Bellefield

ALA Association of Legal Administrators

2019

Annual Law Firm Leader Survey on Outside Counsel Guidelines

Outside Counsel Guidelines Are Here to Stay

Legal departments have been, and will continue to be, under tremendous budgetary pressure to control legal spend and relentlessly pursue neither over or underpaying for the value of services it produces or procures.

Outside counsel spend--the largest line item on any legal department budget--has been the most volatile budget metric in the post-recession period. Cutting these costs is low hanging fruit. In 2016, there was the first measurement of the shift of work in house or to new providers, as well as a push to adopt AFAs and impose Outside Counsel Guidelines (37%) to achieve their goals.

In 2019, clients are now pulling back on outside counsel spend and the overwhelming majority (81%) report utilizing Outside Counsel Guidelines as one of the most effective tools for controlling costs. Enforcing guidelines are in the top tier of effective strategies for legal departments' management of outside counsel, with increasing numbers (16%) of legal departments formally evaluating compliance of outside counsel at matter close and including this metric in future selection.

> *"How can we make sure we aren't over or underpaying for value... that has been our Holy Grail."*
>
> Associate General Counsel, Bob Harchut. GlaxoSmithKline (GSK)

Legal departments are agents of change. Enforcing Outside Counsel Guidelines helps legal departments control costs and influence a law firm's process—and is seen as highly effective 60% of the time. Just before the sharp rise in OCG, Chief Legal Officers noted open dissatisfaction with the law firm model, with about 14.5% reporting they had asked for changes, but had not gotten the results they wanted and another 9.1% believing it was not their job to ask--that instead, law firms should act proactively to improve.

Today, Outside Counsel Guidelines stipulate contractual terms and conditions that define the client relationship across these three main areas:

1. Process and procedures such as conflicts, case assessment, status reporting, and staffing
2. Policies and policy management including security and cybersecurity, general compliance, confidentiality
3. Client billing guidelines, including fees, expenses, invoicing procedures, and appeals

No two Outside Counsel Guidelines are alike; in fact, each can be considered a unique client arrangement and from the above list capture a vastly nuanced array of very complex rules for which non-compliance has very tangible consequences: i.e., not being paid, payment delayed up to 120 days, sued, or simply fired by the client.

For instance, each unique OCG may or may not capture a mix of alternative fee arrangements --including fixed fee per matter, blended rate, flat fee to handle matters in a given area, fixed fee with a collar or a cap, budget based monthly billing, risk sharing, contingencies, auctions, etc., as well as data governance, security and privacy stipulations, some of which indemnify the client for cyberbreach and violation of privacy laws and require firms to explicitly secure the client's data.

This is to say, there is no standardization across clients or even within one single client as to what is contained in the Outside Counsel Guidelines nor how the OCG is managed by the client or its law firm, i.e., non-standardized e-billing platforms.

What is the Impact of Outside Counsel Guidelines on Law Firms?

Firms desperately need this information. There has been, to date, no industry-wide data measuring the impact of Outside Counsel Guidelines on law firms. That is why Bellefield in partnership with the Association of Legal Administrators created the 1st Annual Law Firm Leader Survey on Outside Counsel Guidelines ("Survey").

We know firms are challenged to comply with Outside Counsel Guidelines and that this challenge has caused collection cycles to increase, invoices to be rejected and line items to be met with refusal to pay, written off, or in some cases, whole firms to be sued or fired.

In fact, billing compliance is so complex and overwhelming that, rather than solving the challenge, it is cast aside as a cost of doing business and firms simply accept the cycle of appeals, payment delays, fee reductions and write-offs.

For some firms, this cost translates into $15,000 a day--or nearly $4 million annually. When declining realization is factored in, this means that firms are not being paid for nearly 20% of the work that is being done. We dig into this data more, below.

Invoice Rejections, Write-Offs, and Collection Cycles

Better timekeeping and achieving 100% invoice acceptance–rather than writing off almost 20% of a firm's work–has obvious trickle-down and trickle-through effects that directly impact almost all aspects of a law firm's business, including its investment strategies.

As expenses outpaced revenues in 2019 and is forecast to do so through 2020, firms have to do whatever they can to get invoice acceptance, reports the Citi Private Bank Law Firm Group 2019 Client Advisory ("Citi 2019 Client Advisory").

Rates and revenue have remained strong—but collection realization against standard or worked rates has been in steady decline. Research consistently shows what separates the most financially successful firms from the competition is an ability to both produce a higher number of billable hours–and also to capture and bill a better percentage of those fees. This is achieved through better timekeeping, delivering high quality timecards, and setting objectives for 100% invoice acceptance.

The Citi 2019 Client Advisory also reports that the majority of firms (55%) have seen a lengthening of collection cycles between 2014-18 and that there is a high correlation between use of e-billing systems and collection cycle duration lengthening.

Our Survey reflects this with **a vast majority of firms reporting that billing and collections have not improved because of e-billing** (70%) and drills into further detail to show that most firms' billing and collection cycles have lengthened, for the most part by 30 (40.94%) or 60 days (29.13%). Just under 15% have lengthened by 90 days, and 2.36% report lengthened cycles by 120 days.

Invoice rejection is universally experienced and varies by degree. Most firms experience 5-10% of e-bills getting rejected or reduced (43.24%). Almost a quarter of firms experience 11-20% of e-bills getting rejected or reduced (21.62%). Over one third of firms (35.81%) experience 21% or greater of e-bills getting rejected or reduced.

15% of firms do not appeal rejections either because of lack of staffing power or writing off as a cost of doing business.

What are the Obstacles to Compliance?

The vast majority of law firms (88.83%) report they now receive Outside Counsel Guidelines from clients, but law firms do not have the processes, staffing or technology to properly manage Outside Counsel Guidelines.

The obstacles to compliance begin at matter intake. **Nearly a full quarter of all law firms have no process at all to review, analyze and document OCG as they come in, and the vast majority have only an ad hoc process to do so (62.98%),** leaving just under a quarter of firms with a consistent process. This is likely because most firms simply do not have the staff necessary to handle client guidelines (51.54%).

The processes in place do not improve much from here. **Of the 24% of firms that have a consistent process in place to review, analyze and document OCG, only 59% communicate the guidelines to partners – it is estimated that 20% of the time no one communicates the guidelines to the billing attorney.** With caveats in place, this means about 11% of the time there's a reliable process and chain of command that can be drawn from client intake to the billing attorney.

This is a huge disconnect—which is why no one is surprised when the results show that a majority of lawyers do not know what is in the guidelines (56%). But this too requires further investigation as "awareness" and "action" are distinctly separate actions.

Obstacles: You Can't Comply with What You Don't Know

As noted above, while the majority of firms (59%) report communicating client guidelines to partners, the reliability and effectiveness of this communication is suspect at best.

The current technology of choice to communicate OCG to partners is that of an email summary (52.41%); however, almost all of the time the email summary does not require acknowledgement of its receipt (82.82%), and only half the time are lawyers monitored to ensure they follow the guidelines (55.83%). With the majority of firms reporting they do not have the staff necessary to handle client guidelines, compliance and enforcement (51.54%), and lawyers still believing the guidelines mostly apply to the billing process and are "unrelated" to them, leaving the effectiveness of monitoring dubious.

What can be said with certainty in about a quarter of instances (23%), is that a line can be drawn between an email summary sent to a billing attorney, an affirmation of receipt, and enforcement of the guidelines.

On the other end of the spectrum, about 24% of firms leverage the firms' DMS or intranet as the technology of choice to communicate OCG -- with the "hope" lawyers look at it. **Shockingly, a full additional 23% of firms leverage no technology and do not communicate outside counsel guidelines to attorneys at all.**

In addition to lack of staffing to handle client guidelines, **the majority of firms feel that OCG are simply too complex as their top compliance challenge (66.04%),** and nearly half report that they are simply too long with too much info, and they didn't read them (43.4%).

Sentiment: Outside Counsel Guidelines as Relationship Builder or Destroyer?

The definition of client service has changed. In fact, the definition has changed so radically that "from law firms" is no longer part of the definition. And while the alternative legal service provider market reports only 6% of the market, this number is likely larger. In any case, it represents work that was traditionally sent to law firms and speaks to the **overall shrinking market demand for law firm services.**

Chief Legal Officers outlined key strategies and changes they are instituting in their departments, including developing a more robust in-house capability, restructuring department resources, becoming more sophisticated about which matters to outsource and which to manage internally, pursuing greater efficiency and cost control, and using data analytics to measure performance.

Clients have thrown out the old definition of client service, but firms are struggling to understand that this part of the paradigm has shifted as well. Very few firms surveyed believe that Outside Counsel Guidelines have improved client communications (11.32%).

Law firm views of OCG worsen from here: **almost half report that OCG have actually made it more difficult to communicate with clients (40.25%),** even more report that they believe clients change the rules and guidelines without informing the firm (46.54%), and the majority of firms (63.52%) have pushed back on guidelines.

In open-ended sentiment statements, many firms expressed sentiments of frustration casting guidelines as 'hoops' firms must jump through with purposely obfuscating language designed to simply cut legal spend and glutted with too many e-billing systems. In fact, firms predominantly deal with more than 10 e-billing vendors (38.85%).

Outside Counsel Guidelines are not a relationship 'builder' or 'communication tool' in the traditional sense. The paradigm has shifted. Legal departments care about the spend metrics and compliance metrics with their guidelines. This is the new definition of client service and it's here to stay.

Solving the Process + Technology Gap

Firms predominantly desire better technology in order to comply with outside counsel guidelines (45.07%), and the vast majority of firms desire more visibility into what legal departments really want (59.86%).

However, the Survey strikingly highlights insufficient processes as well. Here are a few recommendations regarding process and technology that can help any firm improve the quality of the timecard, and work toward achieving billing compliance:

Process Improvements

1. Centralize all guidelines into one repository.

2. Assign Responsibility.

Someone needs to own the process in order to ensure that the process is followed.

3. Create OCG Summaries.

It's impossible to execute on OCG if timekeepers don't know what's in them. A summary document should be created that highlights the most important components of the guidelines that need to be adhered to.

4. Require Affirmation Receipt.

Summaries alone are insufficient: they must be communicated to billing attorneys who affirm their receipt.

5. Train Attorneys.

In your quest to create a higher quality timecard inventory, timekeepers are a crucial component. Understanding that attorneys are working with multiple clients and remembering each unique set of billing rules can be challenging. That's why it is important to make them part of the process and summarize what is relevant to them.

Technology Improvements

1. Leverage Technology.

Technology can assist with managing compliance at almost every phase in the process. This will minimize opportunities for human error, allowing firms to optimize staff resources and prevent dollars lost due to non-compliance. When you can leverage technology to address OCG, do the following:

- **Automate compliance at the point of time entry.**
- **Notify timekeepers regarding approval rates.**
- **Centralize your guidelines.**
- **AI for billing guideline review.**
- **Automated training programs for attorneys.**

While OCG and billing compliance is a complex undertaking, it is manageable--thanks very much in part to recent technology advances that minimize the need for manual work. Most firms are losing a significant amount of revenue to non-compliance – which is unacceptable.

