

Litigation Management

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ABSTRACT

Litigation management refers to the coordinated approach to overseeing and directing all phases of a lawsuit or legal dispute, from the beginning through to its resolution. At its core, litigation management is where business strategy meets legal expertise. It includes tasks such as developing legal strategies, planning budgets, coordinating with legal teams, managing documents and evidence, and facilitating communication among all involved parties. For claims organizations and risk managers seeking ways to enhance relationships with their defense attorneys through a unified platform, litigation management software makes a lot of sense. This paper is intended to be a definitive resource for litigation management.

KEYWORDS: *litigation, litigation management, litigation management software, legal industry*

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INTRODUCTION

For proper management of data, the legal industry can use a litigation management system. In essence, litigation is the process by which the legal system attempts to resolve disputes. The filing of that lawsuit triggers the litigation process. The primary goal of litigation management is to ensure that legal disputes are handled in an organized, efficient, and effective manner. Its aim is to achieve the most favorable outcome for the client or organization, whether through court proceedings, settlements, or alternative dispute resolution methods, while simultaneously reducing costs and optimizing resources. Legal departments are starting to turn to dedicated litigation management systems as a holistic solution to address the number of challenges often faced in modern litigation.

Imagine having to consolidate documents for a decade old case. How many petitions filed? How many lawyers engaged? How many changing hearing dates? There is surely a need for dynamic management of litigation specifics to stay on top of hearing dates, to track and respond to notices, documenting all interactions between the parties and

even the lawyers involved. Figure 1 shows a team of lawyers [1].

WHAT IS LITIGATION?

Litigation is simply filling a lawsuit. It is the process of filing and following through a lawsuit to enforce your rights under your insurance policy. When parties have a dispute, whether it be about a contract, personal injury, financial or family disagreement, a party may decide to file a lawsuit. Filing a lawsuit triggers a series of mechanisms that help the parties work towards resolving a dispute. While some lawsuits are resolved before a jury or a judge in court, some are settled by a out-of-court agreement between the parties involved. Many disputes or disagreements will never evolve into a traditional "lawsuit," which is why it is important to speak with an attorney as quickly as possible, to ensure that you are properly represented from the start. If the parties cannot reach an agreement on how to resolve the dispute, then a party may decide to start the litigation process or file a lawsuit [2].

Before officially filing your lawsuit, you or your public adjuster will need to provide any documents or

information you have related to the property damage. Once your lawsuit is filed, the insurance company will respond to your complaints and the “discovery” phase will begin. Discovery is the process of exchanging information between the insurance company’s attorney and your attorney. The last step in litigation is the trial phase. This is what most people think of when they hear the word “lawsuit,” where the case goes to court before a judge and jury [3]. Throughout the litigation process, your attorney will be with you to guide you every step of the way and represent you. During the entire litigation period, your attorney and the insurance company’s attorney will likely engage in negotiation techniques to avoid going to trial and continuing litigation. Every insurance claim is different and some may not require litigation at all while others may result in a lengthy litigation.

Even if a case goes to trial and ends with a verdict, that does not mean that litigation has ended. If one party is unhappy with the decision, they may choose to appeal to a higher court which may delay final resolution of the case for years. Retaining legal counsel right from the beginning is incredibly important to ensure that your case is expedited as much as is possible, and that your rights are properly represented, whether in a court of law, in private negotiations, or by mediation or arbitration.

A litigation manager is responsible for managing the litigation process of a company, including overseeing the preparation of legal documents, researching legal issues, and providing legal advice. They also work with attorneys to ensure that the company’s legal interests are being properly represented in court. They must possess the ability to work under pressure and meet deadlines [1].

WHAT IS LITIGATION MANAGEMENT?

Litigation management is a focus on streamlining processes and procedures to reduce costs by eliminating inefficiencies in litigation. It is a coordinated approach to overseeing and directing all phases of a lawsuit or legal dispute, from its inception to resolution, encompassing tasks like developing legal strategies, managing budgets, coordinating legal teams, and managing documents and evidence. It is an art that integrates strategy, coordination, and foresight. Figure 2 shows a representation of litigation management [4]. Litigation management requires a methodical approach which can be understood by examining the distinct stages or “pillars” that collectively define the process. Each pillar represents a crucial phase or aspect of litigation, guiding organizations from start to finish. The ten pillars of litigation management are the following [5,6]:

