



Selling the Value of Litigation Support

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When it comes to practicing litigation, the use of technology is no longer optional. What is optional, however, is under which business model firms deliver this service to their clients, and how to determine which model balances the most value to the client and the firm. On the firm side, a persuasive consideration is the opportunity to recover for these costs. Here's more as to how, why and what we are seeing in the market.

In-House Model Trends

Some firms are offering litigation support (e-discovery) capabilities to their clients via several different service-delivery models. These capabilities often rival those of third-party service providers, with offerings ranging from Early Case Assessment (ECA), to processing and review with the use of data analytics. As firms have standardized tool sets in

support of their overall practice, the use of “case-based” transactional agreements with third-party service providers no longer makes sense.

Instead, firms are leveraging their spend by investing directly in the tools and infrastructure in-house to support multiple clients, or committing time and money to a managed service agreement that allows them to cost-effectively and consistently support all cases using an identified third party. This allows their attorneys to work in a consistent manner, while offering the same high level of professional service to all clients (not just the large cases that may have justified the use of technology in the past). By leveraging the overall spend, the firm can pass along significant savings to clients when compared with the transactional models in the marketplace for years.

Managed Service Model Trends

Another delivery method we see gaining traction in engagements involves firm staff utilizing a third party for software and infrastructure in a managed

services arrangement. This requires an annual commitment of spend, thereby differentiating it from transactional case-based pricing models that vendors have offered for years. Additionally, firms are looking to these third parties with certified data centers in order to mitigate the risk of hosting client data on firm infrastructure. Client scrutiny at the beginning of an engagement continues to increase, with many firms finding it favorable to shift the infrastructure requirements to the experts. This still results in significantly discounted pricing when compared with transactional engagements, and allows the attorneys to build a client pitch that involves a market-leading solution, savings, and the transparency of third-party “hard costs.”

Some firms have decided to outsource their entire litigation support offering — infrastructure, software, and people. A lift-and-shift approach mitigates the risk of hosting client data on firm systems while gaining access to subject matter experts (SMEs). Often, the firm does not have this specific expertise internally, cannot justify the cost of hiring, and cannot mentor or provide a sustainable career path for such individuals. They feel their core competency is in delivering high-level legal service to clients, and that the supporting work is best left to those skilled in the practice.

How Recovery Opportunities Factor In

When setting up a service delivery model that works best for the firm, recouping costs (charge-back) from clients is a contributing factor in the chosen model. Charge-back of expenses related to e-discovery is often a difficult conversation for attorneys, but the value of an in-house operation or a managed service can be articulated and sold to firm clients. The attorneys need education on the value proposition, including the efficiencies gained by using technology, and the savings a firm’s overall level of investment can deliver to clients.

A common legacy model for offering litigation support services involves firms hosting software on their own internal infrastructure, administered by firm staff. Unfortunately, this model dates back 10-20 years, and historically the software and storage charges went unbilled in support of these client engagements (with only hourly billing for related professional services). Hourly billing by litigation support staff was often enough to cover the costs of labor and the minimal investment needed to

acquire and run these legacy applications. However, with the explosion of data and the requirements of today’s Web-based tools running data analytics engines, this model is no longer viable.

Increasingly, firms are looking for a new billing model to recover the costs of delivering e-discovery as they bring in more sophisticated tools (Nuix, Relativity, etc.), requiring extensive infrastructure investments to run the platform and account for the explosion in data storage. Internal stakeholder buy-in is critical to the change management process, whereby clients are now asked to pay for a service that historically was written off as an overhead administrative burden. This change can be successfully implemented, but it requires internal focus groups, the creation of a market-rate billing model, a compelling value proposition, and speaking points for the attorneys to “sell” the solution to clients. Case studies on how the firm successfully used technology to achieve a favorable client outcome are most convincing, and include anecdotes of identifying key information in less time, with the ability to formulate a strategy based upon greater visibility into the document collection.

Essentially, firms now have numerous options when building out their litigation support offering. Firms can use their own resources and build out their own data centers. Infrastructure-as-a-Service (IaaS) and Software-as-a-Service (SaaS) can be consumed à la carte or as a bundle, and the “people layer” can also be added in to round out a full managed service that leverages the expertise of a third party. The decision the firm makes is based upon internal expertise, attitudes toward outsourcing, the ability to recover cost, and desired level of control.

The Key Is Selling Value

Regardless of how the pieces come together to build the solution, an overarching charge-back model is attainable that covers the entirety of costs — “hard costs” for anything outsourced and “soft costs” for any remaining internal components.



The key is providing — then selling — the value to clients, while demonstrating savings the client could not have otherwise achieved. Many firms are able to deploy a market-leading solution by pooling their spend across multiple clients, along with a commitment of time, that allows them to build a pricing model that significantly undercuts any transactional pricing rate cards in the marketplace. Unfortunately, it does require a change in management process to get internal stakeholders on board and comfortable selling the value to clients.

As for the make-up of the charge-back models, this author sees a combination of continued hourly billing for professional services with the addition of unitized line items for software and infrastructure (data storage). Litigation support staff continue to bill hourly for tasks related to data culling, searching and creation of production sets, while these newly created line item charges cover user and storage fees. The itemized charges are similar to what has been seen in the transactional marketplace for years, albeit as much lower unit rates. Additionally, firms are making it easier for attorneys to speak with clients by moving entirely to an “all in per GB storage” model that covers all costs. This makes it a comfortable, straight-forward conversation for the attorneys, while avoiding the burdensome approach of billing user fees, processing fees, and analytics fees.

If a firm cannot attain buy-in for passing along any internal soft costs to clients, it may consider moving entirely to an outsourced hard cost model (one where there is supporting third party detail). The 2016 Mattern & Associates Cost Recovery Survey demonstrated a greater client acceptance for these charges and we have recommended it with success in past engagements where soft cost charge-back had low net realization rates. An ideal scenario is one where the attorney delivers the value proposition to the client of higher-level legal service using technology at below-market rates. The client is always free to choose its own provider or other hard cost model, but will hopefully see the value of utilizing the firm’s soft cost solution.

Conclusion

The ability to recoup litigation services costs continues to pose questions as to how firms acquire infrastructure, software, and the skilled professionals to run the systems. Accordingly, there are a number of service delivery and charge-back models in the industry to help firms maximize their investment while off-setting costs.