2019 Law Firm Leader Survey on Outside Council Guidelines

Methodology

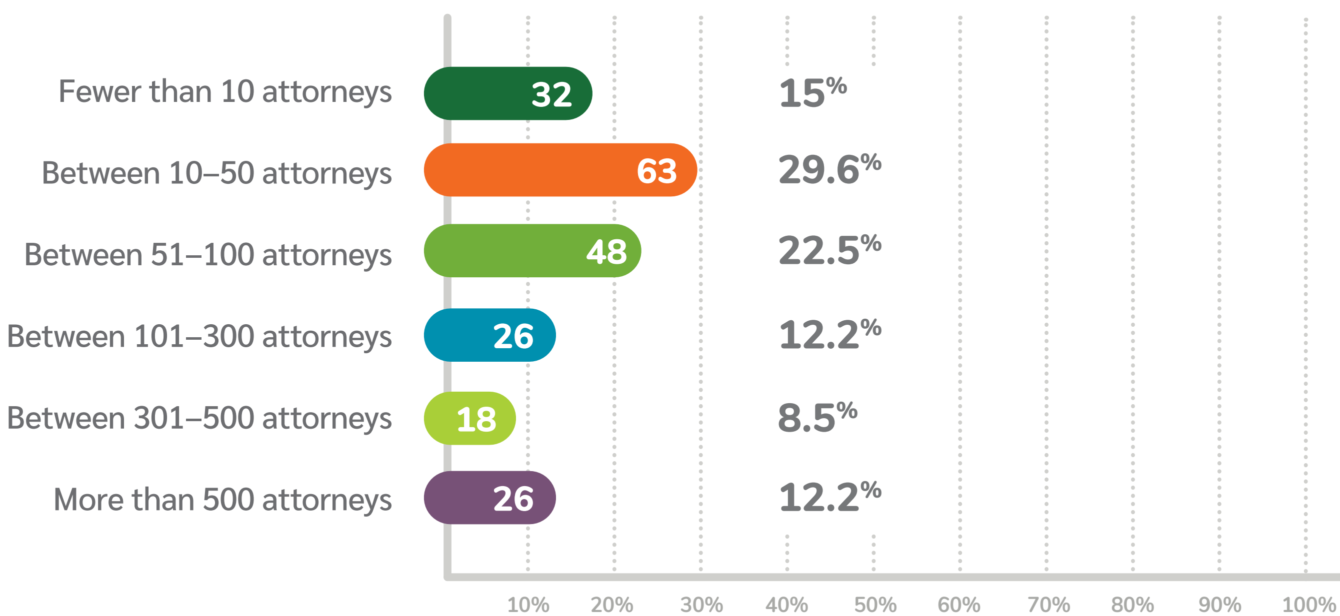
The 1st Annual Law Firm Leader Survey on Outside Counsel Guidelines ("Survey") was distributed to law firm respondents in partnership with the Association of Legal Administrators (ALA). The Survey platform used was Survey Monkey; it was comprised of 34 questions, was launched on August 15, 2019, and closed on October 16, 2019. In between that time, the delivery vehicles were email, press coverage, newsletters, social media and direct outreach by Bellefield and ALA to clients, prospects and association members.

198 unique law firms participated in the Survey. The majority of respondents (65%) held firm administrator, director of accounting, billing manager, executive director, chief operating officer, chief financial officer, eBilling manager, control and managing director job titles.

Participants were well distributed across firm size and practice areas. 20.66% of responding firms had 300 attorneys or higher; 29.58% had between 10-50 attorneys. 33.75% of responding firms had between 51 and 299 attorneys.

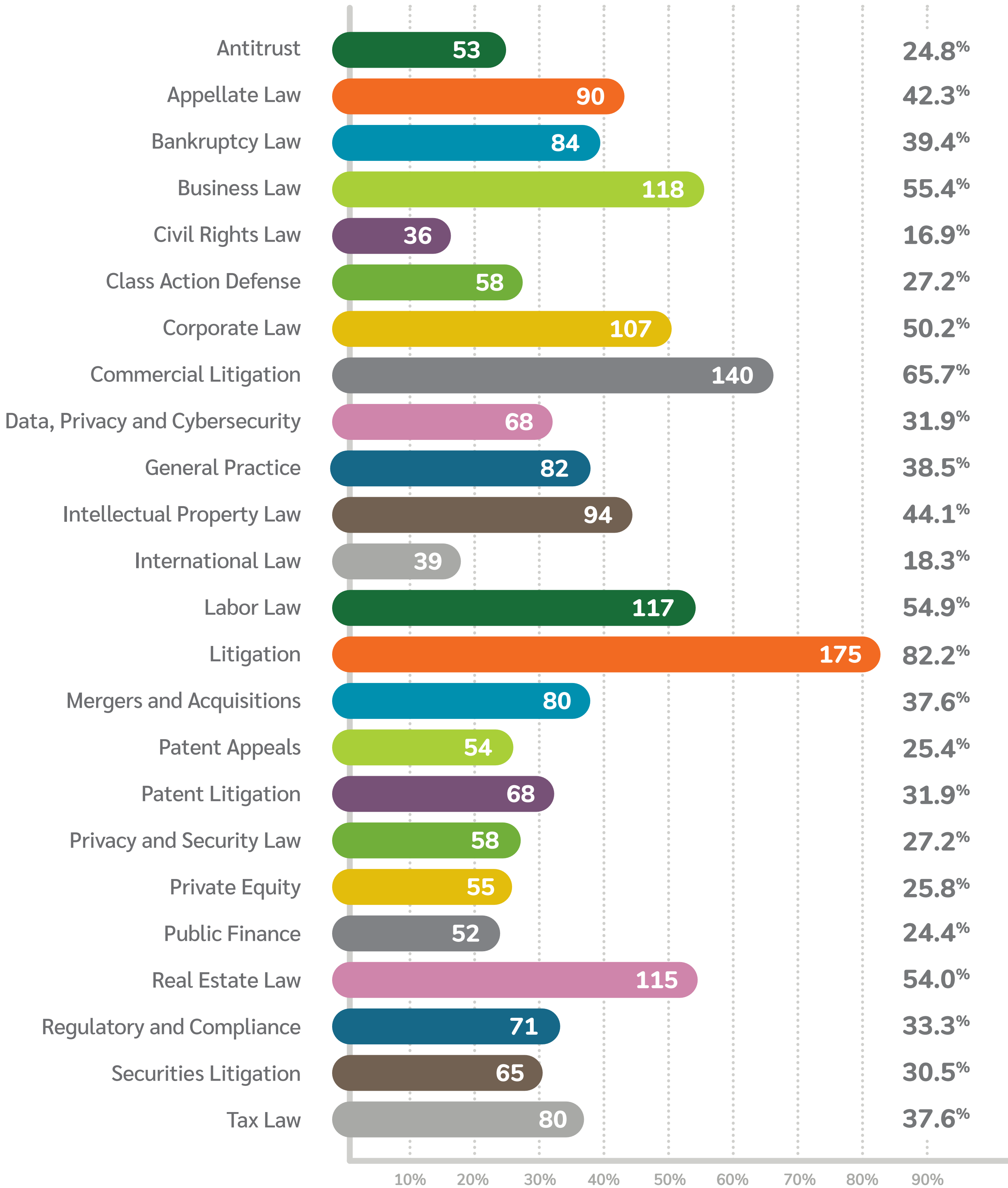
1 Firm Size

Answered: **213** | Skipped: **0**



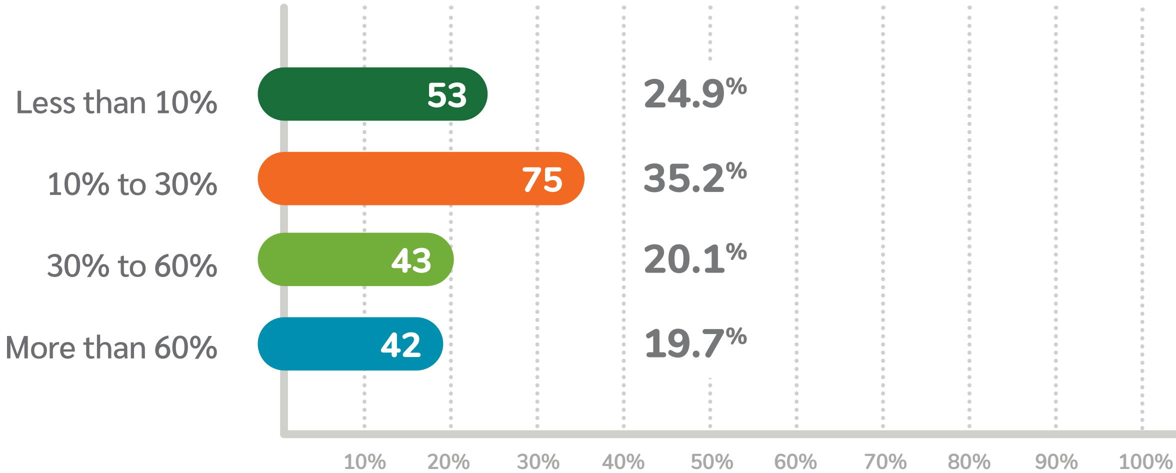
2 Your Firm's Practice Area

Answered: **213** | Skipped: **0**



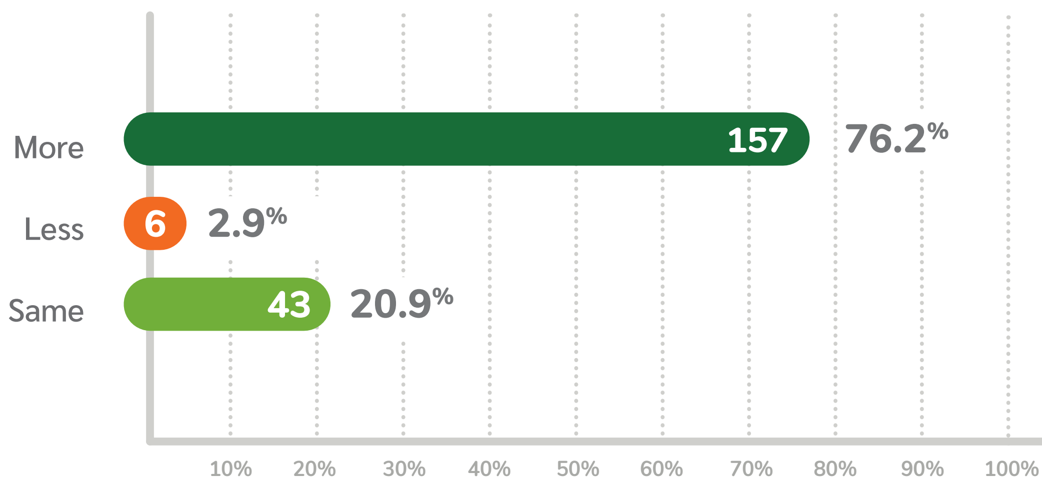
3 What percentage, on average, of your firm's matters require budgets?

