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Evaluating Outside Counsel With 3 Key Metrics

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Editor's Note: *The author of this post works at Legal Decoder, a company that analyzes legal spend.*

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It is axiomatic to say that corporate legal departments have to “do more with less.”

The 2008 financial crisis created resource and headcount constraints that continue to force law department leaders and other executive team members to optimize output value for each dollar spent. With outside counsel fees accounting for about 55 to 60 percent of an organization’s legal department budget on average, according to a 2014 in-house survey by Altman Weil, it is unsurprising that outside counsel spend is an expense carefully scrutinized by the entire C-suite.

Today, however, those in charge of legal resources aren’t limited to a perfunctory analysis. They can look at more than just the bottom line number of outside counsel’s invoice(s), subjectively measured against outside counsel’s output value.

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Intelligently developed data analytics tools have emerged to empower the executive team to quickly and critically analyze outside counsel legal spend and invoice data. The result of this analysis helps general counsel benchmark and measure the following three keys aspects of outside counsel's performance, which are the greatest value drivers for clients.

Staffing Efficiency

Outside counsel's staffing mix must be optimized to ensure the highest value in hourly billing arrangements. This means that the most competent, lowest cost legal professional should handle skill set appropriate tasks in the right amount of time. Inside counsel can scrutinize each task in a line item entry handled by outside counsel for skill set appropriateness using automated data analytics tools. Clients need not accept a \$750 per hour partner working on tasks well below his or her pay grade or a transactional business attorney masquerading as an intellectual property specialist by drafting trademark applications. Because many tasks handled by outside counsel recur with sufficient frequency on an industrywide basis, benchmarks can be set in terms of costs, time and skill set required for individual tasks. The practical upshot of evaluating and monitoring staffing efficiency may be as simple as leaving legal work with the same outside law firm with a mere reshuffling of staffing resources. Sometimes, it may mean diverting some tasks to lower cost, alternative service providers like legal process outsourcing companies. Either way, forward-thinking companies are now empowered with solutions that help them understand and capitalize on optimal outside counsel staffing efficiency.

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Workflow Efficiency

Outside counsel should be encouraged and expected to optimize process management. This necessarily means (i) defining the parameters of the workflow process, (ii) setting standards for task and responsibilities, (iii) continually evaluating the process and (iv) identifying opportunities for improvement. Workflow efficiency measures and seeks to eliminate waste, friction and redundancy by outside counsel. Intelligently designed analytics tools can facilitate this effort. For instance, a well-designed tool will pinpoint when multiple attorneys participate in a single phone call or meeting, identify the frequency with which repeated tasks recur and whether their recurrence is delivering real client value, and highlight where an attorney is billing for travel time. Smart consumers of legal services are helping outside counsel detect and eliminate these types of inefficiencies which law firms are independently disinclined to troubleshoot and remedy.

Billing Hygiene

As long as the legal industry resists the movement away from \$1,200 per hour billable rates, clients must demand clarity and accountability when it comes to understanding the tasks handled during each billable hour. Far too often, invoices for legal services contain line items that run the gamut from being vague and cryptic (e.g., “review file,” “attention to tax issue,” “consider negotiation strategy”) to being overly complicated to the point of lacking readily discernable value. Billing hygiene means recording accurate time with constructive, informative and easily understood entries. Good billing hygiene is crucial for a current understanding of the price and value of services rendered by outside counsel. However, equally as important, it affords a corporate legal department the ability to mine data in a meaningful way that informs the predictability and certainty of future legal expenses.

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When outside counsel excels at each of these three aspects of legal service delivery, clients stand to benefit.