1. *Case Assessment:* At the heart of any litigation lies a case assessment. This involves evaluating the merits of a case, estimating potential damages, and understanding the probability of success. The assessment phase starts with a listening ear. We learn about our client’s business, industry, concerns, and legal needs, and identify what a “win” looks like to our client. Figure 3 illustrates case assessment [7].
2. *Strategy Development:* This step will consider both legal and business implications. It begins after we have thoroughly analyzed all options for a client. We then present options and partner with the client to develop a strategic defense plan. While the legal strategy aims to win the case or reach a favorable settlement, the business aspect considers the wider implications, like reputation and financial impact.
3. *Budgeting and Cost Management:* Managing costs involves setting a budget, monitoring expenses, and adjusting when necessary. When creating that budget, ensure that effective technology solutions, automation, and continuous process improvement are built into the overall plan. Make sure there are budgets in place that correspond to the project plan. The budget should be based on the list of tasks to be done and who will do them.
4. *Document and Evidence Management:* eDiscovery plays a pivotal role here, focusing on the identification, collection, processing, review, and production of electronic evidence. As litigation often involves the extensive review of documents and data, eDiscovery platforms have emerged as specialized tools aimed at simplifying this aspect of the process. Proper documentation, cataloging, and storage ensure that relevant electronic and non-electronic evidence can be retrieved and used effectively throughout the litigation process.
5. *Communication and Coordination:* Keeping all stakeholders informed is key. This means coordinating between in-house legal teams, outside counsel, and other relevant departments within an organization. You have to start with and maintain an open line of communication between the risk manager or claims litigation manager and the trial attorney. With good communication, you can eliminate most surprises, whether you deal with one case a year or hundreds.
6. *Risk Management:* This step is to constantly assess the risks involved in litigation, weigh them against potential rewards, and adjust the strategy

accordingly. The better organized you are, the easier litigation is to manage.

7. *Oversight of Trial and Post-Trial Processes:* If a case does proceed to trial, managing the presentation of evidence, exhibit list exchanges, witness testimonies, and legal arguments is crucial.
8. *Wise Attorney Selection:* Many resources will provide useful leads for checking the background, credentials, and specialties of attorneys and law firms. Network with industry colleagues. Chat with counterparts at other comparable businesses. Use forums such as claim association or meetings and conferences to learn about high-caliber lawyers and firms. Approach the attorney selection process systematically.
9. *Cost Control:* To help manage costs, have written guidelines for outside defense attorneys. Written guidelines also avoid misunderstandings. They should cover items such as the hourly rates you will pay for partner and associate work, the format and frequency of billings, any budgeting and expense-forecasting requirements, what you will and will not pay for, your policy on legal research and retention of expert witnesses, and what they must get approved by you first.
10. *Service Management:* Written expectations—clearly communicated to outside counsel—are the linchpin of service management. Litigation guidelines should cover not just billing issues, but also service standards. They should provide the framework for your client's "Bill of Rights." Be the architect of your own sound foundation by focusing on these pillars of effective litigation management.

LITIGATION MANAGEMENT SOFTWARE

Attorneys have mountains of paperwork that includes forms, evidence, emails, recordings, pictures. With multiple court hearings dates of different cases, no lawyer can remember every event in a case. Most legal professionals lack efficiency and productivity due to not having streamlined workflow management. That is where the litigation management tool steps in.

Litigation management solution is software designed to tackle all litigation cases from different jurisdictions. It is a powerful tool that stores all documents, court dates, case titles, opposite party details, and many more in a single software. It is designed to effectively tackle all litigation procedures and cases from different jurisdictions. Figure 4 shows litigation management solution [8].

Litigation management software (LMS) is a cloud-based solution that serves as a central repository for a

company's claims that are in litigation. Case-related notices, strategy, dates, details, activities, contact information and files live within this software. Every data related to the litigation process, from hearing dates to contact details, court days, detail is packed in a single feature of litigation management software that ensures enhanced collaboration and insightful decision-making. LMS allows lawyers to keep all of these important details in one centralized place [9]. Claims organizations and risk managers are beginning to migrate toward litigation management software. Perhaps the most significant benefit of litigation management software is that it facilitates the use of structured data that helps claims organizations make better decisions that affect case outcomes and close cases faster [10]. Various software programs such as Freshsales, ServeManager, Rimus, TheLawAssis, etc. are some of the LMS's available for purchase,

BENEFITS

Accountability in the court of law is the defining aspect of a civilized society. Proper documentation, or lack thereof, can make or break a case. Litigations cause hurdles to enterprises if left unmanaged. Proper management ensures effectively when dealing with matters as complex as litigations. A litigation management system is a profitable investment for the long-term. Following are other benefits of implementing a litigation management solution [11,12]:

- *Central Repository:* A litigation or dispute comprises of a multiplicity of varying petitions, appeals, drafts, notices, etc. Your litigation management system would need to have a central library or a central repository within which to store cases and all ancillary data relating to those cases. The consolidation of various functionalities into a single platform eliminates the need for multiple, specialized tools. This not only streamlines workflows but also reduces the financial burden of licensing multiple pieces of software. With everything in one place, gaps in information are less likely, thereby enhancing strategic planning and decision-making.
- *Saving in the Cloud:* Saving the copies of your documents in a local drive could spell doom if ever there arises a technical error for the computer in which all these files exist and work in. It behooves us to adopt cloud-based approaches to storing our data. The security benefits of online legal software have closed the gaps by way of multiple online methods of data security and back up resources, making cloud-based software solutions an easy alternative to pick with confidence