Answered: 213 | Skipped: 0



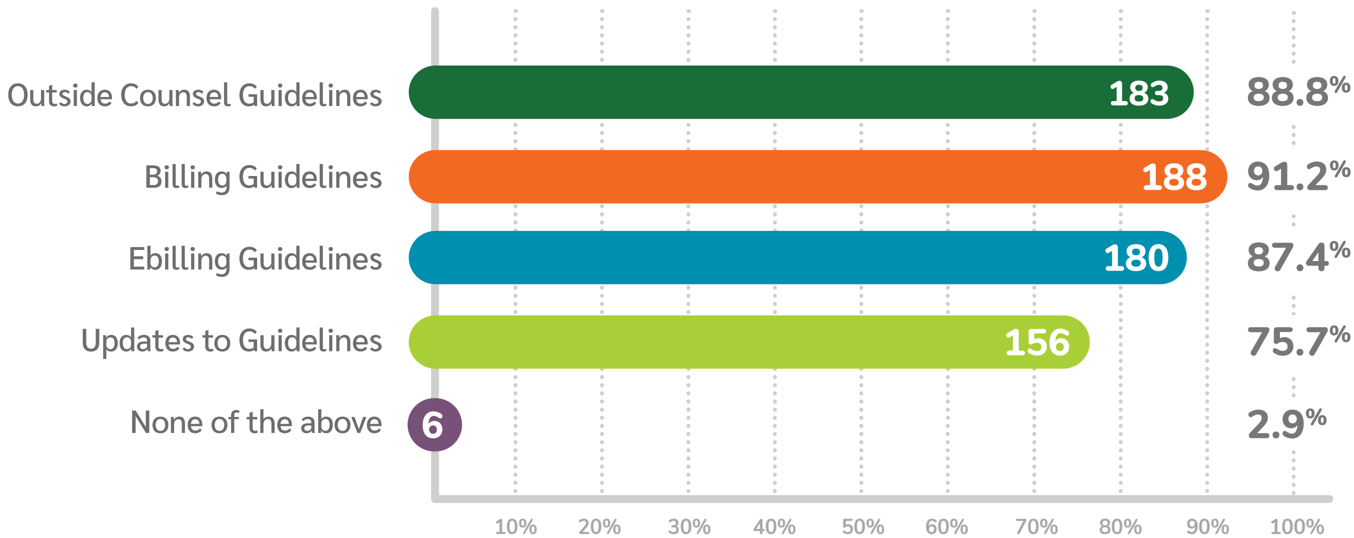
4 Are your clients requesting more, less, or the same number of budgets for matters over the last five years?

Answered: 206 | Skipped: 7



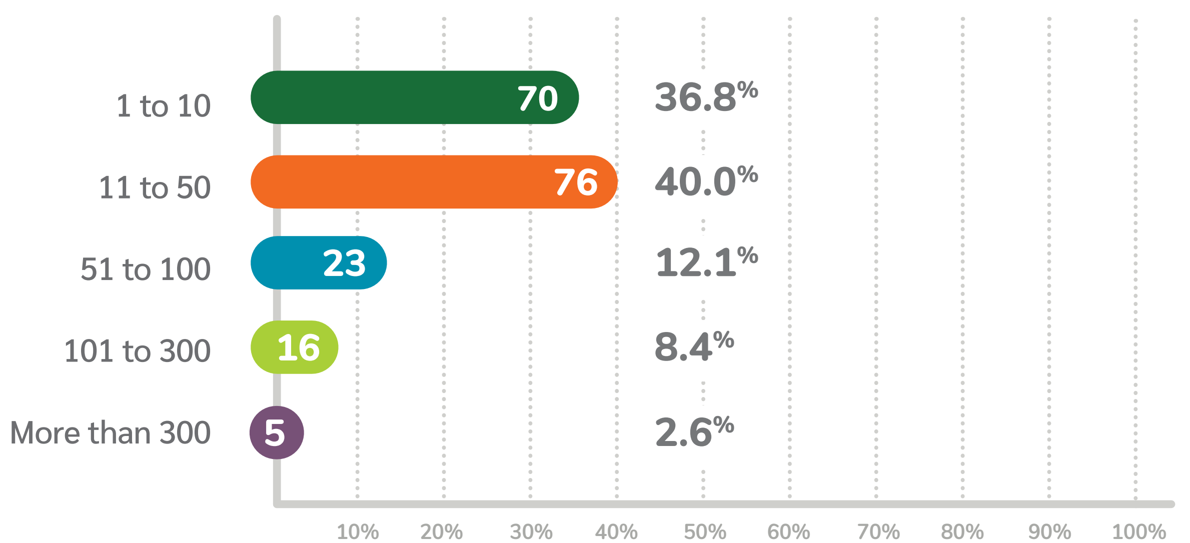
5 Which of the following do you receive guidelines from your clients? Check all that apply.

Answered: 206 | Skipped: 7



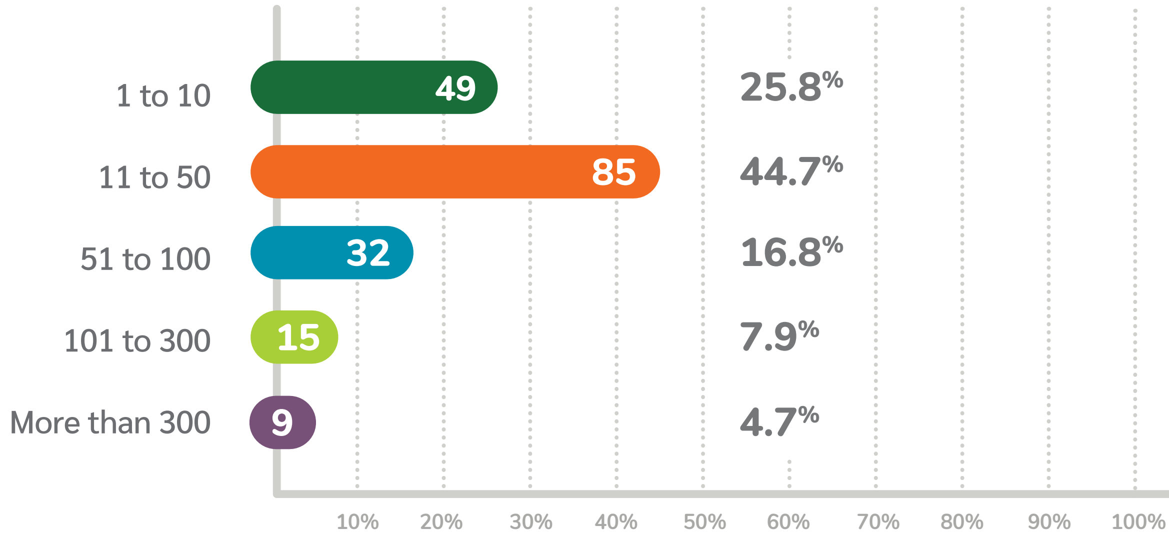
6 Inclusive of all clients (e-billing and non-e-billing), how many total Outside Counsel Guidelines did your firm receive in 2017?

Answered: 190 | Skipped: 23



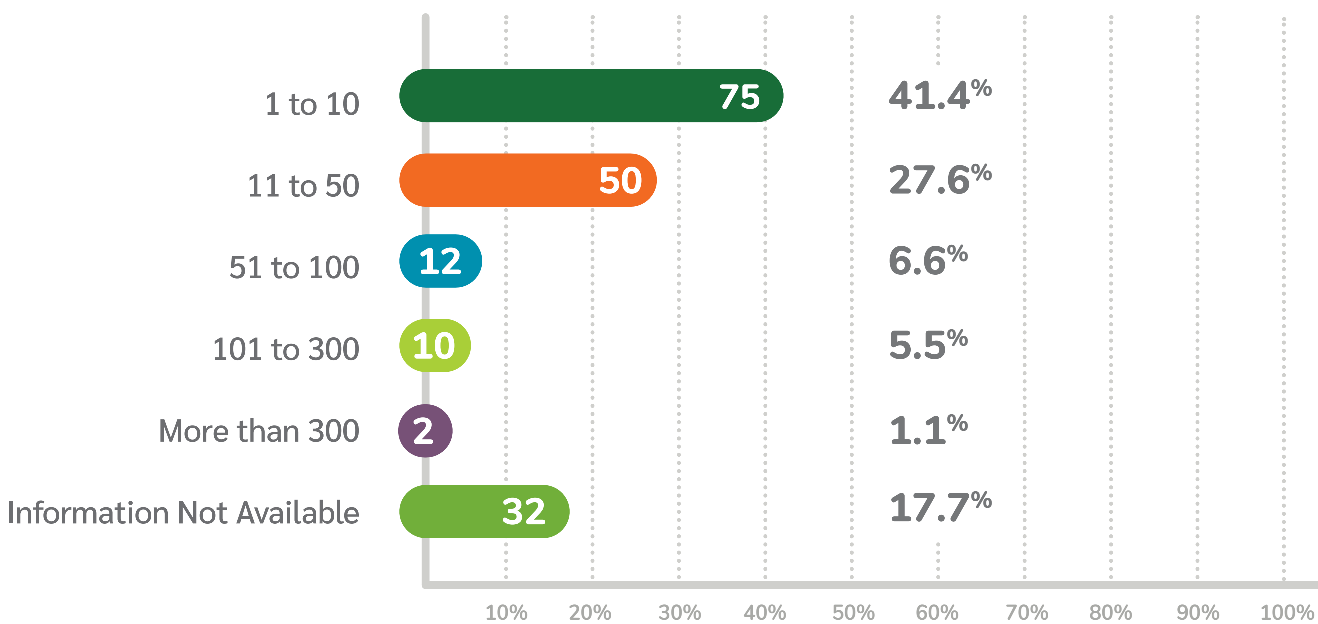
7 Inclusive of all clients (e-billing and non-e-billing), how many total Outside Counsel Guidelines did your firm receive in 2018?

Answered: **190** | Skipped: **23**



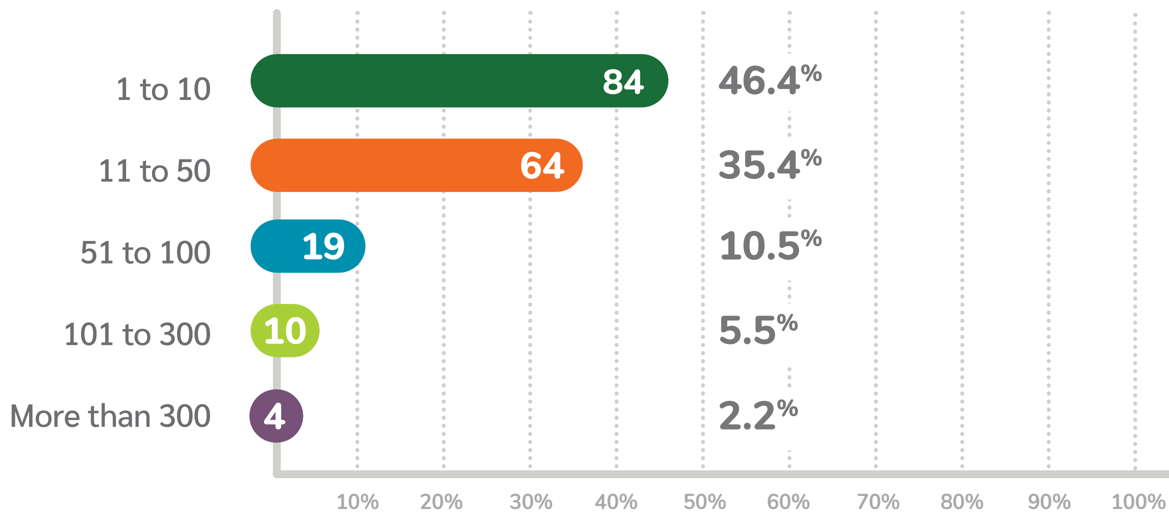
8 Inclusive of all clients (e-billing and non-e-billing), how many total guidelines did your firm receive in Q1 and Q2 of 2018?

