Legal Ops Corner: Yes, Outside Counsel Relationships Can Be Win-Win

Law Department Management

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Lawyers – both in-house and at law firms – typically assume that the relationship between a law department and its outside counsel is inescapably zero-sum.

General counsel face constant pressure to control (or lower) costs, and legal spend is an obvious place to start. Meanwhile, law firm partners must help grow their firm's profits, and the easiest (or, at least, assumed easiest) way is to raise the billable hour rate and increase hours billed. The situation means that any financial gain achieved by one side comes out of the pocket of the other.

But win-win outcomes are possible – if law departments and outside counsel take a collaborative approach based on understanding each other's priorities and goals.

Misunderstood needs: Beyond legal spend and billable hours

The core challenge centers on how each party defines "good service." Law firms usually view service as providing accurate and comprehensive legal analysis at the going price. Billing rates are justified because of the knowledge and experience a firm's lawyers offer, and billable hours merely reflect the time considered necessary for practitioners to apply their expertise.

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For law department leaders, good service does not mean legal acumen but rather the extent to which a law firm helps to solve business problems, with related legal issues just one dimension of the challenge. Law firms' default focus is to achieve the "best" legal outcomes (i.e., that provide maximum protection against legal risk), with cost as a secondary concern. For law departments, the goal is roughly the opposite: maximizing gain at an acceptable, rather than minimal, level of risk.

The problem is worse than the frequent lack of overlap between these differing conceptions of "good service." Often, they operate at cross-purposes. For example, in contracting, many law firm lawyers assume the ideal contract is "bulletproof" (i.e., shielding the client against all possibilities), never mind the cost or the time necessary to draft such an agreement. Meanwhile, a law department usually seeks speed (which drives shorter sales cycles) and process efficiency (which helps minimize spend).

How can the parties reconcile these differences? And what role can legal ops play in achieving that goal?

From "you and I" to "we"

The first step to synthesizing the conflicting definitions of "good service" is for departments and law firms to understand better what priorities and goals drive the senior lawyers at each type of organization:

Law departments must deliver business value

The fundamental consideration is the risk-benefit analysis of the department's (and its outside law firms') activity and outputs. Benefit is defined in business and strategic terms beyond cost savings and legal "wins." The department must promptly triage legal matter requests and fulfill them quickly according to each request's business and strategic impact. It must help prevent adverse, non-legal outcomes (e.g., unfavorable media coverage), meet its budget, regularly report on its operations to the rest of the enterprise, and accurately predict its future spend. The pace is brisk, and the time horizons are short.

Law firms must grow profits

Law firm and practice group leaders must show internal constituencies and the outside world that they are making money. For internal audiences, this means more than achieving increases in billing rates. It also includes sustaining high utilization rates, minimizing write-offs, and achieving targets for metrics like profits per partner and revenue per lawyer. Time horizons vary but are usually relatively long (e.g., the life of a matter).


Law firms must prove and display to others that they have the capability to increase their profits
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Two points are critical. First, only some of a law department’s or firm’s needs are mutually exclusive with those of its counterpart organizations. Second, a law department and its firms often have synergistic objectives. For example, a law firm can accelerate turnaround times for client matters without sacrificing billing rates or, by providing industry-specific guidance, deliver superior value than competing firms (even ones with significantly lower rates) that are unable to offer the same expertise.

RFPs: Shared value, not price, is what matters

The traditional Request for Proposal (RFP) process hinders win-win outcomes by emphasizing price. This incentivizes firms to underbid and underestimate the work required. The result: cost overruns become inevitable, cost savings evaporate, and client resentment is assured.

A better approach is for clients and law firms to collaborate on shared value creation. This requires law departments to clarify their goals and ensure their outside counsel correctly understands those goals and what they entail. Doing so enables law firms to focus on tailoring delivery models to address the client's needs within given constraints and parameters. Depending on the particulars, one or more approaches (e.g., process optimization, alternative fee arrangements (AFAs), secondments, leveraging technology for increased efficiency, etc.) may be suitable.

How legal ops fits in

From a legal ops perspective, quick and sizeable wins for law departments and firms can come from improved matter intake and management solutions. Things move faster and better when a client and outside counsel establish a standardized approach to matter requests (e.g., one that requires the initiators of requests to provide the same categories of information, use the same set of descriptions of the requested work and deliverables, etc.). This sort of standardization eliminates delays from having to get clarification and misunderstandings about matter scope, deadlines, etc.

Legal ops leaders also need to ensure everyone has real-time access to accurate and current information on matter status, progress, and spend. This capability helps eliminate unpleasant surprises (and the harm they do to firm-client relationships) by enabling law departments and law firms to spot emerging concerns and address them before problems arise. Similarly, data analytics allow law departments and firms to work together to optimize staffing and resource allocation.

Transparency is a win-win

Many law firms have a strong cultural aversion to sharing detailed operational data with clients, especially data on client-specific revenue. Law firm leaders need to understand the basis of this resistance and explain to outside counsel how sharing such data benefits the firm. For example, the information enables the law department to demonstrate to key internal audiences (e.g., senior management) the business and strategic value of the department's use of that particular firm. This protects the firm against pressure on the law department to cut back its spend with that firm.

Conversely, information shared by a law department enables firm lawyers to show their colleagues that alternative approaches to service delivery are paying off (by delivering greater value to and strengthening the relationship with the client) – and can provide a competitive advantage in gaining new clients or expanding the relationships with existing ones.

Furthermore, when a client and its outside counsel share data, it facilitates continuous improvement, further benefiting both parties. The law department gains an optimized approach that it can then use with other firms, and the law firm gains a superior approach to offer its other clients.

The cost of delay

> Legal ops professionals have a critical role in driving the shift to win-win approaches by creating the operational infrastructure – process, technology, and administration – required for law departments and law firms to help each achieve their most important goals.

Transforming the dynamic of your law department’s relationship with outside counsel is difficult and ambitious. But the alternative – accepting the status quo – is dangerous for all parties. Law department leaders cannot afford (financially, reputationally, and otherwise) to disregard an approach that increases their department’s business value. Law firms cannot forgo the competitive advantages of offering clients an alternative to the zero-sum paradigm. Legal ops professionals have a critical role in driving the shift to win-win approaches by creating the operational infrastructure – process, technology, and administration – required for law departments and law firms to help each achieve their most important goals.

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Elevate General Counsel and Chief Operating Officer Steve Harmon is an internationally recognized leader in the genesis of and continuing evolution of legal operations and the professionalization of the field. He co-founded CLOC (the Corporate Legal Operations Consortium) and his 20-plus years of experience includes business development and in-house legal organizations. He was vice president and deputy general counsel at Cisco. His responsibilities included technology licensing, oversight for the legal development of product lines, Global Export Compliance, Trademarks, and Cisco's award-winning legal operations function.

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