



## **2014 CLM Annual Conference**

**April 9, 2014 – April 11, 2014**

**Boca Raton Resort  
501 E. Camino Real  
Boca Raton, FL 33432**

### **Roundtable 1: Thursday, April 10, 2014 (10:10 am – 11:10 am)**

#### **Legal Cost Control – Five Creative Ways to Control Legal Fees Other than Legal Auditing**

1. Communicate regularly with Outside Counsel regarding the status of matter, the fees and expenses incurred to date, your concerns regarding the progression (or lack of progression) to successful resolution and the budget going forward.
2. Review your Panel Counsel List
  - a. Convergence – Consider whether you can consolidate the number of attorneys/law firms your Company is using and still have appropriate coverage for your matters.
  - b. Do you need “Big Law” law firms?
  - c. Can you take advantage of newer, younger firms that have been formed by former “Big Law” attorneys (who may have worked on your matters and are already familiar with your Company’s culture) who were let go from their former firms for purely economic reasons and who operate more efficiently with lower overhead, and therefore can bill at lower rates. Can you use one or more of these new firms to work up the file short of going to trial?
  - d. Do you need particular law firms to handle particular matters? Are certain legal matters “line of business” or “matter” specific? Do your law firms have enough diversity of practice and are they proficient in enough different areas of the law to handle the different matters you bring to them? Are the billing rates the same or different for different types of work?
  - e. Look at your firms’ billing rates? Are timekeeper’s regularly getting “step” increases as well as rate increases? Are paralegals billing at a variety of rates? If the work is the same, why isn’t there a single rate for paralegals?
  - f. Review the timekeepers who are billing to your matters? Are there “other timekeepers” who are neither attorneys nor paralegals who are billing to your files? Are you paying for clerical staff, IT staff, library staff, summer associates, project managers, billing clerks, managing attorney support staff or others who are not authorized to bill to your matters? Are you paying for “contract” attorneys at regular attorney rates?
3. Establish a “Knowledge” Library
  - a. Create a library for materials that are routinely gathered in the course of discovery – corporate details, etc., that are “pro forma” that can reside in a databank and be forwarded to counsel whenever a new matter comes up so that your firm’s don’t constantly bill to prepare this information.
  - b. Create a template for discovery (incoming and outgoing) that are routinely used for particular types of matters, e.g. – interrogatories, form interrogatories, requests for medicals, requests for admission that are

regularly prepared in a personal injury matter, or certain patent information that is always requested in IP matters.

- c. Create a library of research memoranda that have been prepared so that if a new case has similar fact patterns or questions of law the research does not have to be done from scratch.
- d. Create a library of motion practice, with templates, for motions that are routinely brought in a particular type of matter.
- e. Make sure your counsel (in-house and outside counsel) are aware of your knowledge library and make use of same!

#### 4. Use the Metrics you Already Have

- a. Many companies have a large amount of information at their disposal from their e-billing and/or matter management systems, but have not taken the time to analyze this information in a meaningful way. You can analyze the material on your own, or hire outside consultants to analyze and report on your metrics.
- b. You can use the metrics that you gather to
  - i. negotiate better rates with firms,
  - ii. negotiate fixed or flat fees for particular cases or types of work
  - iii. negotiate “commoditized” rates for certain types of work, e.g. – first pass document review
  - iv. to determine which firms should remain and which firms should be removed from your panel
  - v. to budget your future legal expense

#### 5. Update and Clarify Your Billing Policy

- a. Auditing is a tool to ensure compliance with your Billing Policy, but is of limited use if
  - i. Your Company’s Billing Policy is old and outdated,
  - ii. Internal staff and outside counsel do not understand and follow your Billing Policy.
  - iii. If you don’t have the necessary “buy-in” of your internal staff and/or your outside counsel and people are disregarding, or regularly granting exceptions to you Company’s Billing Policy.
  - iv. If your Company’s Billing Policy does not reflect the billing issues being identified by your computerized e-billing system.
  - v. If your Company’s Billing Policy does not reflect the billing issues that are in your outside counsel’s invoices. (\*Note – the Billing Policy, e-billing system and auditing team, if you have one, should all work together to maximize your savings and reduce improper charges.)

#### 6. Reverse Auction Platforms

#### 7. Alternative Fee Arrangements

- a. As noted previously, you can use metrics that are already at your disposal to help negotiate better Alternative Fee Arrangements. Consider if there is a line of business or a particular category of cases that would be well-suited to a flat or fixed-fee arrangement.
- b. Consider quarterly “bulk” billing for firms/matters that fit into the AFA model. One Company takes its budget for the year, allocates it (or a significant portion of it) to its various law firms and pays the firms quarterly to handle a number of matters. The firms still track their time on an hourly basis. If the firm’s billing is below the amount allocated, the Company and the firm “split the difference”. If the firm’s billing is above the amount allocated, the Company and the firm again “split the difference” unless there is an “outlier” matter that has caused the budget to be off by a significant amount.
- c. Consider “commoditized” rates for certain types of work such as first pass document review.
- d. Consider “blended” rates, e.g. – one rate for partners, one rate for mid-level or senior associates, one rate of junior associates (if your Company allows junior associates) and one rate for paralegals. Consider a “cap” on paralegal rates. Keep in mind that a paralegal billing at \$100/hour who bills 2,000 hours/year generates \$200,000.00, significantly more than any law firm is paying as salary and benefits. A para billing at \$150/hour is generating \$300,000.00. While a firm is entitled to make a profit, your Company can negotiate how much profit they will make from their paralegal staff. In addition, firms are generally

much more willing to negotiate lower rates for paralegal staff than for attorney staff. Consider too, that given the changes in law firm business practices, there are fewer and fewer legal secretaries, word processors, clerks and other support staff and, in some cases, the slack is being picked up by paralegals and junior associates who increasingly are billing for clerical and/or quasi-clerical work.

- e. Consider fee caps and incentive multipliers.

#### 8. Effective Budgeting, Case Mapping and Project Management

- a. There are increasingly good and sophisticated software programs for better case budgeting, case-mapping and project management. In the best case scenario, your Company's budgeting, case management, matter management and e-billing software all work together so that you can easily determine if a matter is staying on track and on budget.
- b. Ask your law firm if they have budgeting, case management software and ask for greater transparency. Make your case budgets as detailed as possible (especially for large, high exposure matters) and ask your firm(s) to share the results of their software/projections with you. Compare and contrast the budgets and see where there are large discrepancies between the two.
- c. Project Management – make good use of project management software, and also personnel. Determine if it makes sense to have internal project managers, or to use project managers at the law firms. Determine the range and scope of the project manager's responsibilities. Make sure the project manager is qualified (many firms are assigning paralegals and/or junior associates to be project managers even though they have little or no experience managing a case). Decide if/how the project manager(s) will be compensated. Do you consider the project manager to be a part of a firm's overhead staff? Does it make sense to compensate the firm for its project manager(s)? Should the project manager's time be compensated in a firm's hourly billing structure, or should the project manager and any other support staff doing significant work on behalf of your matter be billed to you as a disbursement/expense item (with appropriate supporting backup detail). Keep in mind that if the firm is billing their time as an expense, rather than as hourly timekeeper(s) the firm can recoup their cost for the person(s) but cannot use that person's time as a profit center.