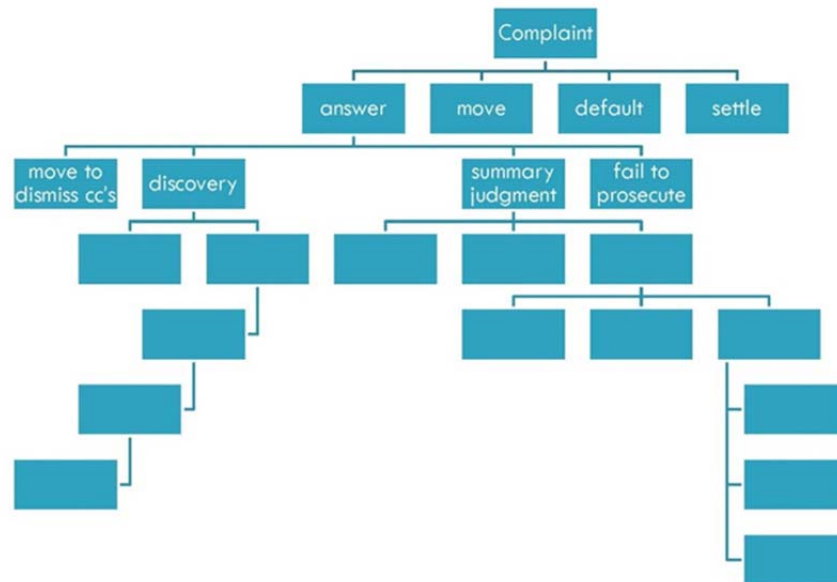
CHAPTER 7: LAWYERS AS RISK MANAGERS

A. Chess – Really?

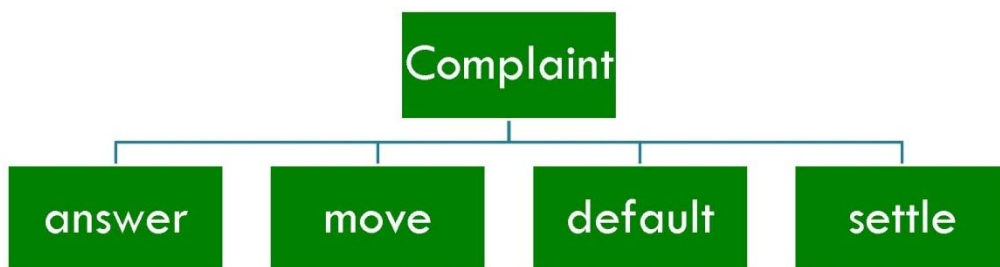
People often say that if you are a good chess player then you will be a good lawyer. I, think, however, that being a good chess player really only means one thing – that you will win a lot when you play chess. Chess is a board game where no piece can move contrary to the rules and where no one gets hurt. In real life, real business and real litigation, the pieces and the players do not always behave according to the rules we all think we know. How often in the last two decades has something happened that has fundamentally changed what is possible in our lives? A good chess player can, and should, think many moves ahead. I am not so sure that this is good advice in litigation any more.

Too many lawyers spend so much time thinking (and endlessly talking) about what might happen ten steps ahead, that they miss the only step they can really do anything about – *the next one*. Your ability to accurately predict and estimate is inversely proportional to the span of time and number of events for which you are trying to make a prediction or estimate.

Try diagramming what you think might happen in a case from inception forward. If you are honest with yourself, it is impossible, as the below diagram indicates:



Now spend some time on only the step right in front of you.



Before a lawsuit is filed, no lawyer can accurately answer the questions, “*How long will the lawsuit take and how much will it cost?*” For example, after a routine commercial summary nonpayment proceeding is filed, the tenant can do at least four things. He can:

- (1) default
- (2) answer and head toward trial
- (3) bring a pre-answer motion to dismiss, or
- (4) show up and try to negotiate.

On top of that – tenant might do any of these four things after no adjournments or three adjournments (courts give tenants, all tenants, adjournments) AND he might be doing any of these four things with or without a lawyer (AND the lawyer might be great and make things go more smoothly or crappy and make everything a fight whether that helps his client or not.)

For sake of an example – let us say that the tenant comes in after three adjournments with a bad lawyer who makes a pre-answer motion to dismiss that is 400 pages long. The motion is going to lose. But it will take 6 months until the motion practice plays out and you win. OR let’s say that prior to the first court date we get called by a lawyer who knows what she is doing, and she is ready to make a reasonable settlement deal, and all we need to do is one adjournment to stipulate the case into a mutually beneficial settlement. BIG DIFFERENCE RIGHT?

The thing is that my *magic prediction wand* is broken. So I can never (no one who knows what they are doing can ever) tell you, “*How long is it likely to take or how much is it likely to cost?*” until the tenant makes his first move.

B. Risk

First, let us define **Risk Management**. At Itkowitz PLLC we believe that, in the context of the engagement, we should help you to identify, assess, and prioritize risks; and then coordinate resources to minimize and monitor the probability and/or impact of negative events.

