

Promoting Litigation Cost Control Measures

Introduction

This guide discusses:

- Methods of tracking the utilization and benefits of cost control measures
- Techniques in-house can use communicate cost control policies and performance standards to those managing litigation
- Ways of overcoming resistance among legal staff to applying these techniques

Tracking Utilization and Benefits of Cost Control Measures

Summary of Action Steps

- Tailor after-action template to capture data about techniques used and an evaluation of the benefits
- Tally results from after-action reports or capture them on-line
- Ask litigators to keep diary of time and cost savings resulting from use of BPs
- Track case net savings from RFPs and negotiations in case management system
- Closely audit recordkeeping on a monthly basis to ensure that the completeness and integrity of records are being maintained

Explanation

Tracking the utilization and benefits is a very important step in controlling costs. Some departments that have probably developed the right techniques have abandoned them prematurely because they weren't confident that they were going in the right direction. Here are five steps to improve tracking.

- 1) Develop and continuously **tailor an after-action template to capture data about the cost control techniques used and an evaluation of the benefits that were achieved.** This template doesn't have to be complicated. It could be a multiple choice form with one or two open-ended questions that takes ten minutes to complete.
- 2) **Tally results from these after-action reports or capture them on-line** so that it is easy roll-up the data and do some basic reporting and analysis to figure out what practices yield the best results. Using your departmental intranet that all the lawyers expected to complete the form can do so anytime anywhere they can connect to the system.

- 3) **Ask litigators to keep a diary of time and cost savings resulting from use of best practices.** These diary entries can be short narratives that capture their contemporaneous comments. Ask them to include them in their monthly activity reports or send them as an email to a designated paralegal who can organize them into a quarterly report for an upcoming team meeting where they will be discussed. Those completing this step could include outside lawyers managing individual cases.
- 4) **Track case net savings in your case management system from RFPs and negotiations** to make it easy to roll-up this data into quarterly and annual reports without having to do a lot of manual spreadsheet tracking.
- 5) **Closely audit the recordkeeping on a monthly basis to ensure that the completeness and integrity of records are being maintained.** There is nothing more frustrating than to get to the end of the year and find that the data to report to the CEO and others has been incorrectly or incompletely filled out. Monthly auditing is about the only practical way to ensure that records will be useful and accurate.

Steps to Promote the Use of Cost Control Strategies

Summary of Action Steps

- Create specific cost savings targets for specific **types** of cases and challenge teams to achieve them
- Create specific cost savings targets for specific **phases** of cases and challenge teams to achieve them
- Publicize successful cost savings techniques and the people who used them
- Ask for periodic reports identifying instances where Best Practices were applied
- Develop a special bonus program for law firms whose overall record of savings and cost reductions is meritorious

Explanation

What can be done to promote the use of cost control strategies? What management framework can be put in place that will inherently propel the litigation team toward greater control over litigation costs? Here are some strategies to consider.

A very powerful strategy is to **create specific cost savings targets for specific types of cases and challenge teams to achieve them.** Why? Because when there is a specific goal, people know what the “success” is. For example, if the goal is to save \$2 million, the litigation team can start by deciding how to apportion the goal to each type of litigation being managed – “We need \$500,000 in savings from employment litigation, \$750,000 in savings from product liability litigation,” and so forth. Then, the employment litigation team can grapple with the challenge of how to create \$500,000 in savings from the employment cases. Some can be found by replacing inefficient firms. Some can be found by

instituting ADR provisions in employment agreements. Part of the goal can be achieved by improving training for managers in areas where too much litigation is being created by sloppy practices. The concept is to use the specificity of the goal to organize and focus the litigation team to identify and creatively examine practical steps that will create the savings and achieve the target goal. This approach is much more successful than simply saying to the team, “we need to save money” because this doesn’t give people the direction they need to decide how to engage their creativity and expertise.

Then, it is easy to see how a related step is to **create specific cost savings targets for specific phases of cases and challenge teams to achieve them**. This next level of granularity focuses the team even more directly. For example, if it is decided to try to save \$250,000 on the deposition and discovery phase of cases, one can immediately think about such steps as: reducing travel costs by having firms on the approved list depose witnesses in distant cities instead of having the law firm handling the case to have two lawyers fly across country for a two hour deposition; or, negotiating better rates from our e-discovery vendors by aggregating all our business with two or three firms. Again, the point is that the more specific the goal, the more likely it is that legal teams will figure out how to accomplish the goal. Setting goals is powerful opportunity for department leadership.

Another proven technique to promote cost savings is to continuously **publicize successful cost savings techniques and the people who used them**. When companies publicize role models, people pay attention and emulate their behavior. This idea is especially powerful considering the inherent rivalry that exists among primary law firms. Every firm wants to be recognized as a leader and role model. If the creativity and success of lawyers in one firm are publicized to all the firms being used, the natural reaction in all the firms is, “I can do that and do it better!”. Take advantage of this by making sure to call attention to the lawyers and paralegals who develop cost-savings techniques that deliver good results. Soon everyone will be doing it.

Flipping this idea over, there it is also useful to **ask for periodic reports identifying instances where Best Practices were not applied**. The simple act of asking for reports on lapses in the use of Best Practices will indicate that there is accountability for using these practices and most lawyers and outside firms will go out of their way not to wind up having to prepare exception reports, especially if it is understood that these reports will be discussed at law department management meetings.

