


Recovering Online Legal Research Costs

Best Practices for Enhancing Small Firm Profitability
and Service to Clients

A White Paper Report

by

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I. INTRODUCTION

Legal research is a fundamental component of an effective law practice,¹ and few would dispute that online research is the most efficient and effective way to achieve in-depth, up-to-the-minute, and reliable results. But such efficiency comes at a cost, since the most comprehensive online legal research service providers charge a fee for their services—either on a search-by-search basis or as part of a periodic subscription or flat-fee contract. If those costs are not passed on to the clients on whose behalf the research is performed, a firm's financial bottom line can be negatively affected. In fact, online research can be one of the biggest expenses incurred by modern law firms—often second only to personnel costs as the highest overhead item in a small firm's budget.² As independent research demonstrates, however, small law firms that recover the costs of online research can be more profitable and may also be serving their clients better by creating an environment in which thorough legal research is encouraged.

Recognizing that many small firms have the need for an improved cost-recovery strategy and the means to effect it, West commissioned an independent legal research firm, Legal Research Center, Inc. (LRC),³ to conduct an interview-based study of the current methodologies employed by small firms with successful cost-recovery programs. Although other studies exist on this topic, none has approached the subject matter solely from a small-firm perspective. Small firms are in perhaps the best position to enjoy substantial gains from an effective cost-recovery program, since most do not have law libraries on the premises. For these firms, traditional—and time-consuming—research exercises may include hours poring over law books, making photocopies, and commuting to and from the law library. Moreover, many small firms do not have the working capital to fund a subscription with an online legal research provider unless steps are taken to minimize the out-of-pocket impact of such expenses.

This study, therefore, involved interviews with attorneys and other legal research professionals⁴ at a representative cross-section of small law firms⁵ throughout the United States,⁶ geared toward gathering information regarding:

- The reasons for and motivations behind a small law firm's implementation of an online legal research cost-recovery program
- The firm's basic cost-recovery strategy
- The firm's best cost-recovery practices
- The benefits of an effective online research cost-recovery program

The results of the study clearly demonstrate that cost recovery serves two primary purposes:

- 1. Online research cost recovery reduces a small firm's out-of-pocket costs and thereby increases revenues and overall profitability.**
- 2. Online research cost recovery enhances the quality of legal representation by encouraging comprehensive research.**

In other words, both the law firm and the client win when effective cost-recovery strategies are applied to online legal research expenses.

II. SURVEY BACKGROUND

American jurisprudence places significant emphasis on caselaw precedent. As a result, considerable effort is required to locate and apply the most relevant authorities from a pool of millions.⁷ In the past, this significant effort was expended in the law library. Attorneys pored over volume after volume of reporters, digests, statute books, and secondary authorities—that is if everything they needed was on the shelf and not checked out by another lawyer. When the proper authorities were ultimately located, the researcher made countless trips to the copy machine to photocopy all the relevant cases and other materials before trekking back to his or her office with copies for later review.

In those days, legal research costs were recouped simply by billing clients for the researcher’s actual time in the law library, plus photocopy expenses. But today, more and more legal research is performed online, using services such as Westlaw®, LexisNexis®, Loislaw, VersusLaw®, and others⁸—a definite time-saver, particularly for small firms that do not have a law library on their premises. Interestingly, although lawyers have rarely questioned the propriety of charging their clients for their actual research time, they do sometimes question whether and to what extent they can bill for online research fees. So, even though an attorney can now accomplish a research task in just a fraction of the time that the same research would have required years ago, he or she may hesitate to charge the client for the online fees that result from that significant reduction in hourly expenditure. Employing that mindset, however, passes the resulting hourly savings on to the client while the firm’s budget has to absorb the costs associated with that efficiency. This can obviously negatively affect the firm’s profitability, which in turn—perhaps not so obviously—can serve as a disincentive to perform necessary research or subscribe to the best services, thereby actually disadvantaging the client. Thus, in order to best serve the firm and its clients alike, small-firm practitioners must define and apply a cost-recovery strategy that allows them to effectively and efficiently recoup their online legal research costs, thereby creating an environment in which thorough legal research is encouraged.