Many lawyers today, however, lead clients to believe that **Risk Management** means something else. And many clients are happy to believe that **Risk Management** means something else. That something else is that clients expect lawyers to: (1) ameliorate risk; and (2) if the risk cannot be ameliorated, clients expect lawyers to absorb the risk. Neither of these outcomes are realistic or even possible. Nothing can eliminate risk. And if negative events happen, they happen to the client, not to the lawyer. It really achieves nothing for either the lawyer or the client to pretend that such is not the case.

Back to the honest definition of **Risk Management** that works. In the context of the engagement, your lawyer should help you to identify, assess, and prioritize risks; and then coordinate resources to minimize and monitor the probability and/or impact of bad events.

Meaningful **Risk Management** requires looking holistically at the client and the matter, considering the big picture and how your involvement as a lawyer will tend to further the client's goals. So, for example:

- (1) If your client is about to sue a celebrity, you need to consider the impact that the press will have on the engagement, and perhaps engage and consult with the client's Public Relations advisers.
- (2) If your client is a shareholder about to sue his co-op board, you may want to consider whether the client wants to sell that unit in the near future and what impact litigation will have for the prospects of such a future sale.
- (3) If your client is a commercial landlord who wants to prompt the Department of Buildings to violate a tenant for allowing defective conditions at the subject premises as a vehicle for a lease default, you may want to consider the effect of such violations on the building in the long run.

Legal Project Management, as discussed in these chapters, facilitates this type of **Risk Management** thought.

CHAPTER 8: CRITICAL THOUGHT - "I hired you because you were the only lawyer who did NOT tell me that you could win my case."

I wrote a prospective client a **Legal Project Management Letter**. The client spent what seemed like a long time thinking about it, and finally came back with questions. I answered the questions. The client hired me. I did not obtain the best results imaginable, but neither did I promise to. The client knew the risks, took a chance, and recovered something that made the legal fee worthwhile.

The client had lunch with thereafter. I asked him why he chose to hire us. He asked, *"Do you want the truth?"* (No, lie to me.) He said:

I consulted about a dozen lawyers on this. You were the only one who did not tell me that you could win my case. You were the only one who did not say, 'Yeah sure, of course, you can win.' Instead you sent me a long, thoughtful analysis, and you concluded, '55% chance of litigation advancing your goals'. You were the only one that thought about it.

That was a profound moment for me -- "*You were the only one who did **not** tell me that you could win my case.*" That's why we got hired. And, frankly, that's why it went well. The client understood that the decision was his, and his expectations were managed such that he didn't have high hopes of recovering every penny that we sued for. He understood there were hurdles. He understood the risks. We went in with our eyes open and with shared goals.

Clients are not paying for lawyers to tell them what they want to hear.

Somewhere along the line, the legal profession (especially in the commercial litigation context) became glutted with "yes-people". I call them "Yes-Lawyers". Yes-Lawyers are lawyers who agree with everything that a client or prospective client says and wants to do. "Yes, Sir, certainly we will win that motion!" The Urban Dictionary defines a "Yes Man" as someone who always agrees with authority and does what he's told, even if it is stupid or illegal.

I asked a lawyer outside my firm why our profession increasingly operates in this sycophantic way, and he responded, "*Because there are 77,000 lawyers in the New York City metro area, and if you do not tell the prospective client what they want to hear (especially the rich and powerful ones who are used to hearing just that), then they will hire someone who will.*"

I reject that.

Clients are paying lawyers for meaningful analysis and for paths toward solutions. When you take a thorough and searching look at something, especially the law and the facts at the forefront of a sophisticated commercial litigation, you usually need to admit that there are no "slam dunks". Oh how I hate that phrase!

It takes patience and commitment to practice the Legal Project Management way. But wouldn't you (and I am speaking to both the lawyer and the client here) rather have the courage of convictions born of a structured process of real thought and attention to the matter at hand, as opposed to just bluster?

I can't tell you how many times I had an assumption about a case going in to it, and then my ultimate recommendation after the **LPM Letter** is written is very different than my original assumption.

How can a law firm get consistently great results for its clients? A law firm cannot rely on the alleged quality of its people, either because of their experience or their professional pedigrees. People move in and out of the modern law firm with great fluidity. And people have bad days. A law firm would also be wise not to rely too heavily on technology or infrastructure. **The only thing that can create consistently great results for a law firm's clients is a superior methodology. That is Legal Project Management.**

CHAPTER 9: WHEN THE BEST ENGAGEMENT IS NO ENGAGEMENT

Sometimes the best way that a lawyer and a client can work together – is not to work together at all! Not every legal engagement is worth having. In fact, the vast majority are not. Knowing which matters are worth being involved in and which are not, is at the core of whether or not a lawyer can do her best work, make the most money, and enjoy her career. At this point in my career journey, I have seven (7) criteria for taking and keeping a matter:

