Stabilizing the Shifting Sands of Litigation Services

Outsourcing offers new ways for law firms to improve efficiency and maintain profitability in a rapidly changing legal landscape.

By Roger A. Smith, Esq., and Daniel S. Carroll
Bob Dylan, way back in the 1960s, first informed us that “the times they are a-changin’.” Now, nearly 50 years later, the legal industry is faced with tumultuous times, a rapidly evolving operating landscape that is changing many of the concepts that lawyers imagined were part of the legal industry’s bedrock.

Perhaps the hardest change to accept is the altering of the long-true idea that law firms are profitable. The changes are often difficult for firms to process. In the end, however, they are opening up new ways for improving efficiency and restoring profitability.

Core among these new ideas is outsourcing litigation support services — otherwise known as legal process outsourcing (LPO).

**Firms in Flux**

Today’s legal industry is, perhaps for the first time ever, more in flux than it is stable. Law firms are fighting to stem profit drain on multiple fronts:

- Escalating overhead costs, including support staff employment, IT expansion and/or upgrades, and professional liability and health insurance premiums.
- Market maturation is shifting power from the seller (the law firm) to a buyer, where clients are increasingly determining pricing and, therefore, dictating staffing and strategy.
- Marketing expenditures are increasing, now approaching and even exceeding 2 percent of revenues in some firms.

“Just as Craigslist decimated the newspaper industry by taking away its low-end but profitable classified-ad business, LegalZoom targets the high-volume, low-cost business of providing basic consumer and business [legal] documents.” This is particularly devastating for small- to mid-sized firms.

Another seismic shift is the hiring of non-lawyers as law firm leaders. Philadelphia-based Pepper Hamilton (an Am Law 200 firm) did it earlier this year, citing its desire to bring business efficiency to the firm while letting lawyers do what they do best — practice law.

“[S]ome legal purists are aghast at a proposal that would reverse long-standing tradition by letting non-lawyers own limited stakes in U.S. law firms, something allowed on a broader scale in the U.K. and Australia. Opponents worry that non-lawyer partners could push law firms to maximize profits at the expense of their obligations to clients.”

These more recent developments further complicate the industry’s already difficult technology landscape. In 2006, the industry adopted into law the e-Discovery amendments to the Federal Rules of Civil Procedures. Since then, more than half of the 50 states have put in place some rules for electronically stored information (ESI). While everyone believes that e-Discovery will ultimately improve efficiency (and thereby profitability), the fact is that ESI has added complexity, as well as infrastructure and staffing costs.
Litigation support services are being stretched beyond capacities even at the biggest firms and within the offices of corporate counsels. The issues are so prodigious that some large firms are hiring "chief knowledge officers," funding and staffing them to manage the non-IT portion of their firms’ technology based work. But that’s simply not an option for small and midsize firms, forcing them to find alternative means for conquering these mountainous challenges.

Enter legal process outsourcing.

**The Rise of Legal Outsourcing**
The practice of outsourcing legal support services quietly sneaked onto the scene around 1997. Most firms did not want their clients to know that they were engaged in the practice, particularly those that sent the work offshore to places like China and India.

But in the following decade some firms and corporate counsels who offshored work started getting pushback. Some of it was completely unwarranted, spillover from bad experiences people had with other offshored services (think customer service for your computer). But much of it was not justified. The work was not inferior, but the stigma remained. That stain slowed the growth of outsourcing.

It’s estimated that by 2010 less than 15 percent of law firms had outsourced any activities. A survey of corporate counsels reported that the overwhelming majority had not used legal process outsourcing but were either researching or starting to use it for the first time in 2011 or 2012.

Yet corporate legal departments comprise the lion’s share of the LPO market, which in 2011 was estimated at as much as US$857 million. Private law firms, however, are expected to drive as much as 41 percent of the projected LPO growth. A 2009 report by research organization ValueNotes estimates total legal outsourcing growth to reach more than $1.1 billion by 2014.

