

Managing The Law Department With A Tighter Budget: How Integrating Legal Research And Litigation Tools Improves Risk Management

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Readers of *The Metropolitan Corporate Counsel* will recall an article in last month's issue by my colleague, Marcus Linden, which explained how the era in which in-house law departments were somewhat insulated from the effects of economic cycles has officially passed. Legal chiefs today are more pressed than ever to control legal costs, a task made more daunting because of increased government regulations and litigation workloads.

This set of circumstances has been discussed for a while now in anecdotes shared by in-house counsel, but recent studies have actually benchmarked the fact that the pressure to "do more with less" is now a reality for many in-house law departments. For example, a recent LexisNexis CounselLink study conducted by *Corporate Counsel* and published by Incisive Media found that 68 percent of in-house legal professionals feel pressure to reduce the law department budget, and a majority of them have already experienced actual reductions in total budgets (58.9 percent). Another 2009 study, conducted by consulting firm Lexakos, found that 40 percent of legal departments expected a decrease in their overall operating budget for 2009, compared to only 8 percent last year.

So faced with the reality of tighter budgets, how can in-house counsel figure out a way to fulfill their primary business responsibility of minimizing risk while reducing their costs during these challenging economic times? Clearly, there is no single answer to this dilemma, but one specific technology-driven strategy that many progressive law departments are embracing is the integration of online legal research with robust litigation support tools.

Litigation As A Business Endeavor

At first glance, the integration of legal research with litigation tools might seem an unlikely business strategy for corporate law departments seeking to do more with less, but the legal industry has clearly seen a shift in recent years toward business-driven strategies to more effectively manage

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dispute resolution.

In a broad sense, most corporations are built around processes and continuous process improvement. That mindset and framework is now being applied to corporate law departments and moving downstream to law firms as well – and for good reason. Litigation is more than an area of practice within the legal profession; it is a business endeavor that can have a profound impact on the financial health of a corporation. As a result, corporate executives are increasingly expecting a project management-style approach from their in-house legal departments when it comes to their oversight of the litigation portfolio.

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At LexisNexis, we are now seeing a surge of interest among corporations interested in putting processes in place to gain greater control and insight early and throughout the litigation process. This trend from viewing litigation as a practice to viewing it as a business process is an important one to monitor.

The fact is that many departments are unaware of just how disconnected their various litigation processes are right now. Consider just a few examples and the extent to which they are integrated in your organization:

- Conducting early case assessment;
- Investigating witnesses and experts;
- Researching case law;
- Capturing and culling document collections; and
- Reviewing and producing documents.

There are some important in-house law department areas of daily responsibility in which an integration of these

litigation and research processes can yield substantial risk management benefits for the organization.

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Early Case Assessment And Dispute Resolution

“Early Case Assessment” is an important litigation management strategy that focuses on an early evaluation of the merits and likely outcomes of disputes. The benefits of early case assessment are faster and more strategic decision making, more cost-efficient litigation, and ultimately more favorable outcomes.

More specifically, early case assessment helps in making sound settlement decisions at an early stage, potentially limiting the need for substantial discovery, by facilitating early dispute resolution decisions (between business executives, in-house counsel or a mediator) at the earliest possible stage and before significant expenses are incurred.

Despite this, many litigators often find thorough and thoughtful case assessment thwarted by such barriers as time constraints, budget concerns, and lack of awareness of available resources. Many litigation management experts suggest that the best practice for kick-starting an Early Case Assessment strategy is to create a preliminary case report within 60 to 90 days of the dispute. The report itself should be an organic process, subject to frequent revision and ongoing assessment, which is based on an investigation into the facts surrounding the case. By using an appropriate litigation software tool, in-house counsel can house the case facts on a secure database, where new reports can be generated, shared and analyzed at any time as new information comes to light that alters counsel's assessment of the case.

For example, in-house counsel would be well-advised to include in their early case assessment reports a variety of important details such as the following:

- Prior disputes between the parties;
- Preliminary review of key documents, key witnesses and experts, and a summary of key legal issues in the case;
- Assessment of the judge, opposing counsel and jurisdiction;
- Construction of a timeline of key dates in the case;
- Preliminary assessment of potential damages, legal fees and potential settlement possibilities, based on prior case information; and

• A rough budget of various stages of the case through a possible trial.

All of the ingredients that go into the creation of an early case assessment report can be easily and seamlessly created with the assistance of various technology offerings available to in-house law departments, but it requires innovative thinking regarding the way legal research and litigation support tools are related.

In Closing

Disconnected litigation processes lead to inefficiency in an in-house legal department, which in turn means increased costs and increased risk of errors. A major step toward eliminating this problem is to integrate the crucial litigation management functions of case assessment, legal and factual research, and discovery. This allows in-house counsel to bring together key case information, relevant research and the critical insights of the entire litigation team in powerful, productive new ways – while allowing the department to meet its directive of reducing costs this year.

LexisNexis offers litigation tools and legal research integrated with each other to provide in-house counsel with an easy way to gain early case insight and greater control throughout the life of a case. The result is a more cost-effective and efficient approach to litigation.

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Whether conducting early case assessment, motion practice, discovery, legal research or fact investigation, attorneys can have access to relevant content throughout their case preparation with the LexisNexis Litigation & Research Portfolio, which offers solutions for Case Assessment, Legal and Factual Research & Discovery, including CaseMap, Concordance and LAW PreDiscovery. This portfolio provides one place for all work-in-progress to be shared and monitored, delivers an approach that offers in-house counsel assurance they're not missing critical information and have more control over their work product, and enables corporate legal departments to achieve cost savings due to gains in efficiencies.

Times are tough and budgets are tight, but the integration of legal research and litigation tools represents a viable business strategy for corporate law departments to derive more control over litigation and mitigate risk, all while reducing their overall spend.

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