Answered: **181** | Skipped: **32**



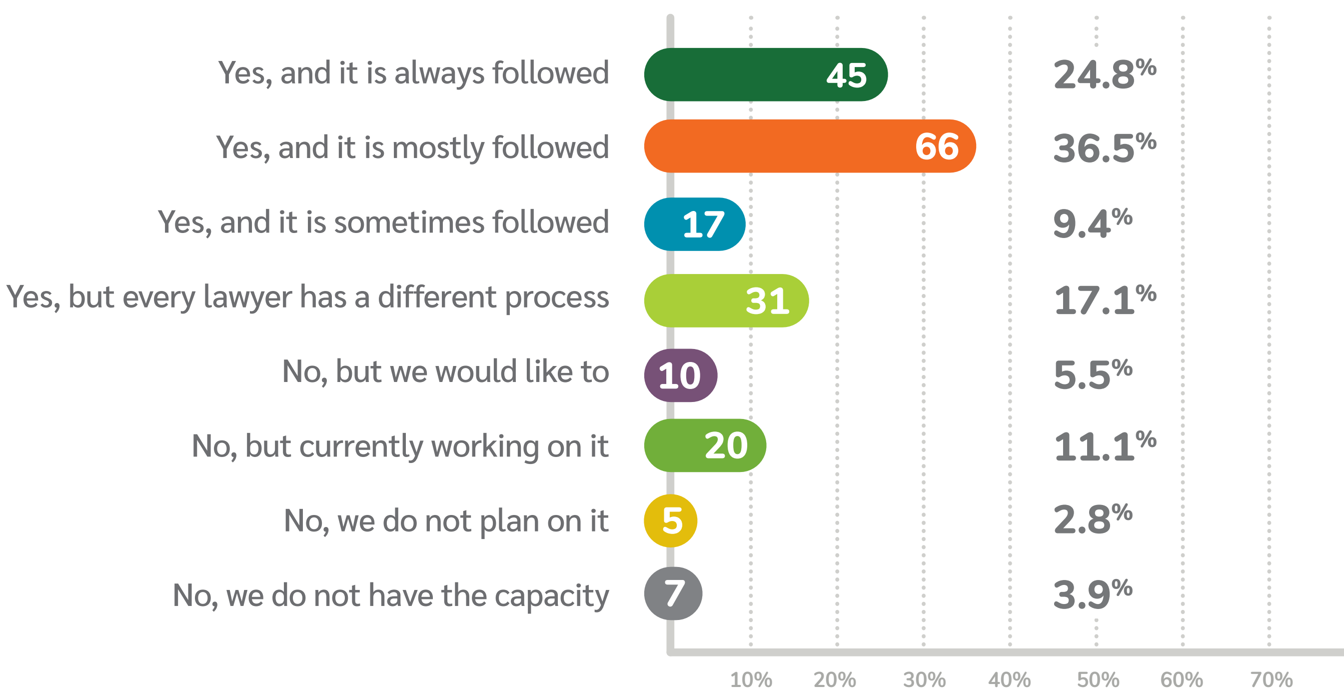
9 Inclusive of all clients (e-billing and non-e-billing), how many total guidelines did your firm receive in Q1 and Q2 of 2019?

Answered: **181** | Skipped: **32**



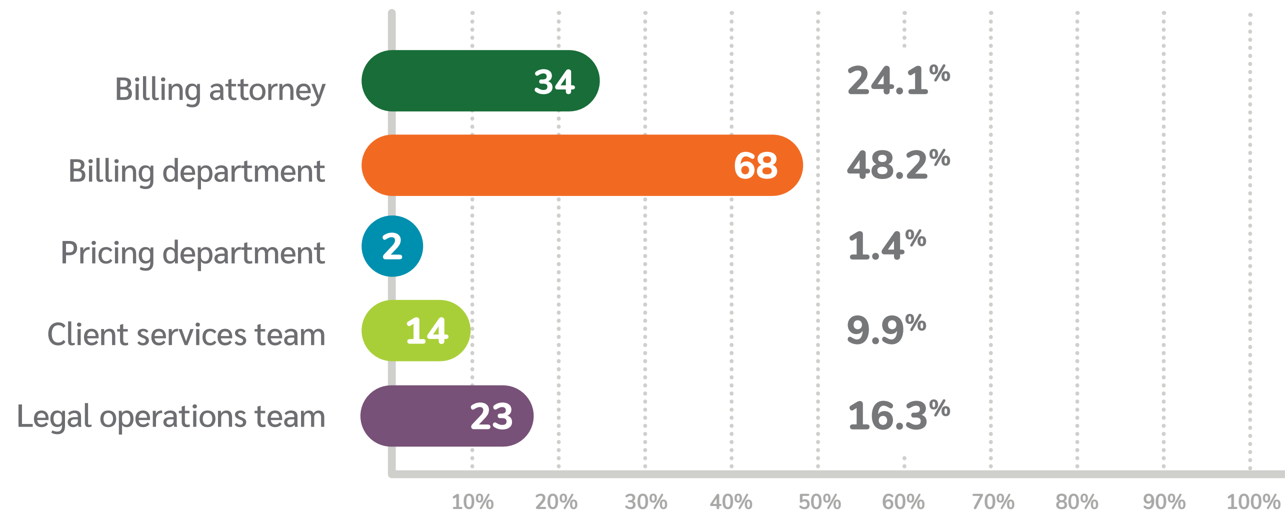
10 Does your firm have a process to review, analyze and document Outside Counsel Guidelines as they come in? Check all that apply.

Answered: **181** | Skipped: **32**



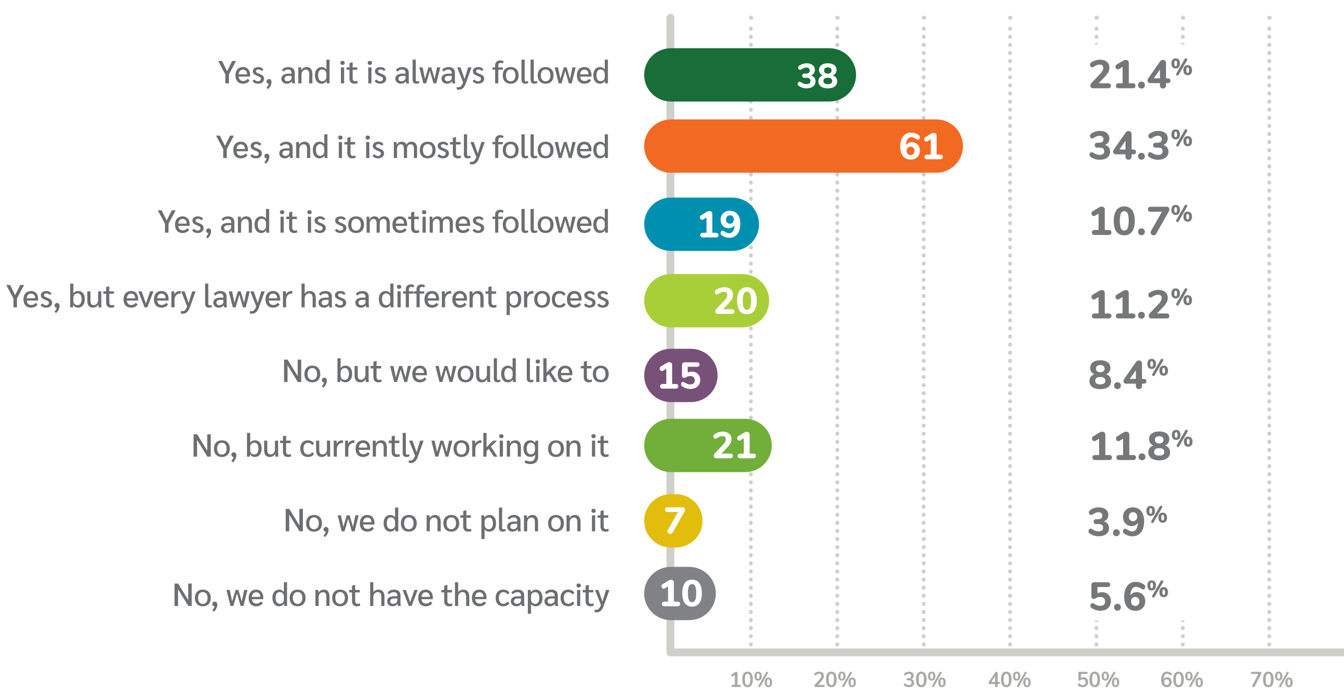
11 Who at your firm is responsible for reviewing/analyzing and documenting Outside Counsel Guidelines?

Answered: **141** | Skipped: **72**



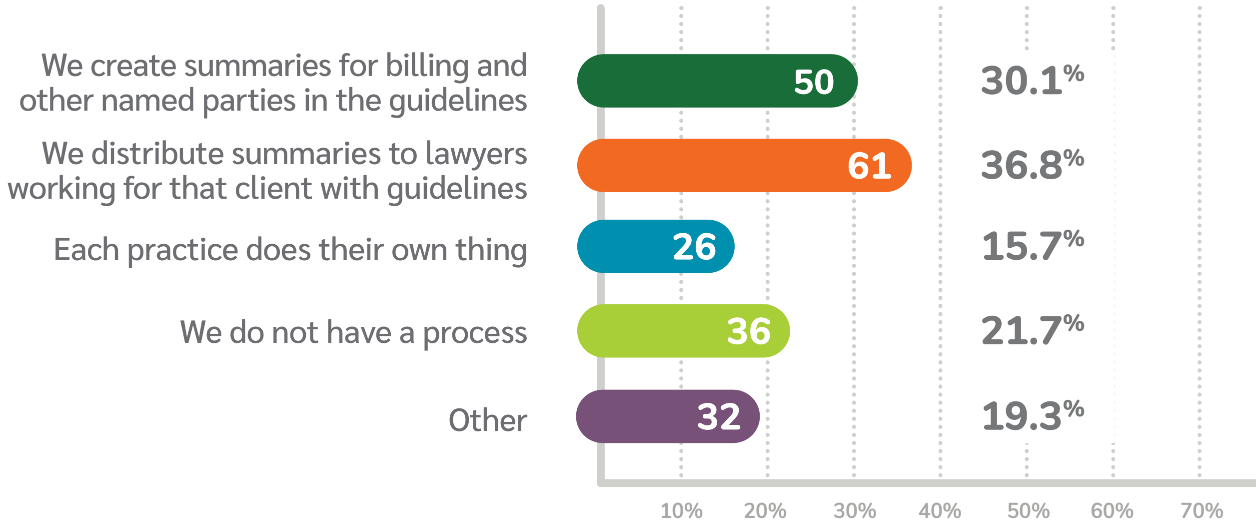
12 Does your firm have a process to review, analyze and document the "updates to existing guidelines"?

