

Chapter 7 - Managing Litigation Information Using Technology

Implementing Litigation IT



Case Litigation Workflow

As you transition from a paper litigation practice to a paper and an electronic "paperless" case and litigation practice, the flow of the work within your office will change. Instead of having a clerk log in and file a paper copy of a pleading, it may be received as a "digital" copy by modem or it may be scanned and indexed by your clerk for later retrieval. This will necessitate a refocusing on the "workflow" within your firm. Workflow has been defined as the "sequence of activities that are performed with business processes". Workflow analysis requires one to focus on the tasks to perform the work associated with the processing of factual and legal materials in your case. In a typical law office, lawyers are supported by a variety of ancient and cutting edge services - couriers, phones, E?mail, videoconferencing, etc. The purpose of these services is to support the detailed and diverse flow of information in the office. Transforming or reengineering an office requires a reexamination of the workflow process in the office. Such a workflow reexamination will enable you to optimally utilize the old services and to bridge them with the new services.

As we transition into an electronic workplace, the "group" will be increasingly involved in the work product because of the ease of enabling other people to be involved in the process. Software called "groupware" is focusing upon this phenomenon of group members having immediate access to the information and immediate input. This will require further workflow analysis for the routing and the processing of the litigation work. Electronic lawyering within a law firm must be visualized as you process information. Just as the assembly line factory process revolutionized the manufacturing process, computer technology will revolutionize the

workflow process in litigation.

To assist in capturing the workflow process, there is a new group of software called workflow software. It provides software tools to depict tracking of the process, icons to represent people, places, or things, time and cost analysis, and other features to assist in the determination of the most efficient and productive workflow. It assists in restructuring workflow processes and provides the users the ability to delete wasteful steps in the business process. Graphical workflow software also allows managers to represent and review litigation processes at a high level of abstraction. They break apart processes and depict litigation or other business processes using maps or other graphical aids. They also can depict the resources needed to run these processes. Because they are graphical, you can use them to teach and discuss.

The workflow of the litigation process will depend upon you and your work processes. The following is one that I use:



Initial meeting with client. At this meeting, the general description of the case is described. Certain events, witnesses, and document information are collected to begin to understand the case. The client is interviewed if they are a part of the case or have a general understanding of the matter. The size of the case in terms of size of the document population, number of depositions to take, etc. is discussed. A preliminary course of conduct is decided upon and the necessary resources and budget to handle the case are discussed.

- *Involvement of litigation team.* The attorneys, paralegal, and other members of the team are assembled and a case briefing is provided.

- *Determining level of IT.* The extent of IT is determined based upon the requirements for the particular case. Existing hardware and software resources are inventoried and additional needs are determined. Discussions are held to determine if integrated software is needed or whether only a database program is needed for the case. A budget should be developed and approved by the client.

- *Setting up case management software.* A decision is made as to managing the overall strategy of the case by using software designed to incorporate docketing, case action plan, timekeeping, and contact information.

- *Setting up an IT case/trial notebook.* A determination is made as to the cause of action, legal issues and propositions and some of the themes of the case. The initial coding for connecting factual information to the legal issues is discussed.

- *Accumulating client material.* Paper documents, computer ASCII files and any other client

materials are accumulated.

- *Loading and inputting case information into computer.* All full text ASCII case material is loaded into the computer. Initial design of the case database and document bibliographic indexing should be discussed. Consideration should be given to adding issue fields and other subjective coding fields to the database or full text indexing software. Enhancements in the form of note tags, document summaries, or event summaries can be completed and added to the full text materials. Standardization of legal and non-legal terms should be decided.

- *Initial discovery or disclosure from opposing party.* The initial disclosure of the opposing party's materials will raise issues in terms of using IT, such as images and full text to manage the information.

- *Legal and factual issue reformulation.* The legal and factual issues should be reformulated after reviewing the opposing party's case materials. Special attention should be paid to your client's strengths and weaknesses, legal theories, damage components, and possible insurance coverage.

- *Visual Aid Plan.* Preliminary visual aids should be developed to reflect the themes of your case. They can be used to explain your position to your client, or witnesses, and for any pretrial proceedings with the court.

- *Document management.* The relevant documents should be coded. As new case material is accumulated, it should be added to the existing database. A determination should be made to code the documents in-house or outsource them to a service bureau. Bibliographic indexing and imaging can be outsourced to a service bureau. If it is to be done in-house, determine the availability of existing resources and timelines. Assign responsibilities for IT supervision and provide IT training if needed. Determine if the material should be converted to full text.

- *Initial Investigative Stage.* A variety of reports should be generated to provide an analysis of the case up to this time. A chronology of events, timeline, important words and phrases, issue codes and specific time limited chronology reports should be run and analyzed to assess the strengths and weaknesses of your client's case.

- *Depositions.* In setting up the first round of depositions, prepare witness kits from your existing database. Prior to the deposition, run database reports on the witness for author, recipient, person mentioned, copied and so forth. If coded, sort by date, name, and analyze for patterns, etc. Tag documents and print if imaged or pull the documents. Prepare an outline of questions, dates, and what a deposition entails for the witness. Determine if real-time transcription should be used for the depositions. Should the audio and/or video be sent real-time to your expert witness or others who live out-of-state? After taking the depositions review, annotate and generate case issue and chronology reports on the key elements of the case. Formulate follow-up questions for witnesses and prepare deposition digests to support pretrial motions. Chronology of key testimony and documents and key deposition excerpts should be prepared for analysis. Flag areas where a witness has changed his testimony or position on issues or events.

- *Case Evaluation.* After the first set of depositions, evaluate the strength and weaknesses of your case again for your prospects in trial or to pursue settlement. Run database and full text reports by cause of actions, legal elements and supporting evidence.

The workflow of your case may differ, but this gives you an idea of how to use IT in the

preparation of your case for trial.