Why the turnaround? Fundamentally, the explosive growth of ESI is simply making it impossible for the legal industry to keep up without outsourcing. But there are several other factors that simply make outsourcing litigation support services good business:

1. The laws concerning outsourced work have been clarified.
2. The federal cost-recovery statute was amended.
3. Outsourcing no longer means offshoring. Onsite, non-employee staffing gives law firms outstanding control over the work.
4. It’s cost-effective.

**The Value of Outsourcing Today**
Early adopters of outsourcing were continually plagued as to whether these services constituted an unauthorized practice of law. While several state and local bar associations issued guidance on the topic, it took an opinion from the American Bar Association (ABA) in 2008 to completely allay lawyers’ fears.

In its formal opinion 08-451, the ABA used far-reaching language approving the use of outsourced legal and ancillary services to support a core legal team (“The outsourcing trend is a salutary one for our globalized economy,” Opinion 08-451 at 2.). However, the opinion also makes it clear that a legal team electing to outsource work still retains full responsibility for the quality of the work, just as if the work had been performed directly by members of the legal team.

That same year, an amendment to the federal cost-recovery statute changed the wording of 28 U.S.C. §1920(4) to include practically all copying of any relevant materials, not just paper duplication. Subsequent cases widened the interpretation of the amendment, opening the door for more comprehensive recovery for technology-based support services.

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**Salary Trends: Spending on Practice Support Staffing**

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<td>2010</td>
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**Medium salary of a “Litigation Support Specialist” on the East Coast**

Source: The Career Group/Litigation Support Today Magazine
These findings have had a two-fold impact. First, it has opened the door for lawyers to increase the use of ESI and other technology based processes. In turn, that has increased the workload for technology specialists in practice support and driven more firms toward outsourcing to keep up.

Equally as important, the LPO industry has changed significantly since its inception. Today, outsourcing doesn't mean the same thing as offshoring. In fact, it doesn't even mean that the service are provided offsite. Today's latest trend is to provide onsite, non-employee staffing. This isn't the same as hiring a temp.

Bringing outsourced litigation support in-house is typically a long-term (one year or more) arrangement that allows the firm to benefit from highly skilled technical specialists without adding headcount and without large investments in training. Doing so contains back-end costs such as health insurance, while allowing the firm to keep up with growing demand. Perhaps more important, it gives leadership close control over their technology staff, which is often the underlying reason that the idea of outsourcing is discounted.

Onsite staff can be monitored every day. LPO providers stress a systematic approach and cost reduction. LPO providers rely on industrial disciplines that include process improvement, metrics, service level agreements (SLA), formal governance plans, lower cost labor, detailed playbooks, defined accuracy rates and frequent progress reports. This is typically more oversight and process structure than most firms provide their own employees.

Finally, outsourcing litigation support simply makes financial sense for midsize firms and corporate counsels because it enables lawyers to focus on high-value tasks. Studies have repeatedly shown that highly skilled, highly paid employees underutilize their qualifications and experience because they are saddled with low-value tasks that are well below their pay grade, just because there is no one else to do them. This is frequently the result of austerity measures that include cutting litigation support staff.

The legal industry today is grappling with multilayer issues that are changing their operations and, in many cases, eroding their profitability. Yet, at the same time, there is more pressure than ever to grow profits. Emergent technologies and a broadening of applications for ESI are putting pressure on managing partners to adopt or fall behind. By outsourcing litigation support services, law firms and corporate counsels can gain control over their technology burden, empower their lawyers to focus on the law and effectively maintain their margins.

4 David Ratib, KM innovators lead change in the legal field", LM World, February 2012.
5 ALI Report, "Corporate Counsel: Agenda 2012" as reported in Law Technology News, February 2012.
9 The LPO Program, 3rd Floor, 85 Broadway, New York 10006.
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MCS Management Services is a leading provider of on-site business account services, including mail center operations, shipping and receiving, records management, in-house litigation support, document and print management, managed print services and related professional services. Organizations throughout the legal and corporate markets turn to MCS to reduce operating costs, streamline operations, and enhance internal service levels. MCS Management Services is a division of The MCS Group, Inc. and is a women-owned business enterprise (WBE) certified by WBENC (Women’s Business Enterprise National Council).

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About The Authors

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