- (1) I only work on things that are within my core-competencies. In other words, I am only interested in landlord and tenant law in the City of New York.
- (2) I will only work for a client (be they tenant or landlord) that is operating ethically and legally at all times and in all things. If I even suspect any funny business, I am out.
- (3) I will not prosecute or defend losing positions.
- (4) I must be paid fairly. “Fairly”, as determined in my sole discretion.
- (5) I must be able to add VALUE. If someone wants to use a bazooka to swat a fly (me being the bazooka) I am not interested, I want to be challenged and I don’t want to take people’s money when a lawyer of a lower price-point would suffice for their engagement.
- (6) I must be able to add VALUE (again). Clients do not always have to take my advice. A client decision is a client decision. But if I disagree with your decision strongly enough, if I believe that you are harming yourself, then I will probably not represent you or I will resign. I can’t take your money and watch you drive a jeep off a cliff. There are too many people who allow me to help them, for me to spend time on the people who will not. I need to believe that I am adding value.
- (7) I need to like the people I am working with.

CHAPTER 10: THE CASE FOR (AND AGAINST) LEGAL PROJECT MANAGEMENT

A. Why wouldn't everyone practice this way?

In the real and busy world that we all live and work in, why would a lawyer criticize the Legal Project Management methodology I have described in this booklet?

Lawyers opposed to LPM have the following criticisms:

- LPM is time consuming.
- LPM results in a higher cost of doing business.
- Clients don't want to think, they want you to solve their problem.
- With LPM, there is a higher chance that litigation will be avoided altogether, lowering the potential legal fee.

And here are some client criticisms, which I have occasionally heard. People want to know the outcome of the initial Legal Project Management analysis, *before paying for the analysis*, to decide whether or not it was worth paying for the analysis! Such criticism is invalid. If my analysis reveals that you have a weak position, that information is worth paying for. As opposed to starting a case that you can't win with a cheaper lawyer, that in the long run will cost you more. By employing the LPM method, you can know if walking away is the most prudent course, or if your weak position can be shored up somehow, or, at the very least, the amount of risk you are incurring when you roll the dice.

Do you have a good case? How do I know? If someone can tell if you have a good case from an email – hire him! Because they are psychic, and super powers could come in handy.

B. Reason LPM Carries the Day

In response to the above criticisms from the Bar, the follow response is offered:

- Spending more time at the beginning on an engagement on information gathering, understanding who the players are, understanding the client's business model, goal identification, and having the client's buy in to the legal approach taken, will cause the matter to proceed more smoothly in the long run.
- Being a better lawyer and business problem solver will inure to the benefit of your career and your pocket book far more over the course of your time at the bar than the quick and easy approach we started by looking at today.

- The LPM way produces a more satisfying way of engaging with clients. You will enjoy your life more when you engage in this way.

ABOUT THE AUTHOR

Michelle Maratto Itkowitz is the owner and founder of Itkowitz PLLC and has been practicing landlord and tenant litigation (both complex-residential and commercial) in the City of New York for over twenty years. Michelle represents BOTH tenants and landlords and her core competencies include: Rent Stabilization and DHCR Matters; Rent Stabilization and Regulatory Due Diligence for Multi-Family Properties; Rent Stabilization Coverage Analysis for Tenants; Sublet, Assignment, and Short Term Leasing Cases (like Airbnb!); all kinds of Residential Tenant Representation; Good Guy Guaranty Litigation; Co-op Landlord and Tenant Matters; Loft Law Matters; De-Leasing Buildings for Major Construction Projects; Emotion Support Animals in No-Pets Buildings; and Co-Living.

Michelle publishes and speaks frequently on landlord and tenant law. The groups that Michelle has written for and/or presented to include: Lawline.com, Lorman Education Services, Rossedale CLE, The New York State Bar Association, Real Property Section, The Columbia Society of Real Estate Appraisers, LandlordsNY, The Association of the Bar of the City of New York, Thompson Reuters, The Cooperator, and Argo University.

Michelle regularly creates and shares original and useful content on landlord and tenant law, including via booklets, blogs, videos, and live presentations. As the "Legal Expert" for LandlordsNY.com, the first social platform exclusively for landlords and property managers, Michelle answers member's questions, guest blogs, and teaches. Michelle developed and regularly updates a seven-part continuing legal education curriculum for Lawline.com entitled "New York Landlord and Tenant Litigation". Over 20,000 lawyers have purchased Michelle's CLE classes on Lawline.com (a labor of love for which Michelle gets not a dime) and the programs have met with the highest reviews. Michelle co-authored a chapter on lease remedy clauses and guaranties for the New York State Bar Association, Real Property Section, Commercial Leasing Committee.

Michelle is immensely proud that Itkowitz PLLC was awarded its NYS Women Business Enterprise Certification by the Empire State Development Corp. Michelle's eponymous law firm is one of the largest women-owned law firms, by revenue, in the State.

Michelle is admitted to practice in New York State and the United States District Court for the Southern District of New York. She received a Bachelor of Arts in Political Science in 1989 from Union College and a Juris Doctor in 1992 from Brooklyn Law School. She began her legal career at Cullen & Dykman.



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