Answered: **178** | Skipped: **35**



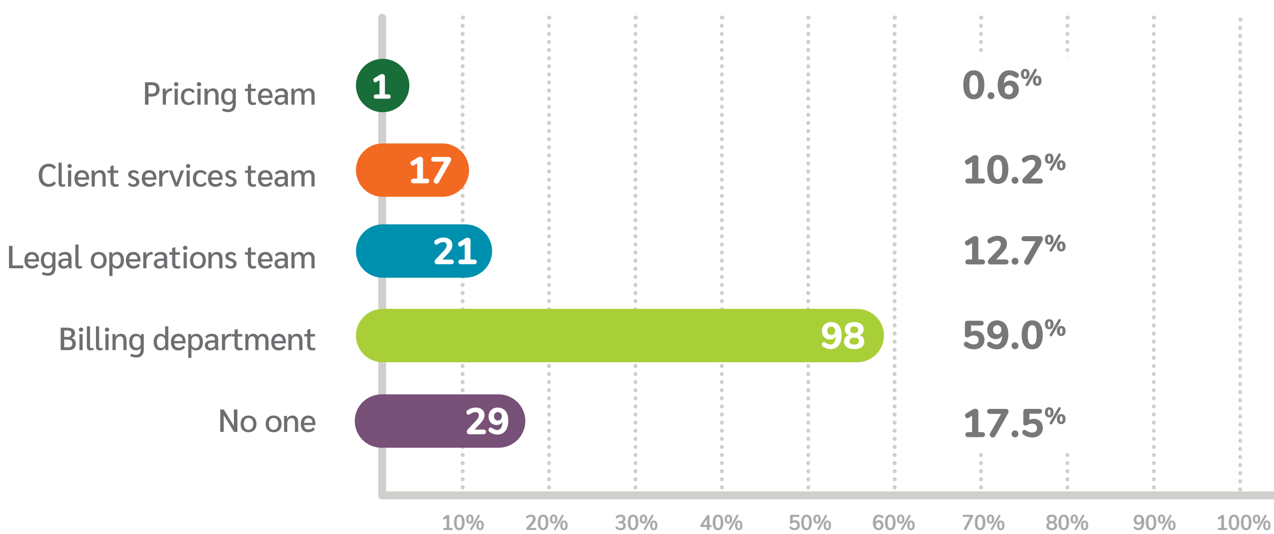
13 Describe the process of sharing the content of the guidelines with timekeepers. Check all that apply.

Answered: **166** | Skipped: **47**



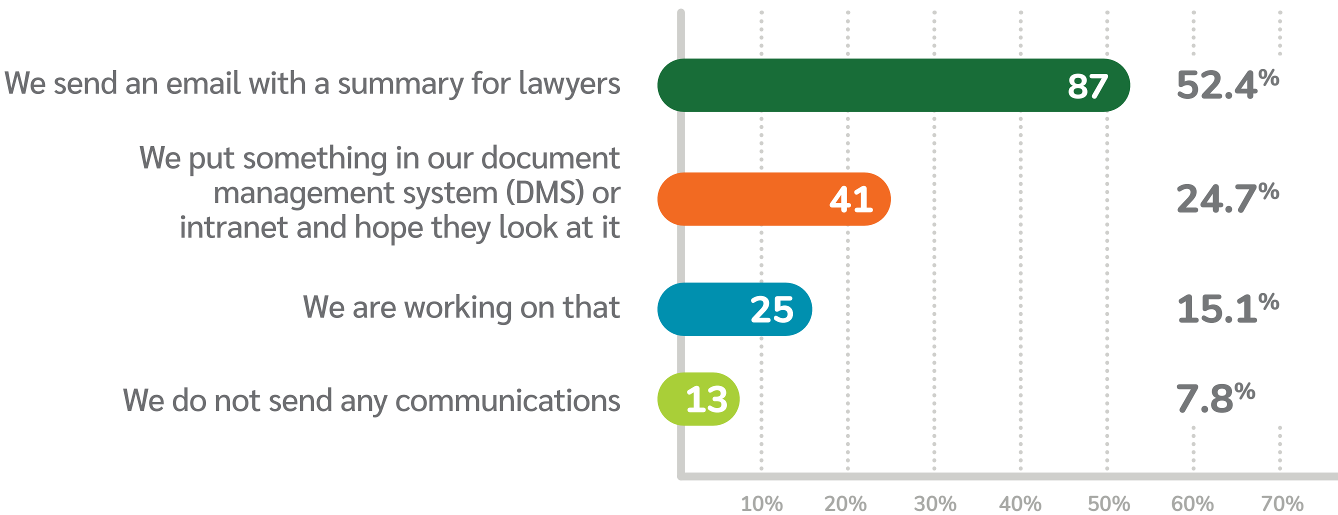
14 Who at your firm works with the partners to understand the guidelines/or who delivers guidelines to the lead partner?

Answered: **166** | Skipped: **47**



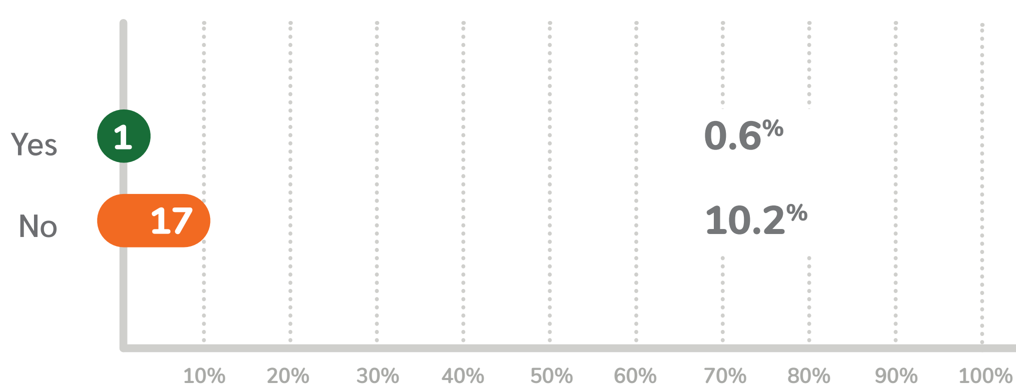
15 How does your firm communicate what is in the guidelines to your lawyers?

Answered: **166** | Skipped: **47**



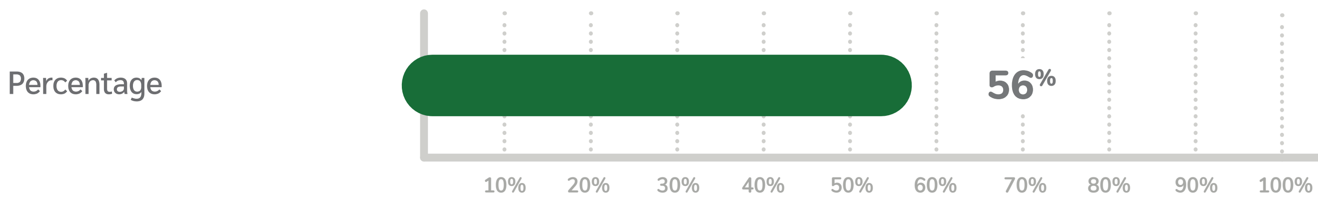
16 Does your firm require your lawyers to acknowledge receipt of the guidelines for their matters?

Answered: **163** | Skipped: **50**



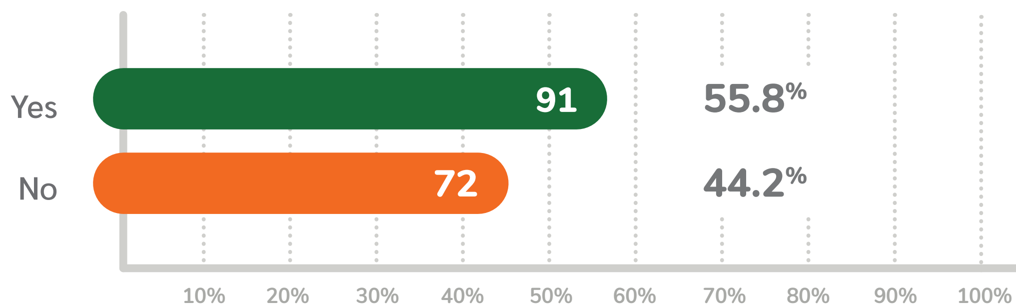
17 What percentage of your lawyers know what is in the guidelines for their matters?

Answered: **163** | Skipped: **50**



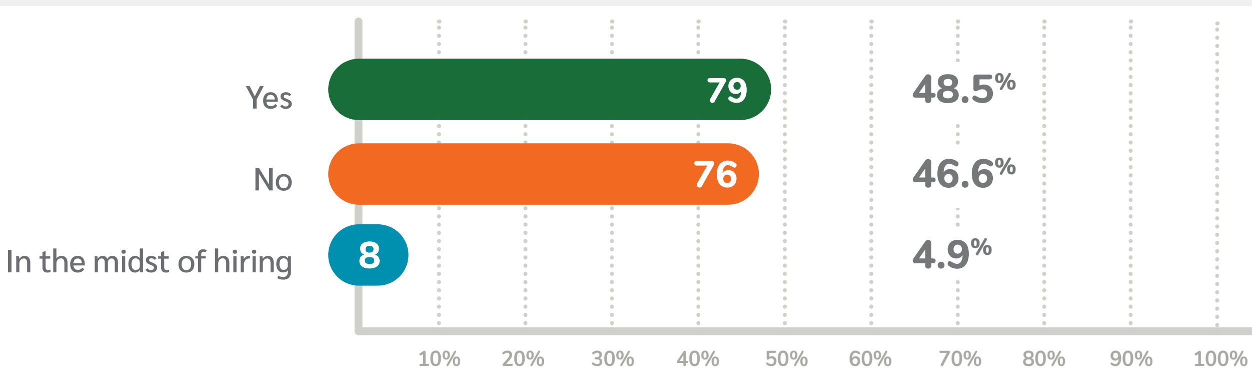
18 Does your firm monitor your lawyers to ensure they follow the guidelines for their matters?

