

Corporate Law Department Cost Reduction Through Competition

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Becoming a chief legal officer for a successful and substantial company is usually regarded as the pinnacle of private law practice. It is at least equivalent to the status of managing partner in a large, prestigious law firm. Challenges, glamour, and status, along with the opportunity to do and oversee significant legal work, abound.

During my tenure as the General Counsel of Ally Financial, I had the honor and burden of ensuring the provision of legal services for a wide variety of routine, specialized, and transformative activities for the company. These included movement from being a wholly-owned subsidiary of a perennial top ten Fortune 500 Company to becoming a stand-alone Fortune 500 company of its own, ownership by a large private equity firm, the United States Department of Treasury (as a TARP recipient), and, finally, public ownership. The work also included the sale of subsidiaries in 41 countries, the bankruptcy of large mortgage subsidiaries, the formation of a bank, and then, financial holding company, disputes with shareholder "activists" and federal government regulatory agencies like the DOJ, SEC, and CFPB, all while keeping the highly profitable and heavily regulated business on the legal rails. The frequent, but not uncommon, turnover in the C-Suite - including at least six CEOs and the wholesale change-out of the Board of Directors at least three times - greatly complicated delivery on these various routine and radical tasks during my tenure as General Counsel.

Having a staff of top-notch, hard-working, and highly-motivated attorneys, paralegals, and support personnel, coupled with the identification and retention of expert outside law firms, large and small, resulted in the successful discharge of these duties over many years. But at what cost?

Faced with dramatic legal and regulatory changes, corporate upheaval, and business transformation in the economic crisis of 2007-2008, there were times when the "spend" for these myriad legal demands soared, with the ratio of outside-to-inside legal spend exploding from the norm of roughly 50-50 to 80-20. Fortunately, a sophisticated and knowledgeable management understood that these ballooning costs were driven by the demands of the radically changing environment. But this patience had its limits. Ultimately, we were challenged with reining-in, even lowering, the legal spend by a substantial amount, all while the changes and challenges continued.

Articles, books, conferences, and professional sages will advise about numerous ways to control and reduce the cost of inside and outside legal services. Most of these techniques work, to some extent. In some cases, the ideas, if properly and consistently implemented, can result in meaningful savings. In others, the tools have a nice ring to them and will go a long way toward placating business managers that the legal department “gets it,” is “on-board,” and is a “business partner” with other staffs and operations of the enterprise to ensure a successful company-wide cost containment program.

This cynical tone should please be pardoned, but the failure of a loyal legal officer charged with zealously representing the interests of the client to which he or she has a fiduciary duty, cannot ever be excused. In short, the management – in contrast to the actual provision – of legal services is nowhere near as glamorous as supporting the Board of Directors, handling a large acquisition or an IPO, successfully defending a class action, concluding a large funding or lending transaction, or providing solutions to an intractable legal problem. Still, if the single most important responsibility of the chief legal officer is to make certain that the corporate client is receiving first rate legal service – whether provided by inside or outside legal counsel – then this, above all else, should determine the general counsel’s overarching workaday world. Correlatively, if that responsibility demands careful management of cost, then this too must be addressed. While doing so lacks the charm and magic of practicing law, it is, at the end of the day, inherent in the position of a senior corporate officer.

Following are some of the most common cost-reduction tools often touted for corporate legal department use. As noted, depending on the situation, they may or may not bring satisfactory results. Each of them should be carefully considered for possible implementation. However, the single most powerful and successful device for reducing legal spend is **competition**. Why, when, and how to utilize this most basic tool is briefly explained in the second portion below.

Conventional Legal Cost Reduction Tools

Effective staffing of legal resources.

- 1 Ensure that the client actually needs the types and amounts of legal services currently provided.
- 2 Who is best able to provide these legal services? e.g. Inside vs. outside; large vs. small law firm; lawyers vs. paralegals or other professional; full- vs. part- time; permanent vs. temporary professionals; staff vs. contract vs. secondment professionals.
- 3 Assess and address the quality of current service providers.
- 4 Evaluate and assign legal work based on type, risk, etc.; routine vs. core vs. ad hoc vs. critical.

Identify and eliminate/mitigate legal risks.

Develop and improve standard corporate policies, procedures, practices, protocols, and forms.

Utilize new technologies to manage and reduce/replace legal resources; e.g. databases, form files, libraries, etc.

