



The 'Science' of Litigation Management: measuring risk, cost, quality and value

Litigation management, including its related cousins of legal spend and cost control, are not new phenomena. They have been around in various guises, especially in the insurance market, for well over a decade – but it's evolving rapidly in the economic downturn, writes Gary R Markham

With the advent of the UTBMS (uniform task based management systems) coding structure (see www.ledes.org) and the ratification of universally applied invoice or billing formats, such as ledes98b along with its more recent forms, the "science" of litigation management has evolved, in the main part, due to the availability of legal data which once only resided within the practice management or time and billing systems in law firms.

Thus, in the world of paper - based billing, case management, budgeting, reporting and planning, the job of the fee-paying client to efficiently and effectively evaluate aspects of each case is made much more difficult without the support and proper execution of litigation and legal spend management technology software and related services. (See Box, below, for a non-exhaustive list of questions the client should be able to answer rapidly when litigation comes into the legal department)

This is where the "science" of litigation management comes in. The argument for using technology to assist is now compelling, to say the least.

Technology and fee paying client

Litigation and legal spend management have evolved into a science via a combination of technology companies, insurance carriers, legal and other professional bodies, corporate legal departments and last but certainly not least, the fee-paying client and its desire to have greater transparency and understanding not only of the process of litigation, but in steering and controlling those resources employed to deal with it; namely those of outside legal counsel.

One such catalyst for this change is the Council on Litigation Management or CLM (www.litmgnt.org*) CLM has been a centralizing and polarizing force behind the drive towards improved litigation management techniques, tools, skills, training, education and technologies for the past three years.

THE QUESTIONS GCS MUST ASK THEMSELVES:

- Where the case is against projected spend expectations?
- How long the case has been running?
- What key milestones have changed the course on the case handling strategies/tactics?
- How many lawyers and support staff have worked on the case?
- How many hours and how much has been spent on the case to date?
- What were the typical outcomes for this type of case (where that analysis is relevant against a significant/meaningful pool of likewise data)
- What was the average number of days needed to close or settle this type of case in the past?
- What were the key characteristics about this type of case, making it unique, if at all, against those similar cases handled by outside counsel?
- What is the optimal point to settle this case?



- Are my legal costs measuring up to my company's corporate litigation management guidelines?
- Are we paying the right amount for pre-agreed rates, whether they be hourly fees, or disbursements of other case costs?

CLM membership is rapidly increasing, its exposure to and influence over new areas of legal practice, and the heightened credence it now commands (recent meetings with a number of US Supreme Court judges, as an example), leave no doubt in that it is fast becoming a compelling force in the expansion and furtherance of the "science of litigation management". The science is quickly evolving, along with the technology and support services, in line with heightened client expectations.

In short, the fee-paying client in this economic downturn wants to maximise its "bang for its buck", and although that driver may have always been in place, its prevalence and importance, have never been more obvious. Today is the perfect time to grasp the litigation management technology "bull" by the horns, and drag it firmly into the corporate legal and/or insurance claims or third party administrators (TPA).

Demonstrable performance measurement data shows that the use of technology in the field of litigation and legal spend management, generate an economically-sound business case for adoption and implementation.

The simple software-assisted tasks, such as electronically validating legal and other professional services invoices, checking on rates, mathematical errors, duplications and ensuring costs for agreed upon disbursements and other charges are adhered, means that the client can concentrate on case management and resolution of the matter.

Using technology to further assist in the consistent measurement of law firm compliance against corporate litigation or billing guidelines, also supports the case for implementing web-based litigation management technologies and support services.

Finally, the power and increased level of control over costs, which is provided by housing all legal and professional services expenses in a single database repository, can only be achieved by utilizing such tools.

Paper billing and paper-based case and litigation management processes are cumbersome, inconsistent, costly and slow. Web-based technology is efficient, inexpensive, fast and consistent in its performance. It also operates 24/7 without feeding or watering!

ABOUT THE AUTHOR

Gary R Markham is a New York State and International Chair and Fellow of CLM and Chief Executive of Legal Solutions Group. More details from www.lsg.com or directly from: grm@lsg.com