Answered: **163** | Skipped: **50**



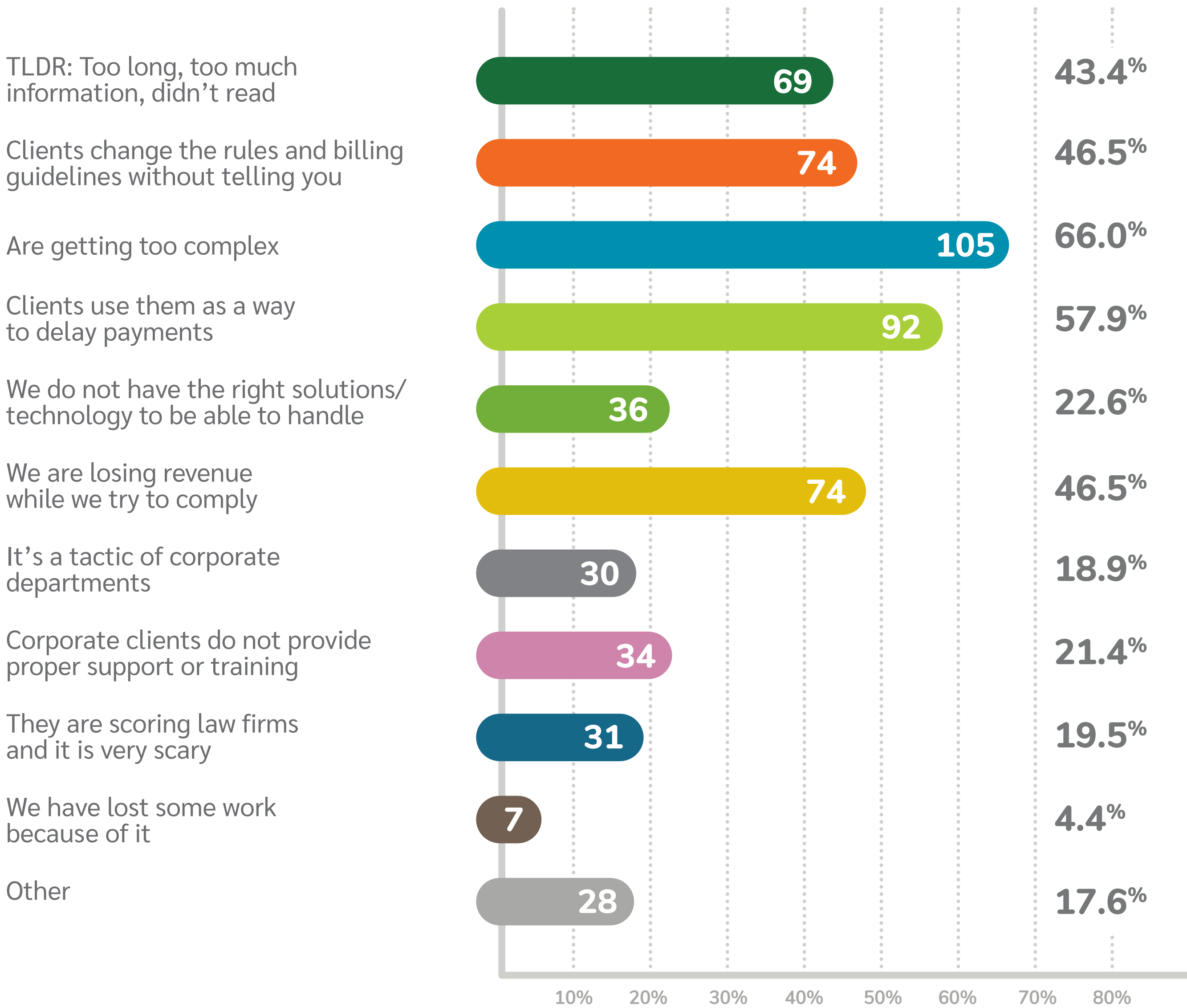
19 Does your firm have the necessary staffing to handle client guidelines, compliance requirements and enforcement?

Answered: **163** | Skipped: **50**



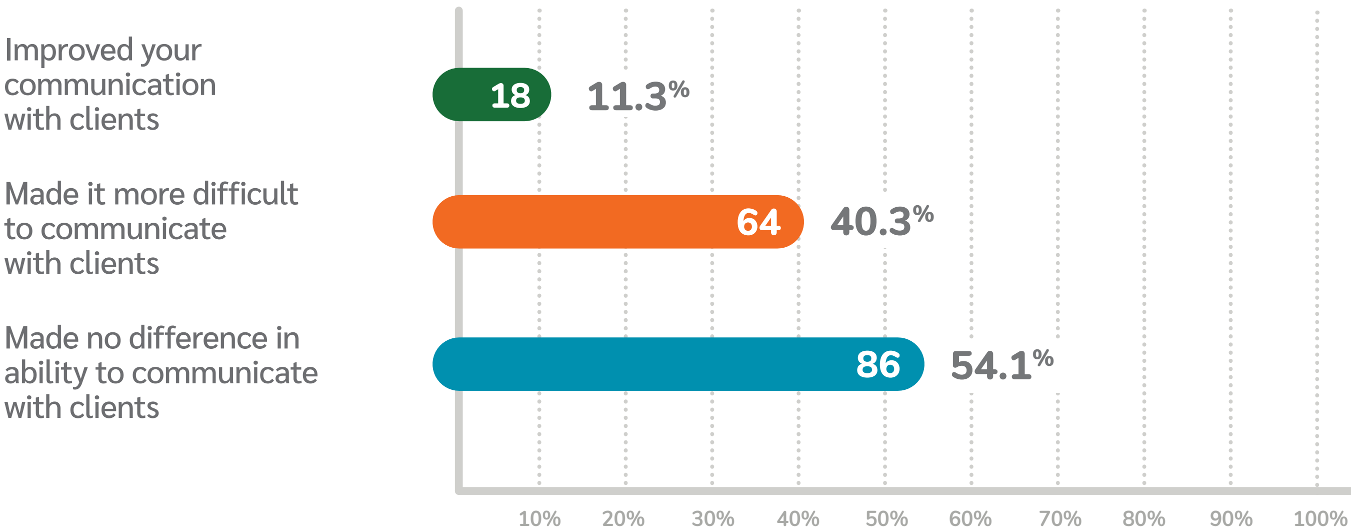
20 What are the top challenges your firm is facing in managing Outside Counsel Guidelines? Check all that apply.

Answered: **159** | Skipped: **54**



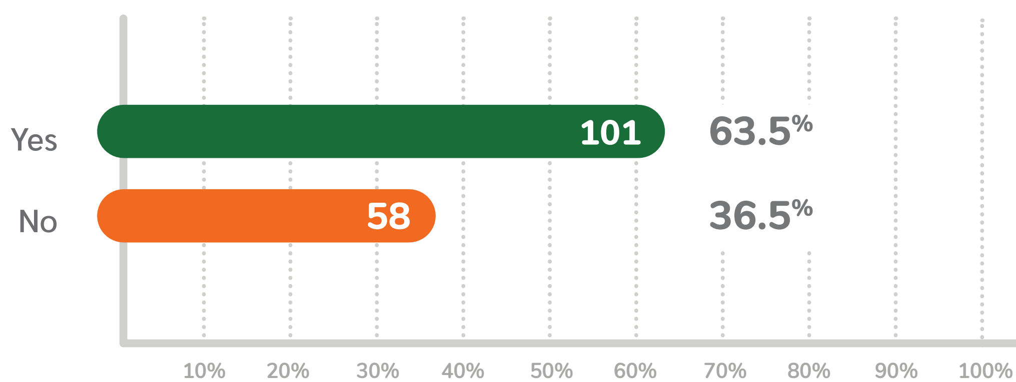
21 Do you believe Outside Counsel Guidelines have ....? Check all that apply

Answered: **159** | Skipped: **54**



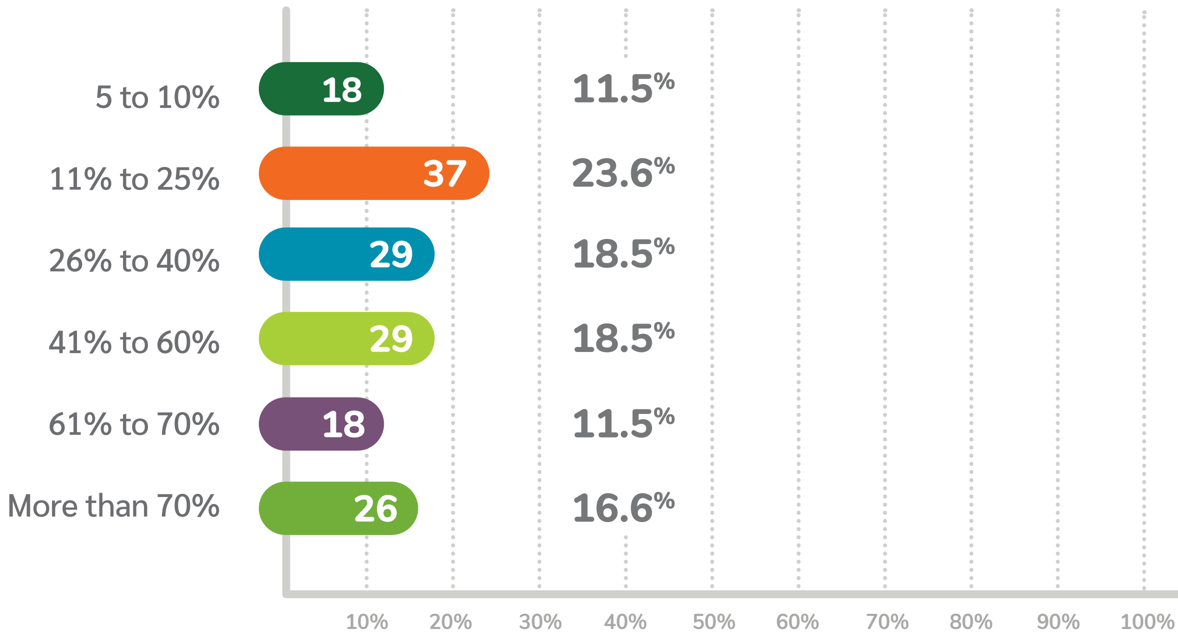
22 Has your firm ever pushed back on guidelines?

Answered: **159** | Skipped: **54**



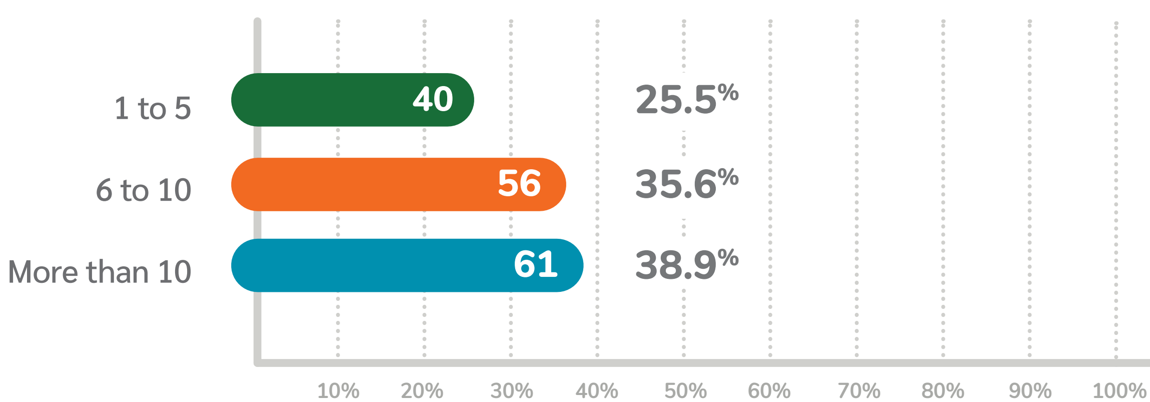
23 What percentage of your firm's total billing is e-billed?

