

LATEST TRENDS AND BEST PRACTICES IN MANAGING OUTSIDE COUNSEL

BY THOMSON REUTERS, 2013

INTRODUCTION

With budgets as tight as ever and legal needs increasing in many areas, such as intellectual property and regulatory compliance, the need for better management of outside counsel has never been greater.

Reducing outside counsel costs has consistently been one of the most pressing issues mentioned by corporate counsel in recent ACC/Serengeti® Legal Department Surveys. But it's not only a matter of reducing costs. Improved management and oversight of outside counsel can also promote better coordination with outside counsel, more effective use of both in-house and outside counsel, and better, more data-driven decisions.

General counsel need to know not only where every dollar of outside spend goes, but also whether outside counsel is being engaged as effectively as possible, and whether options that could lead to greater efficiency have been sufficiently explored for every matter.

In recent years, GCs have become more proactive and sophisticated in the ways they manage outside counsel. Our discussions with GCs have yielded several trends and best practices for improving how they engage outside counsel.

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SET THE RULES OF ENGAGEMENT

Legal departments are increasingly setting billing guidelines and requiring firms to follow them.

Guidelines can typically include such items as:

Basic Project Management:

- Requiring project budgets
- Early case assessments

Rates and Expenses:

- Requiring discounts from standard rates
- Travel expense rules

Staffing Guidelines:

- Not allowing changes in assigned attorneys without client consent
- Limiting usage of new associates
- Policies requiring diversity of service providers

Other:

- Client ownership of work product
- Encouraging use of alternative dispute resolution
- Technology requirements

ENFORCE BILLING GUIDELINES

While billing guidelines are excellent in principle, they matter little if outside counsel don't follow them. Many times, firms' internal processes, such as time and billing, aren't set up to correctly follow a client's guidelines. In addition, because many firms deal with a large number of different clients and billing guidelines, it may be challenging for them to be 100% compliant with all billing guidelines. As guidelines change, it may be difficult for them to keep up with changes in a timely manner.



Electronic bill auditing and review tools, such as those found in Serengeti Tracker[®], can help ensure that billings are in full compliance with guidelines. Without electronic billing tools, monitoring guideline compliance can be a highly labor-intensive process that uses up department resources and detracts from other tasks. Automation also can reduce billing disagreements by pointing out exactly where invoices are out of compliance and citing the applicable section of the agreed-upon retention guidelines.

Use of e-billing can also lead to direct cost savings. Studies show that an automated e-billing process can significantly expedite bill review, resulting in shorter review periods. Accordingly, many legal departments negotiate for early pay discounts for timely invoicing, resulting in additional savings.

EVALUATE PERFORMANCE

Not all firms provide the same level or quality of service.

- Do you engage in systematic evaluation of outside counsel? What do you measure? How do you memorialize objective and subjective evaluations of outside counsel?
- Based on historical data or management reports, have you reallocated work to outside counsel with lower rates?
- Based on historical data or management reports, have you reallocated work to outside counsel with better performance?
- Do you identify the firms who are doing the most work and ask them for additional discounts or other perks such as CLEs?

As with bill auditing, electronic tools are available that can generate management reports for evaluating outside counsel performance. Such management reports and historical data can also be used to ask outside counsel to justify their hourly rate charges.

SUBJECTIVE PERFORMANCE TRACKING

Subjective factors also can make a difference in determining which outside counsel you engage with. While such factors can sometimes be difficult to quantify and track, Serengeti Tracker provides an automated means to evaluate, compare and track the performance of firms along several key factors, including:

- Understanding goals
- Expertise
- Efficiency
- Responsiveness
- Predictive accuracy
- Effectiveness

BUDGET TRACKING

Automated budget tracking can monitor budgets at every level from the entire department down to firms and even individual matters. Matter tracking can provide both early and ongoing snapshots that identify matters that are in danger of exceeding budget and may require some extra attention. This helps to spot potential budget issues and make corrections early before they become major problems.

Budget tracking software can evaluate which firms are most closely adhering to projected budgets and matter durations over a given time period.

IMPROVE COLLABORATION

Ideally, the legal department and outside counsel work together as a tightly coordinated team. But having outside counsel located across the city or even in a different state or country can make efficient communication and coordination difficult. This is especially true in cross-border and cross-jurisdictional matters, or cases involving multiple co-counsel.

New tools such as Thomson Reuters Concourse™ Matter Room can greatly enhance collaboration among the entire legal team, streamlining communications and sharing of key information. Inside and co-counsel can quickly and easily share documents, legal research and emails. Team members can identify past work product that could be leveraged without needing to “reinvent the wheel.” With all matter-related information stored in one place, team members can easily search across documents, people and matters, with access and permissions controlled by the GC.

In addition, it enables more effective management of outside counsel by integrating matter management and tracking capabilities. GCs can check matter progress to minimize risk and maximize outcomes.

Mobile access means that GCs can oversee matters, and team members can securely access and share key case information, wherever they are as long as they have Internet access.

CLOSER, STRONGER RELATIONSHIP

Outside counsel play a significant role for the legal department. They provide additional resources, reach, expertise and capacity. But using outside counsel as effectively and efficiently as possible requires forethought, careful planning and the right tools.

Establishing the right approach for managing outside counsel can generate significant cost savings and improve efficiencies.

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