For those attorneys who may balk at charging their clients for online research,⁹ it is important to note that the ABA Model Rules of Professional Conduct authorize charging clients reasonable fees for computer-assisted legal research.¹⁰

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Various ethical opinions, too, support the propriety of passing on online research fees, if the fees are (1) reasonable and (2) disclosed to the clients.¹¹ Commentators and practitioners further reinforce the efficacy of cost-recovery mechanisms when it comes to online legal research. “Cost recovery systems are good for both lawyers and clients,” writes law librarian Molly Kilmer Flood, M.L.I.S.¹² Such systems “enhance the firm’s profitability,” notes law librarian Mark Schwartz, while at the same time “help[ing] ensure that clients are getting the best possible service and value.”¹³ Adds Schwartz, “Effective online research cost recovery benefits everyone.”¹⁴

III. SURVEY RESULTS

Surveys were distributed to legal professionals throughout the United States in small law firms covering a broad spectrum of practice areas. Results indicate that many small firms have designed and implemented successful online research cost-recovery plans—that is, plans that allow them to do thorough and comprehensive legal research while enabling them to recover the associated costs as part of the client’s fee.

The interviewees who took part in the cost-recovery survey were asked a series of questions regarding:

- Cost-Recovery Motivations
- Cost-Recovery Strategies
- Cost-Recovery Practices
- Cost-Recovery Benefits

Their responses indicate that there is much to be gained and nothing to lose by implementing a cost-recovery program to offset the cost of fee-based online legal research, and that a simple system can achieve optimal results.

A. Cost-Recovery Motivations

“Legal research is a real cost that can be tied to a particular client. ... It seems unfair to increase rates across the board for those clients for whom no online research is done.”

Survey respondents indicated two primary motivations for implementing an online legal research cost-recovery program: (1) to reduce the firm’s overhead expenses and (2) to facilitate and encourage more extensive research than perhaps the firm could afford to do on a client’s behalf if the client were not billed for the services.

Most respondents took a very pragmatic approach to passing on research fees. “Online research is an added cost, so it is recovered just like any cost,” noted James Coles of the Coles Law Firm in Bismarck, North Dakota, and Chair of the North Dakota State Bar Association’s Legal Economics Section. “Clients are responsible for all costs, and legal research is a cost,” a Philadelphia solo practitioner stated.

“Our expenses would be too high if actual costs were not charged to the client,” added Peg Buchholz, the office administrator for Ohnstad Twichell in West Fargo, North Dakota.¹⁵ If online legal research costs are not recovered from the clients for whose benefit the work was performed, the firm would have to spread the costs among all of its clients, explained Rodney Seefeld of Conway & Seefeld in Baraboo, Wisconsin, a member of the Wisconsin State Bar Association Law Practice Section Board. “It’s more fair to bill only those clients who have a need for research,” he added. Alvin D. (“Skip”) Mayhew, Chair of the Washington State Bar Association Law Practice Management and Technology Section, agreed, stating that “[l]egal research is a real cost that can be tied to a particular client. Online research is an out-of-pocket expense that must be paid, so either the charges must be directly recouped, or the hourly rate must be increased; and it seems unfair to increase rates across the board for those clients for whom no online research is done.”

Other commentators agree that unrecovered legal research costs can pose an impediment to a firm’s economic vitality. “Unbilled online research charges can add up to significant amounts of revenue if recovered,” observes librarian relations consultant Julie Webster-Matthews.¹⁶

“More in-depth research can be conducted outside our standard databases if the cost can be recovered from the client.”

But the survey revealed that economics alone are not the sole motivator for cost-recovery practices. Intertwined with the desire to improve small-firm profitability is the acknowledgement that, although going outside a standard plan and performing more extensive and exhaustive online research result in increased usage fees, they also result in better-quality research results and thus better client representation. “More in-depth research can be conducted outside our standard databases if the cost can be recovered from the

client,” noted an associate in a small Maryland firm. John T. Rice, a Chattanooga, Tennessee solo practitioner, agreed, noting that charging clients for complex searches is what enables him to thoroughly research the appropriate files.

B. Cost-Recovery Strategies

“Make a firm-wide commitment that cost recovery benefits everyone, and stick to it.”

Setting or refining a firm’s business strategy has been identified as the first key to effective online research fee cost recovery, with securing the organization’s commitment to that strategy coming in second.¹⁷ The interviewees in this study concur. If the survey responses in this category were summed up in one sentence, it would probably be, “Make a firm-wide commitment that cost recovery benefits everyone, and stick to it.” In other words, the strategy behind effective cost-recovery programs is to acknowledge the value of recovering the cost of online legal research from the perspective of both the firm and its clients, embrace that philosophy, get everyone on board, and ensure compliance with the program.

C. Cost-Recovery Practices

Perhaps the most important practical element of this study was determining how to implement a small-firm cost-recovery program. Many small-firm practitioners might want to know how to start a cost-recovery program that really works, without significantly increasing non-billable load or resulting in an increased need for administrative support. The survey responses actually indicate that some of the simplest procedures can help achieve cost-recovery goals, and there is more help available that small firms can take advantage of—free of charge—to streamline their billing process and fairly recapture online fees.

