



CLM 2018 Annual Conference
March 14-16, 2018
Houston, TX.

Enhancing Our Relationships: Optimizing the Delivery and Quality of Litigation Management Services Through Data, Analytics, Technology and You!

I.

How can technology work to create efficiencies in managing your litigation program?

The rapid evolution of technology is causing rapid change and constant disruption in our industry. One quote explains it this way, “The reality of today's fast-paced, technology-driven world is that change is inevitable. By embracing this reality and planning for it, you will not only feel empowered and in-control of your own business, you will also be the leader that your staff and clients need”.

Innovation in the legal industry is disrupting everything from basic office operations to the actual way we practice law. Law firm leaders in this space understand that this evolution has also created challenges to meet client expectations. As a result, these leaders recognize the need to not just embrace change but to become an integral part of the change. Such law firms understand the need to build a culture of innovation from within that will create critical alignment between client expectations and the firm’s ability to meet them. They are not only acutely aware of the benefits of technology but they actively pursue the use and deployment of valuable operational enhancements such as Artificial Intelligence to advance their capabilities beyond what their clients need. AI is poised to change our machines to legal partners ever searching for operational and cost efficiencies for firms and clients alike. This part of the session will further explore what leading firms in this area are doing to achieve sustained business partnerships with their clients in our technology driven and ever evolving industry.

Understanding key metrics to measure law firm performance and legal quality

The quest for greater predictability in legal cost management and litigation outcomes is at the forefront of technology development and continuous improvement in our industry. Law firms that are leading the way in this area have embraced the need to understand and apply metrics, data and analytics and the role they play in all levels of their day to day operations. They understand the connection to the success of their firm and the success of their client's satisfaction and the overall relationship. Understanding which metrics are key to your business involves first understanding what is essential to your client and their business. What you measure and track must inform your client and add value in an impactful way. Transparency in what is measured and evaluated is essential. For the Corporate / Insurer client using metrics to assess their legal service providers performance it is critical that the firm know what is being measured and how the results are being used. For the law firm it is critical that operations be aligned with a focus on creating a culture within the firm that will result in a sustained alliance. In this part of the session, examples of key metrics, their value and how they can be developed and tracked within your organization will be further explored.

Ideas and best practices to help your organization/firm transition to new technology

The most difficult part of any change is first accepting that change is necessary. Change such as that being driven by technology requires both a mindset and philosophy change, a disassembling and reconstructing of prior notions of success which will enable effective disassembly and reconstruction of former processes and operational norms. Attempting to build anew on an existing framework can obstruct critical thinking, detract from mapping essential processes and cloud vision of what change can truly look like. Disassembling forces a fresh approach, thinking out of the box and engaging creativity. Developing a mission statement as a touchstone to guide efforts will prove invaluable. When reconstructing processes, it is essential to think ahead toward creating efficiencies for other users groups within your organization. Create cross functional development teams engage those in the organization or firm that has trained in the area of innovation or thought leadership. If necessary, consider engaging a consultant in the area of information systems and continuous improvement to manage your project. A highly

functioning and agile infrastructure is essential to ensure capture of key information and data you will use to measure performance, create metrics, evaluate application of resources and ultimately impact positive change. Continuous improvement and adaptability to change should be the culture that is encouraged and embraced by those within every operation. In this part of the session, examples of ways to approach and implement the change to new technologies will be further explored.

II.

Key to Overseeing a Successful Litigation Management Program

U.S. President, statesman and lawyer, Abraham Lincoln once said, “Never stir up litigation. A worse man can scarcely be found than one who does this.” Today, the most successful litigation management programs are built upon foundations that foster true partnerships, set attainable standards and regularly communicate honest and actionable feedback. Law firms and their Corporate / Insurance clients often labor with the challenges of consistently achieving the operational alignment needed to successfully meet quality and financial performance targets. However, those that share a common strategic vision find that their litigation management programs are well positioned to deliver exceptional results beyond merely identifying short and long term goals. To get there, the parties need to identify mutual measures of success, continuously assess whether they are achieving clarity of purpose and collaborate on ideas for the future of the relationship. Joint planning, especially in complex litigation and developing dedicated attorney teams and “right fit” staffing models to manage the terms of a customized legal services delivery model are examples. Creativity, agility and engagement on the part of all stakeholders is also essential given our challenging economic climate, the expansion of in house counsel organizations and the needs of Corporate / Insurance clients and firms to achieve even more effective legal handling. Thus, whether a Corporate / Insurance client’s needs are short or long term, planning the relationship should be mutually conceived through open conversation founded upon clearly aligned priorities that engage employees to fully execute on obligations.