Answered: **157** | Skipped: **56**



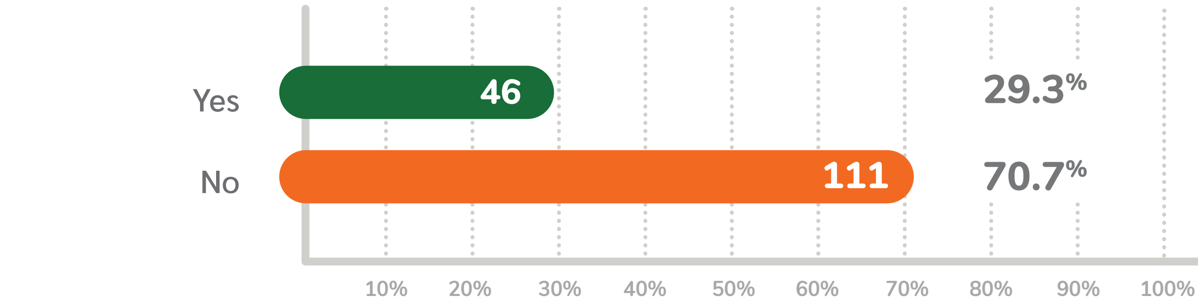
24 How many e-billing vendors do you deal with, on average?

Answered: **157** | Skipped: **56**



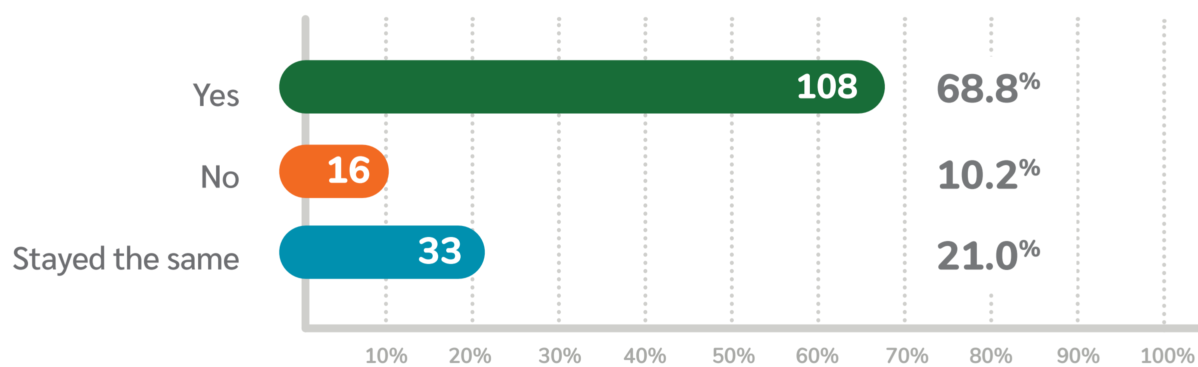
25 Have your billing and collection cycles improved because of ebilling?

Answered: 157 | Skipped: 56



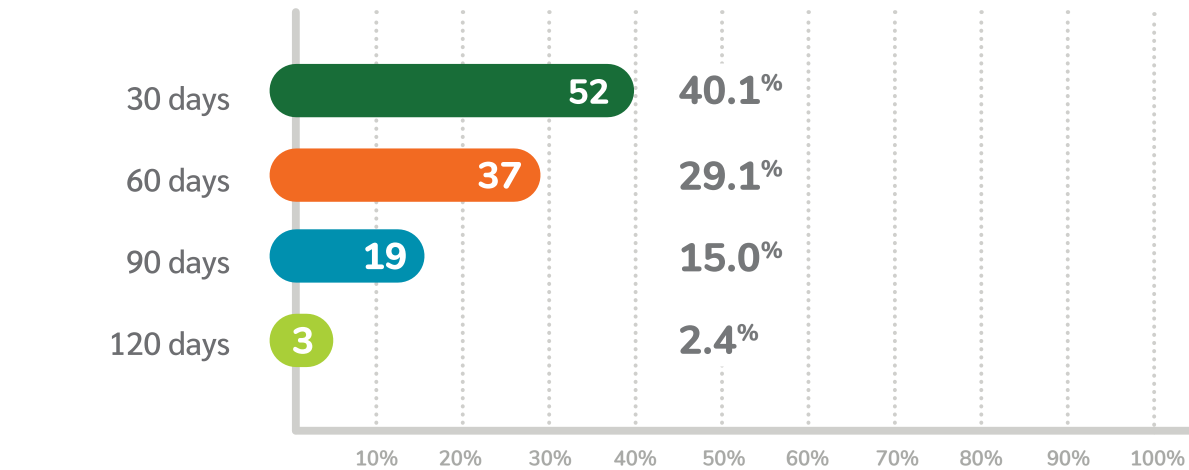
26 Have your billing and collection cycles lengthened because of Outside Counsel Guidelines?

Answered: 163 | Skipped: 50



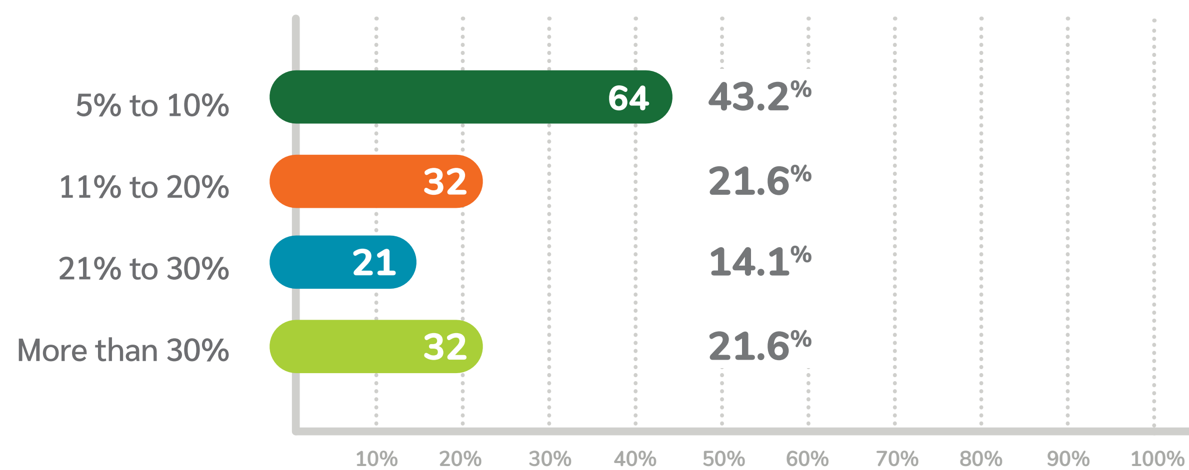
27 By what length of time have billing and collection cycles lengthened?

Answered: **127** | Skipped: **86**



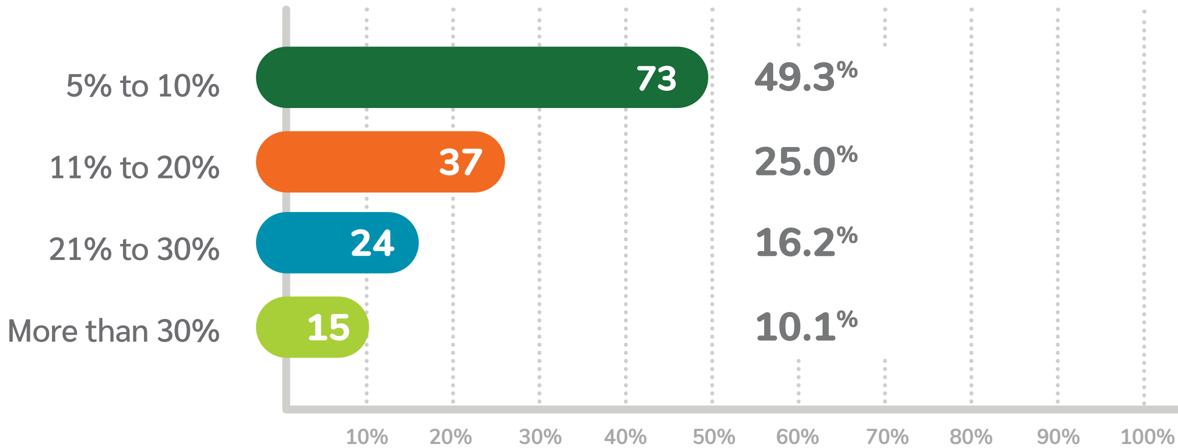
28 On average, what percentage of your e-bills get rejected or reduced?

Answered: **148** | Skipped: **65**



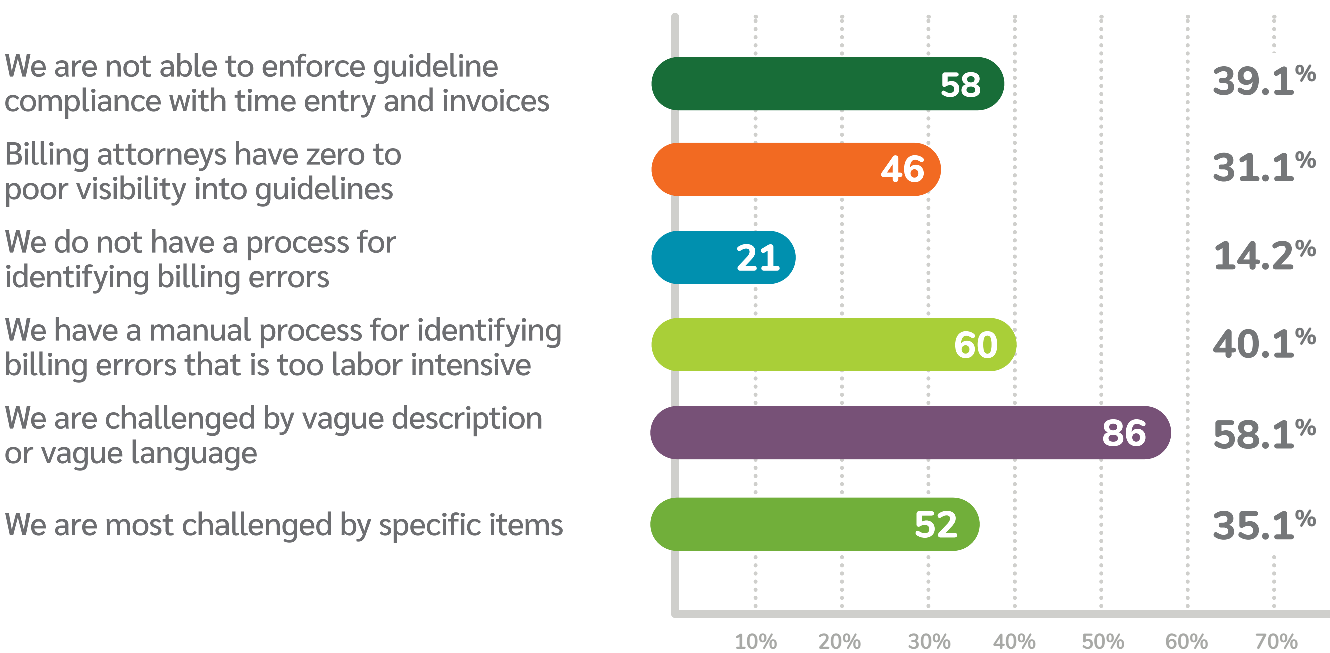
29 On average, what percentage of your e-bills need to be appealed?