Cost Recovery “Best Practice” Rule No. 1:

Inform clients that they will be billed the reasonable charges for online legal research, above and beyond the researching attorney’s hourly rate.

As the ethics opinions on this subject make clear,¹⁸ when online legal research costs will be passed on to the respective clients, those clients must be apprised of this billing practice in advance.¹⁹ Not surprisingly, then, many survey respondents, when asked about their cost-recovery best practices, stressed the importance of up-front client communications. “We explain the policy up front and set forth our billing practices in our engagement letter,” reports Roger E. Barton of Barton Barton & Plotkin LLP, a 17-attorney firm in New York City. “Good client relations are key,” he adds.

It is important to note, too, that clients generally do not object to being charged for online research sessions. The majority of the interviewees in this study reported no significant client pushback to online legal research charges. Other observers, too, have noted that the number of actual client objections was small.²⁰

Cost Recovery “Best Practice” Rule No. 2:

Directly tie all online legal research sessions to a particular client and matter.

Perhaps the number-one most important element of an effective online research cost-recovery program is directly identifying each and every research session with the client (and matter) on whose behalf the research is performed. This step can easily be accomplished by requiring that all research sessions be preceded by the mandatory on-screen entry of a valid client identifier—a function available free of charge from the major online legal research service providers. Nearly all of the survey respondents indicated that client validation is a key component of effective cost recovery, and that dollars are lost when a researcher fails to tie a particular research session to the appropriate client. “You must always remember to key research to the client,” directs the chair of one state bar association’s Small Firm Practice Committee. A member of another state bar’s Law Practice Management and Technology Section echoed that sentiment, stating that “[i]t is essential to identify clients and matters by number before starting a research session.”

Legal commentators, too, agree that client validation is key to cost recovery, noting that the failure to record a client matter number in association with a research session is the primary barrier to improved cost recovery.²¹

Cost Recovery “Best Practice” Rule No. 3:

Rely on free billing assistance from the firm’s online legal research service provider to determine how much to actually bill legal research clients. No tricky computations required.

Next, of course, the time spent on a client’s research must be translated into a billable amount. This aspect of cost recovery seems to pose a greater challenge for some small-firm practitioners—particularly those with flat-rate contracts. Ethics opinions offer only vague and general guidance in this arena, stating that an allocation method or formula may be applied to determine how much to charge a client for online research under a flat-fee plan, as long as it results in reasonable charges reflecting the research attorney’s actual cost.²² But some interviewees—like Jana Barnett, past chair of the Pennsylvania Bar Association Small Firm Practice Section, and James Coles, chair of the North Dakota State Bar Association Legal Economics Section—bypass the need for tricky calculations by simply relying on statements from their service providers that help formulate an appropriate billing amount. Another interviewee using the same principle responded that “billing information from the provider is printed out and placed directly in the client’s file, then it goes directly on the client’s invoice, dollar-for-dollar.”

A respondent to another survey similarly reported that “several years ago we tried building the cost of the flat fee into the hourly billing rate but felt that was not really fair to clients for whom online research was never necessary. . . . Now we charge each client a prorated portion of the flat fee and charge the actual cost for searches not within the flat fee.” The firm’s online research service provider “provides the prorated charges,” and, as a result, the firm’s “recovery of our flat fee has gone from about 70% to about 95%.”²³

Other small-firm practitioners, however, still struggle to figure out how much *money* to bill for online charges, even though they know how much *time* they spent on a client’s file. “Recoupment adds to the complexity of billing,” observes New York attorney Roger Barton. Like other interviewees, office administrator Peg Buchholz commented that “we need a better way of figuring out the amount to bill back to the client.” And Alvin Mayhew, chair of the Washington State Bar Association Law Practice Management & Technology Section, similarly seeks “help arriving at an hourly charge to apply when the firm pays a monthly charge.” Fortunately, that help is available to these and all small-firm practitioners, often free of charge. Westlaw’s QuickView+® service, for example, makes tracking Westlaw® usage an automatic function. This free service automatically apportions research charges to client bills based on the firm’s approach to billing, thereby significantly streamlining the accounting process. These cost-recovery aids offer various pricing options that mesh seamlessly with small-firm accounting systems to accommodate their unique cost-recovery needs and ensure an equitable billing structure that is fair to all clients.

Accordingly, figuring out how much to bill does not need to take time or mental energy. Most online legal research services can provide all the billing information and help the firm needs.