- *Delegation:* There are responsibilities and duties that arise from the circumstances of each case, and it is not humanly possible to stay on top of every activity in every case. Delegation is the way to route obligations arising from these responsibilities and duties. Task based assignment of your case obligations ensures a fitting response is doled out to address each point of friction.
- *Meeting Deadlines:* It is a tedious task for a law firm to manage all the deadlines, which is an essential part of any case. The thought of having to keep up with the sheer number of updates regarding multiple cases itself is something that strikes fear. With a litigation management tool that provides intelligent updates relating to court procedures and hearings you can be at ease, knowing that no updates regarding your cases will go unnoticed. A litigation management system will merge with the calendaring system in the Microsoft office. It will help you in managing the deadlines more promptly and accurately.
- *Referrals:* All the lawyers or law firms agree that improving client service is a priority for their organizations. To attract and retain customers, you need to satisfy your clients. A satisfied client will always return to the same firm and also refer their family and friends. If an enterprise is looking for ways to improve its customer base, the first investment must be made on a case management system or litigation management system. Your law firm will stay ahead in the competition by using a litigation management system.
- *Collaboration:* Litigation management software can also facilitate much better collaboration and communication, with both claims professionals and attorneys working in one unified platform. A dedicated platform provides a centralized repository for all case-related data and documents, facilitating real-time collaboration among team members and even between in-house and external counsel. This lets you collaborate with paralegals and any other parties involved by setting open folder permissions for your team. Since all the client information is put in one place, it becomes easier to look out for the required contact information.
- *Archiving:* Lawyers need to sift through tremendous amounts of documentation to avoid making mistakes. The law requires that all legal documents be kept in an archive for both active and closed cases. Legal documents need to be archived very carefully in compliance with the law.

CHALLENGES

In today's litigious business and legal environment, clients face many challenges in litigation management. Insurers, claim professionals, and risk managers have vast legal needs. Managing litigation has always been a significant component of corporate legal practice, but its complexity has intensified over the years. Law firms and corporations that do have dedicated technology specialists tend to be larger. Other challenges include the following [4,7,13]:

- *Security:* Another point of concern is the issue of data security. Homegrown systems may lack the sophisticated encryption and security protocols that specialized litigation management systems offer, making them a risky option for storing sensitive data. Any litigation document management software needs to be able to enforce privacy and integrity of a client's legal documentation.
- *Lack of Scalability:* These systems may also lack scalability and real-time collaboration in matters where you need to share documents and work product with external co-counsel users in real-time. The ideal litigation management platform should not only meet your organization's current needs but also adapt and scale as those needs evolve.
- *Lack of Accountability:* There is a lack of an accountability system when it comes to the judiciary, especially in developing countries like India. It is not only exempted from the preview of the Right to Information Act, but also the permission of chief justice needs to be taken before a case can be instituted against a sitting judge. This hinders the administration of justice in a big way.
- *Technological Issues:* Due to the outbreak of Covid-19 physical courts operational, cases are being heard through video conferencing. Some lawyers are trying to take undue advantage of lockdown. The legal profession is gradually being attempted to be hijacked by a few blessed lawyers and selected law-firms who have high-level connections.
- *Establish Trust and Loyalty:* By using the same firms repeatedly, the attorneys get to know the organization better and can be more effective at staffing and handling cases. The client has to trust the managing attorney to know who is best suited for a specific task. For example, a more experienced attorney may be able to write a brief on a complex subject in far less time than an associate, even at a higher billing rate.

- *Expect Regular Updates:* Although the value and complexity of the case will vary, try to have a uniform approach about status updates. Build monthly updates into the plan with the expectation that updates will occur whenever something happens in the case, such as a filed motion or a judge ruling on the motion. Review and update the budget and the schedule when the case takes an unexpected turn. You also can use the reports available in your litigation management system to review the status of a case at any time.
- *Over-Lawyering:* Getting your lawyers to stay within your budget is only part of the solution. In many cases, the real culprit in runaway litigation costs is over-lawyering, overstaffing a case with too many lawyers and allowing high-priced senior lawyers doing what junior lawyers or paralegals could do far more cheaply.
- *High Fees:* High fees are being charged by lawyers. It has almost become a trend among advocates to charge unnecessarily high fees.

CONCLUSION

With the growing world and its technology, it is important for law firms to adopt new ways to deal with the competition. The management of clients and their cases is vital to be considered as the core. Litigation is the process of taking a dispute to a law court to resolve it. It is the process of resolving disputes through the legal system, which can take anywhere from a few months to several years, depending on the case's complexity and other factors. Litigation management refers to the coordinated approach to overseeing and directing all phases of a lawsuit or legal dispute, from the beginning through to its resolution. It often boils down to *lawyer* management. Lawyers can and should be managed, just like any other outside service vendor: a broker, a third-party administrator, or a safety consultant. It is possible to manage litigation to save time, money, and frustration. It is important to note that today's best practices are tomorrow's legacy systems. More information on litigation management is available from the books in [14-16] and a related magazine: *Litigation Management Magazine*.

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Figure 1 A team of lawyers [1].



Figure 2 Representation of litigation management [4].



Figure 3 Case assessment [7].



Figure 4 Litigation management solution [8].