Answered: **148** | Skipped: **65**



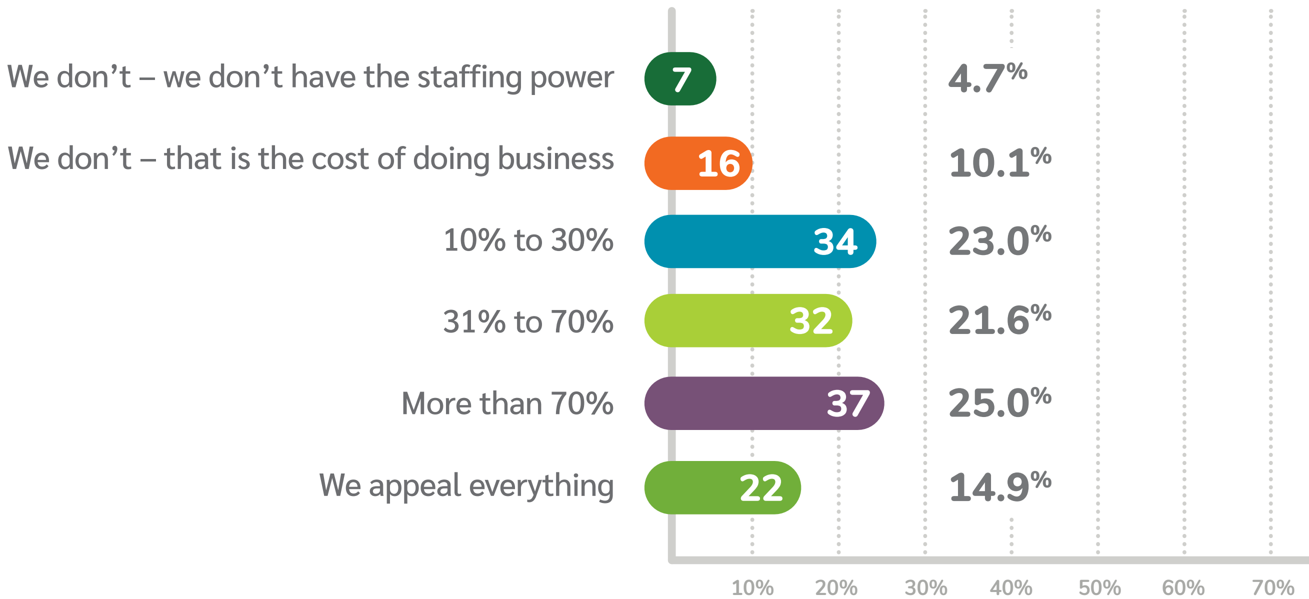
30 What are the top reasons for rejections or appeals? Check all...

Answered: **148** | Skipped: **65**



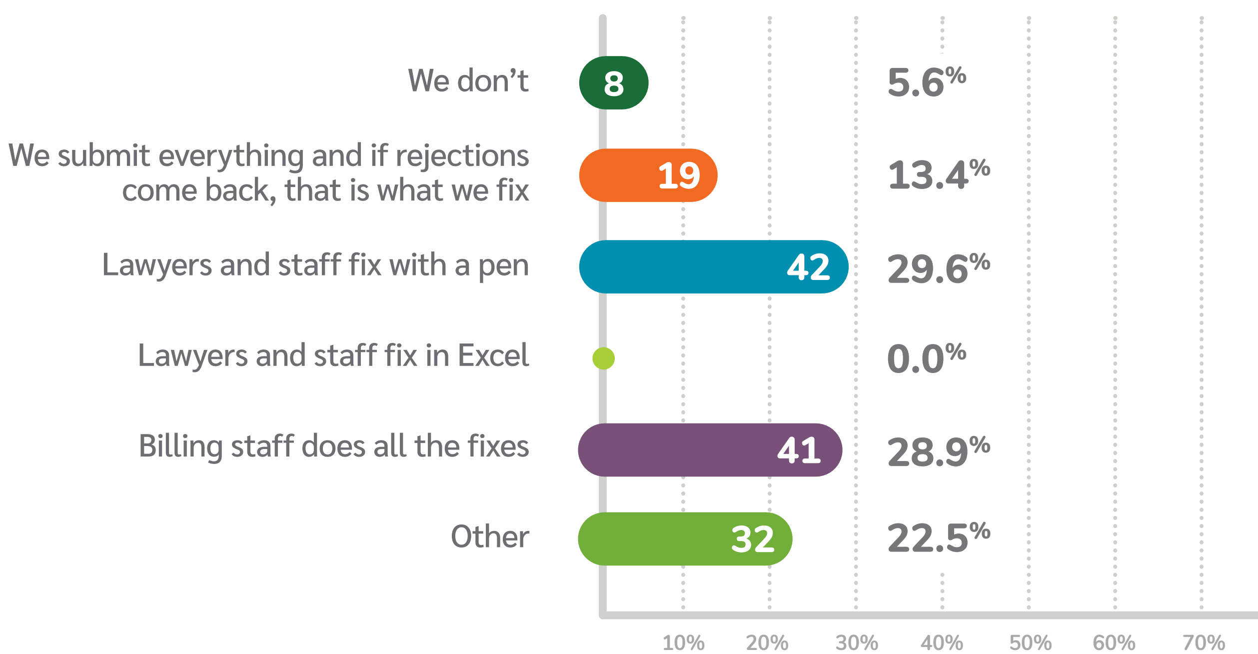
31 What percentage of reductions or rejections does your firm decide to appeal?

Answered: **148** | Skipped: **65**



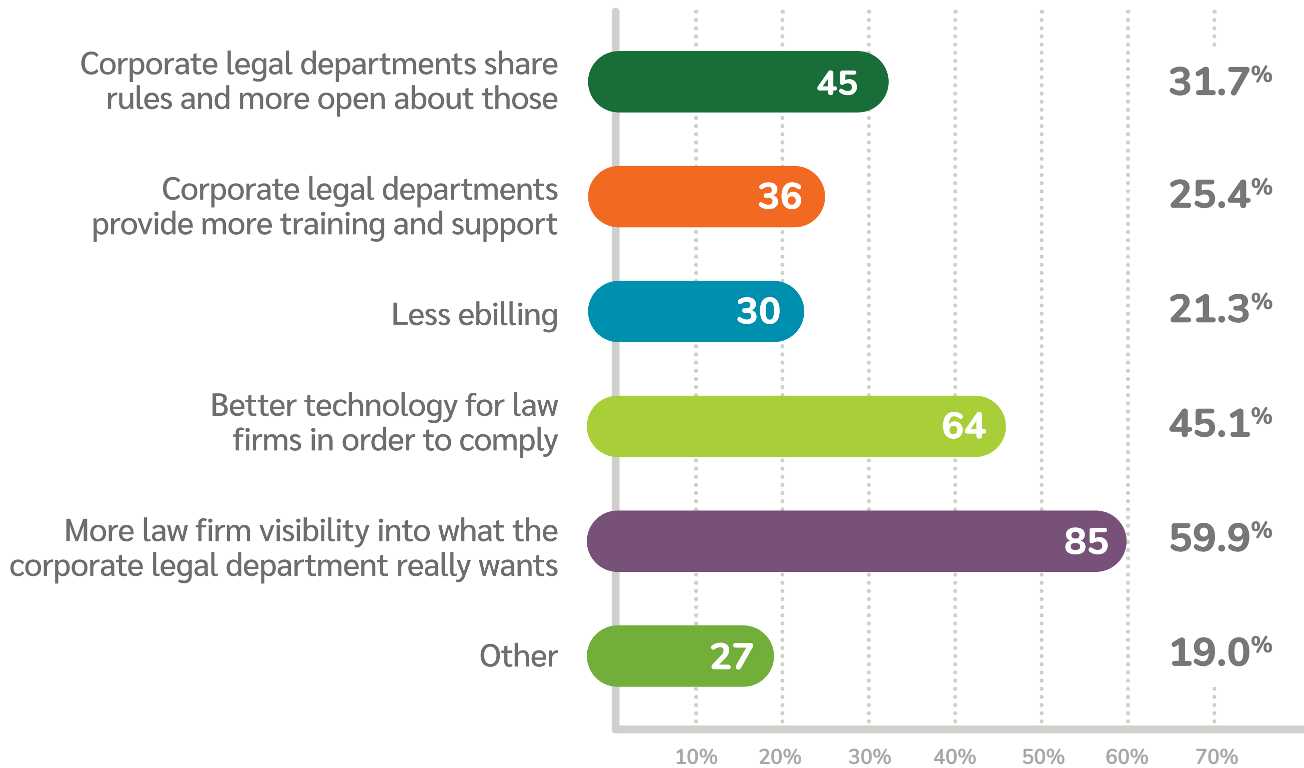
32 How do you enforce the guidelines and compliance with time entry and invoices?

Answered: **142** | Skipped: **71**



33 What would you like to see improve with OCG Compliance, billing and ebilling compliance?

Answered: **142** | Skipped: **71**



34 Job Titles

Conclusion:
How to Win in 2020 and Beyond

76% of Chief Legal Officers expect there will be a recession in the U.S. within the next 24 months. Legal departments have been steadily improving internal processes, including investing in technology and have become more sophisticated consumers of legal services. A recession may suppress external spend.

Law firms must compete on efficiency and compliance with outside counsel guidelines to maintain market share of clients' legal spend. Winning work once, however, is no longer enough, just as delivering on one set of outside counsel guidelines is no longer enough. Law firms must have an approach to strategically focus on 100% invoice acceptance by operationalizing compliance with outside counsel guidelines. To operationalize compliance, law firms require a strategy that includes the right people, process and technology.

Today, the majority of firms report they do not have the right people, process and technology in place to operationalize compliance. This has made billing compliance so complex and overwhelming that, rather than solving the challenge, it has been cast aside as a cost of doing business, causing firms to not only lose revenue but to cause an efficiency failure in client service.

This is not a sustainable strategy. Clients are increasingly keeping score. Firms are deeply challenged, however, at very basic levels of internal communications. The result is a shocking industry-wide phenomena that most attorneys, regardless of firm size, do not know what are in the guidelines. It is impossible to comply with what you don't know.

Without the appropriate people, processes and technology in place inside of law firms, the internal disconnect is a natural consequence, and the associated sentiment trends to the negative with most firms agreeing that OCG have made it more difficult to communicate with clients and most firms are pushing back on guidelines.

This report highlights the potential opportunity for law firms to seal the disconnect of process and technology and provides recommendations appropriate for any law firm size to operationalize compliance. Technology can assist with managing compliance at almost every phase in the process—and in fact, firms predominantly desire better technology to comply with outside counsel guidelines that will minimize opportunities for human error, allowing firms to optimize a strategy of 100% invoice acceptance.

Even barring an actual recession, the vast majority of clients expect one and will suppress outside counsel spend. Strategies that focus on realization and invoice acceptance are absolutely critical components of overall business strategy—and as clients become increasingly sophisticated measurers of firms' efficiency and compliance, this strategy extends well beyond 2020 and core to operationalizing success.