D. Cost-Recovery Benefits

The survey responses demonstrate that the simple practices these small firms employ to achieve cost-recovery goals actually work. The firms report the obvious resulting benefits of reduced overhead, fewer out-of-pocket expenses, and thus increased revenues.

But service to the firm's clients is similarly enhanced when the attorneys in the firm operate in an environment that encourages online legal research. Although some attorneys may believe they are doing their clients a favor when attempting to keep costs down by forgoing fee-based legal research, they may actually be shortchanging their clients by adopting that philosophy.

“Enhance the firm’s profitability ... ”
and “... help ensure clients are getting the best possible service and value.”

First, even if adequate research can be conducted for a particular client using traditional print resources, it is far more time-consuming than using online services, particularly in small firms without an on-site law library. So if the hours-based bill to the client is higher, the client certainly does not benefit from the firm's avoidance of fee-based research.

Moreover, clients may be better represented if firms are encouraged to engage in online legal research. If an attorney believes that the cost of an online research session will come out of his or her own pocket, he or she may be dissuaded from conducting research that could turn out to be pivotal to a client's case. Plus, online research often produces more comprehensive and current results than traditional research.

Case Study: The value of up-to-date online research

On a hot June afternoon in Dallas, two lawyers squared off across a conference table to begin what might have been a fairly predictable mediation—except for one thing. In the briefcase of one of those lawyers, Omar Habbas, was the citation to a crucial case that had been decided—and discovered via online research—only days earlier.

In a stunning turn of events, this “needle-in-a-haystack” case dramatically increased the settlement offered by the defense to Mr. Habbas' severely injured client—from \$300,000 to a hefty \$3 million!

It all began just a few days earlier when Mr. Habbas received a call at his San Jose office from his LRC Research Attorney, who alerted him to the just-decided, pivotal decision in *Garcia v. General Motors Corporation*, a case that was found using Westlaw's KeyCite® service, and would ultimately lead to a ruling in favor of Mr. Habbas' client—and which was unknown to opposing counsel.

“The end result of LRC's online research was amazing,” said Mr. Habbas. “I walked into a mediation with the *Garcia* case in hand ... [and] opposing counsel was completely surprised. The research was so compelling that I'm convinced it was responsible for a settlement approximately ten times the initial offer we had received.”²⁴

IV. CONCLUSIONS

The responses of the legal professionals interviewed for this survey, together with other published discussions of online legal research cost recovery, clearly demonstrate that recovering the cost of online legal research is a win-win practice, benefiting both the small law firms that implement such programs and the clients they represent. Specifically, the study results demonstrate:

- Recovering the cost of online legal research is not only ethical, but it also encourages better service to clients and enhances the value of legal representation.
- Small law firms experience greater profitability as a result of online research cost-recovery practices.
- It is important to discuss the firm's approach to online research cost recovery in the initial client interview and include the precise terms in the written agreement.
- Successful cost recovery does not have to be complicated or time consuming, but it does require a firm-wide commitment and simple procedures that tie research sessions to the appropriate client and translate online time or transactions into billable dollar amounts.
- Major online legal research service providers can—free of charge—capture all online research expenses and help translate them into a fair and ethical billable amount, consistent with the firm's billing strategy.

¹ The Model Rules of Professional Conduct require that attorneys provide “competent representation” to their clients, which in turn requires “the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.” Model Rule of Professional Conduct Rule 1.1. Accordingly, lawyers have a duty to “perform sufficient research to enable [them] to make an informed and intelligent judgment on behalf of [their] client[s],” and failure to do so may be grounds for a legal malpractice claim. See *Smith v. Lewis*, 530 P.2d 589, 597 (Cal. 1975), overruled on other grounds by *In re Marriage of Brown*, 15 Cal. 3d 838, 851 n.14 (1976).

² See LaJean Humphries, *Cost Recovery for Online Research* (Nov. 18, 2002), <http://www.llrx.com/features/costrecovery.htm>. Humphries is the library manager for Schwabe Williamson & Wyatt, a Portland, Oregon firm.

³ LRC (www.lrci.com, <http://www.lrci.com>) and West purchase each other’s services; however, LRC does not endorse any specific online research provider and utilizes several distinct online services.

⁴ Although three-fourths of the interviews were with attorneys, other legal professionals familiar with the cost-recovery strategies and methodologies of their firms also responded to the survey, including a paralegal, three administrative directors, and one financial representative.

⁵ Small firms were defined for purposes of this survey as including one to 35 attorneys. The actual interviews included firms of from one to 18 attorneys.