Another major opportunity for promoting cost control strategies is to develop a **special bonus program for law firms whose overall record of savings and cost reductions is meritorious**. The idea of having a bonus program is more important than how much money is awarded to the best performers. The fact that a discretionary bonus for superior performance is awarded sends a message to everyone that the department is serious about creating cost savings. It is widely understood that the company spends money and pays bonuses for what the company believes is most important. This is a good way to underscore that cost control activities are very important.

Steps for Communicating Policies

Summary of Action Steps

- Periodic meetings of internal-external teams managing specific types of cases

- Periodic e-mail newsletter to all inside and outside counsel handling cases (not just supervisors)
- Case study reports identifying how policies and standards were successfully applied to specific cases
- Orientation meetings for new litigation staff to provide thorough grounding

Explanation

One of the most important challenges is to effectively communicate the need for cost control to all the people who are part of the total legal team working for the company. Of course, this includes all the people inside the law department – lawyers, paralegals, administrative staff and even the IT staff working with us. It also includes all the people in law firms and service firms engaged to manage litigation.

- Too often, the law department communicates with only two or three partners from each of the primary firms and hope that the message about cost savings is successfully communicated throughout the network. However, often the vast majority of the people in all the law firms and service companies don't get the message and don't become vested in reducing costs.

To make sure everyone working on cases understands and acts on the message so that they behave differently and help reduce costs, there are four action steps that will yield nearly immediate results.

- 1) Convene **periodic meetings of internal-external teams managing specific types of cases to pool their experiences and creativity to evaluate their case management strategies and adopt cost savings strategies**. As suggested earlier, give them a specific savings targets and publicize the people who achieve them.
- 2) Send a **periodic e-mail newsletter to all inside and outside staff handling cases (not just supervisors)** to tell directly about the savings goals, publicize techniques that work, and especially, call attention to the role models who are proving that it can be done.
- 3) Develop **case study reports identifying how policies and standards were successfully applied to specific cases and then present these at staff meetings and annual conferences**. Use the case studies to lay out the step-by-step activities and decisions that created the savings so that everyone will understand how to adapt these techniques to their own cases.
- 4) Convene **orientation meetings for new litigation staff to provide a thorough grounding** for them in the best practices the litigation team has found effective in controlling costs. The goal is to accelerate the learning process for the new team members so that they adopt these techniques faster and more effectively rather than learning them over the course of a year or two while money is being spend unnecessarily.

To sum up, a good cost control communication strategy involves: focusing everyone on the entire legal team on what needs to be accomplished, giving them the information and insights they need to accomplish the goals, and continuously reinforcing the message that the goals are important. The

more effectively these steps are implemented, the more likely it is that cost reduction goals will be achieved.

Overcoming Resistance to Using Cost Control Measures

Summary of Action Steps

- Make it more time consuming to explain non-compliance than it takes to comply (e.g., routine reports to explain exceptions)
- Utilize on-line reporting to track whether policies and standards are being observed
- Assign lawyers to be "champions" for practices they try to ignore
- Factor compliance into bonus calculations
- Promote people who demonstrate support for policies and standards
- Monitor compliance regularly and award more cases to firms that comply
- Demonstrate flexibility in eliminating policies that don't add value

Explanation

No matter how much is communicated, there will still be those people who are simply going to resist changing the way they manage litigation to save money. Many people simply don't like being told they have to change their methods and try to resist because they don't like change of any type. There are ways to overcome this resistance.

For example, the department can **make it more time consuming for people to have to explain non-compliance than it takes to comply – just require them to submit routine reports to explain exceptions to the use of cost control methods.** If law firms are expected to prepare early case assessments and they don't, hold up their invoices until they submit a report explaining why they ignored this requirement. Then, have the in-house litigator add his or her explanation as to why he or she didn't enforce the policy. Soon the onerous nature of these reports will motivate them to complete the case assessments on time.

Another technique is to **utilize on-line reporting to track whether policies and standards are being observed.** For example, in your matter management system add fields requiring when key milestone steps are completed, such as early case assessments. Have the system send reminder emails when these are overdue. Then, provide reports to the management team showing how well the various litigation teams are doing in meeting the targets.

Assign lawyers to be "champions" for the very practices they try to ignore. The idea is to create a convert who will then zealously encourage others to adopt these practices.

Another opportunity is to **factor compliance with cost saving practices into bonus calculations.** Even if cost savings achievements account for only 5% of the bonus criteria, this still sends the

message that such compliance is important.

In the right circumstances, **promote people who demonstrate support for cost savings policies and standards**. Of course, this isn't going to be the only reason why to promote people. But when the promotion announcement is made, include a few sentences or a paragraph that describes what the person has done to create cost savings by streamlining case management practices or developing a new approach to case settlement and so forth. This also helps send the message that one element of being promoted is taking the cost savings goals seriously.

The department can **monitor the compliance of law firms with cost saving practices regularly and award more cases to the firms that comply**. E-billing data will help to do this. Here again, monitor whether firms are completing early case assessments and using early case resolution techniques effectively.

Finally, to build credibility that cost control measures are rational, **demonstrate flexibility in eliminating policies that don't add value**. If alternative fee arrangements aren't working, stop using them. If the rule about limiting the number of depositions in certain cases proves to be counterproductive, eliminate it and move on to the next idea. In other words, prove to the team that the focus is on taking steps and enforcing policies that really work rather so that they are confident that the priority is results, not busywork.