Maintaining Meaningful Partnerships

Corporate / Insurance clients and law firms continue to progress in the areas of advancing quality and improving support services but how can they further move toward an optimal state of realizing lasting mutual benefits and rewards? Those that no longer subscribe to the notion that simply practicing law and managing costs are enough have not only embraced the importance of transparent communication, innovation and technology, they are actively sharing meaningful and actionable performance data and analytics to elevate their relationships, demonstrating innovative business practices to one another, developing and sharing the benefits of cost effective process improvements and transforming how to maximize investments in technology. Many firms are recognizing the value in learning from their client's experiences and are adopting continuous improvement methodologies, benchmarking and strategic planning techniques. The heightened use of industry intelligence and the application of internal metrics to assess the performance and financial health of the firm, practice groups and major projects are examples. Other avenues being explored by law firms and Corporate / Insurer clients include pooling ideas through collaboration vehicles such as focus groups and forums to assist in the development of long term projections around resources, talent retention and enhanced performance. Many firms are empowering firm leadership to react more quickly to disruption in their client relationships when business needs drive imminent change. Looking ahead, law firms and Corporate / Insurance clients must endeavor to evolve together and commit to create well defined business objectives and collaborative leadership structures that drive solution oriented plans across organizations to optimize the delivery of legal services and outpace rapidly evolving industry standards. To do so, transparent communication and the mutual sharing of knowledge are imperative to furthering meaningful two-way discussions and establishing common goals and values that enable and engage employees at all levels. In this part of the session, additional context and viewpoints to demonstrate how law firms and Corporate / Insurance clients can develop and sustain meaningful partnerships will be explored.

III.

Alternative Fee Arrangements Fostering Mutual Success

In business, predictability in expenses is essential across all organizational units, including litigation. The *2017 CounselLink Enterprise Legal Management Trends Report* (p.10) observed that more Alternative Fee Arrangements (AFAs) were used in high cost matters or portions of high cost matters than in recent years. Yet, Alternative Fee Arrangements are not new. In 1939, the ABA opined that an insurance company or client could agree to the amount of compensation an attorney received by fixing a rate of fee the attorney must adhere to regardless of the amount of time or effort involved *Canon 12 ABA Formal Opinion 190* (Feb. 17, 1939).

Jump ahead half a century and the rules governing Alternative Fee Arrangements varied by jurisdiction. In Connecticut, setting fees on a per case basis is permissible (*CT Eth. Op. 97-20*). In Florida, Alternative Fee Arrangements are allowed for insurance defense practitioners, as long as the fee is not so low as to impair professional judgment or limit representation of the insured (*FL Eth. Op. 98-2*). Kentucky however, prohibits the use of Alternative Fee Arrangements in the defense of matters (*American Ins. Ass'n v. Kentucky Bar Ass'n*, 917 S.W.2d 568 (1996)).

Through the use of data, analytics and technology, new generation Alternative Fee Agreements have become viable options to traditional hourly billing models. Integrating a successful AFA from the law firm perspective requires firm leadership to thoroughly examine its operation from legal, cultural and financial perspectives. This includes an understanding of its profit margins, its metrics and staffing models. Most significantly, it requires partnership wide commitment and recognition that for many AFA programs, profitability can be dependent upon the firm's ability to drive next level efficiencies and adapt to changing business needs.

Once the litigation objectives of an Alternative Fee Arrangement have been carefully vetted by the parties and the program has been integrated into the firm's practice, attention must turn to maintaining its integrity. From the Corporate / Insurer client perspective regularly communicating and assessing program metrics, litigation progress and the propriety of referrals is critical. Beneficial practices from the law firm's side

include devising a “right fit” staffing model to achieve litigation objectives as effectively as possible and maintaining ‘shadow billing’ and other key performance indicators to realistically measure quality and financial impact. This part of the session will further explore examples of the keys to developing mutually beneficial and sustainable Alternative Fee Arrangements.