⁶ The interviewees represented firms located in Alabama (1), California (1), Illinois (1), Maryland (1), Minnesota (3), New York (1), North Dakota (2), Pennsylvania (4), Tennessee (1), Texas (1), Washington (2), and Wisconsin (1). One interviewee was from a Canadian firm.

⁷ See Edward A. Friedland et al., *Legal Research Management, in Successful Partnering Between Inside and Outside Counsel*, ch. 19, § 19:2 (Robert L. Haig, ed., West & ACCA 2002).

⁸ The interviewees for this study subscribed to LexisNexis (11), Westlaw (8), Dialog (1), Law.Net (1), Loislaw (1), and RIAA (1). Some subscribed to more than one service.

⁹ In a recent survey of 300 research directors and law librarians, a significant majority (87%) shared the opinion that all forms of online research, including annual subscriptions, should be fairly allocated to clients. See *2003 Research Management Survey Results*, http://www.researchagent.com/2003_Research_Management_Survey_Results.pdf. A 1999 ABA survey, however, revealed that only 57% of the respondents, 90% of whom were from firms with one to 20 attorneys, billed online research costs to their clients. See Pam Dempsey, *Online Flat Fee Plans & Cost Recovery—A Summary*, <http://lawlibrary.ucdavis.edu/LAWLIB/feb01/0391.html> (Feb. 16, 2001).

¹⁰ See ABA Model Rule of Professional Conduct Rule 1.5.

¹¹ See, e.g., ABA Comm. on Ethics and Professional Responsibility Formal Op. 93-379, *Billing for Professional Fees, Disbursements and Other Expenses* (Dec. 6, 1993) (available on Westlaw®); Alaska Eth. Op. 95-4, *Standards Governing Charges to Clients for Disbursements and Other Expenses* (Alaska Bar Ass’n, 1995), <http://www.alaskabar.org/index.cfm?ID=4860>, and Conn. Bar Ass’n Comm. on Professional Ethics Informal Op. 96-3, *Charge to Client for Computer-assisted Research Under Contingency Agreement*, 1996 WL 285556 (Mar. 14, 1996) (both stating that online research charges can be passed on to the client if the practice is disclosed in advance); Phila. Bar Ass’n Professional Guid. Comm. Guid. Request 87-23, *Billing of Cost of Computer-aided Legal Research*, 1987 WL 109748 (Oct. 20, 1987) (stating that there must be written disclosure and consent before online research charges can be passed through to the client) (available on Westlaw®).

¹² See Molly Kilmer Flood, *Cost Recovery: What’s Fair Game?*, <http://www.abanet.org/tech/ltrc/publications/costrecovery1.html>.

¹³ Mark S. Schwartz, *Keys to Effective Cost Recovery* (Jan. 15, 2003), <http://www.llrx.com/features/costrecovery2.htm>.

¹⁴ *Id.*

¹⁵ Named partner Daniel Twichell is a member of the North Dakota State Bar Association’s Legal Economics Section.

¹⁶ See Julie Webster-Matthews, *Who Has Spare Change Anymore: Cost Recovery of Online Research*, <http://www.lexisnexis.com/info-pro/profdev/column/2003/200301.asp>.

¹⁷ See Schwartz, *supra* n.13.

¹⁸ See *supra* n.11. See also Patrick Moran, *Who’s Paying the Westlaw Bill? If It’s Not in the Contract, You Are*, 17-JUL-CBA Rec. 45 (June/July 2003) (stating that when charging clients for online legal research under a contingent fee agreement, the policy must be spelled out in the contract) (available on Westlaw®).

¹⁹ See ABA Formal Op. 93-379, *supra* n.11.

²⁰ See Humphries, *supra* n.2.

²¹ *Id.* Humphries reports that in one study, an invalid or missing client matter number was a key factor, responsible for over 80% of the variation in cost-recovery realization rates.

²² See ABA Formal Op. 93-379, *supra* n.11; Ill. State Bar Ass’n Advisory Op. of Professional Conduct 85-9, *Topic, Computerized Legal Research*, 1986 WL 352852 (Jan. 17, 1986). The ABA guidance may not apply to Canadian attorneys, however, as exemplified by the Canadian survey respondent’s statement that, in his firm, “[a] premium is charged for research, in addition to hourly charges; . . . [i]t is a money-maker for the firm.”

²³ Dempsey, *supra* n.9.

²⁴ See Friedland et al., *supra* n.7, § 19:3 & n.3 (citing Omar Habbas, *Finding the Critical Needle in the Haystack: Firm Credits Multi-Million Dollar Settlement to Online Research*, Law Tech News, Nov. 1999, at 13).

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