Effective management of litigation (50% of most corporate legal spend); e.g. early case resolution; alternative dispute resolution; case budgeting; feedback loop; controlling "cowboy-clients"; invest in the defense of core business practice cases; etc.

Vigilant management of outside counsel; e.g. selection process; policies, review, auditing, and compliance of approved fees and expenses; evaluation and improvement processes; hybrid and alternative fee arrangements (e.g. discount, blended, fixed, contingent fees); retention and oversight; consolidate/rationalize firms.

In-source more legal work.

Better manage compensation, workload, quality, expenses and structure of in-house staff; raise-the-bar on performance; performance reviews, continuous improvement.

Using competition
to reduce costs:
why, when and how.

Why competition for legal services works.

Lawyers in America are a competitive lot. The academic standards to enter and complete law school necessitate high-performance over many years by individuals hoping to become attorneys. Once licensed, attorneys - whether vying for partnership, tenure, or title - immediately and continuously experience rivalry with fellow members of the bar. This is most acute in the practice of law firms, large and small, where client attraction and retention is paramount. Finally, the adversarial nature of American jurisprudence, where the winner-take-all standard prevails, ensures that lawyers will always be challenging one another to be "top dog." While competition among attorneys and their firms is not ordinarily cutthroat or contentious, and most maintain a sense of decorum and propriety, the evidence is overwhelming that beneath the silky surface of professional courtesies, the competitive forces of winning and/or keeping a good client are churning. Increasingly, particularly since the last economic recession, the pressure to survive, if not succeed, is enormous.

When competition for legal services

works. It is hard to imagine any type of legal service that a corporate client may need that is not susceptible to competitive proposals by various law firms. Litigation - ordinarily the single most expensive type of corporate legal work - is highly susceptible to competitive pressure. This is true for significant, high-risk litigation like product defense, class action, patent troll, and shareholder activist cases. It is equally true - though a different technique is to be utilized - for high-volume, lower risk, "routine" litigation, such as insurance defense, slip and fall, mortgage foreclosure, bankruptcy defense, and consumer and collection cases. As well, non-litigation matters that are fairly voluminous, core to the business practice, and transactional - such as loan closings, regulatory review and advise, procurement, employment counseling, and banking practice - are all amenable to competitive pressure on outside legal providers. Essentially, while the technique for utilizing competition may vary, nearly all types of work requiring outside legal services can be the subject of competition. This most certainly includes the classic, one-off, even bet-the-company types of matters such as IPOs, capital raises, M&A, government investigations, and insolvency proceedings.

It would be naïve to think that there are no obstacles for the universal implementation of this cost savings tool. These are almost always due to lack of law department or corporate commitment to the program. For instance, influential directors or senior executives may have close ties to a particular lawyer or law firm which will preclude any meaningful shift to another, of which the relevant bar members will be well aware. The nature, size, or speed of a transaction may preclude use of the tool, though as discussed below, if the proper groundwork is laid, this should be a rare exception. Also, there are some matters that only a limited number of super-specialized attorneys are available which will limit the effectiveness of competitive forces. Finally, there are some law firms - albeit fewer and fewer - which simply refused to negotiate, offer competition proposals, or even consider modifying their billing practices. Avoiding a snide comment on the shortsightedness of this approach, it is enough to state that "there are plenty of fish in the sea."

How to generate competition for legal services. Following is a greatly simplified description of the eleven steps for creating a program for generating true and highly effective competition for legal services. All of them have been previously and frequently utilized to great, positive affect. The initial effort is significant, and ongoing work will be needed to maintain and enhance the program. To be sure, such a program cannot be launched all at once, nor can it be implemented across-the-board for all outside legal work. Rather, selecting two or three high dollar activities and enlisting the help of a few legal staff operatives and clients who will greatly benefit from the savings, is a good and wise starting point. Early success will engender organizational support, and even persuade, recalcitrant staff lawyers that their job as legal “managers” will actually improve to permit more meaningful work as practicing lawyers. Finally, there will be variation in the steps and sub-steps to launch an effective program but the core principles remain the same, as follows:

- 1 Collect and sort data on all legal services including:
 - All amounts spent and by whom, when, and for what.
 - The tasks, duration, and outcome of all cases and matters.
 - The method of payment (e.g. fixed, hourly, contingent, etc.)
 - The rate of pay per person or matter
 - Any special fee arrangement such as success, premium, or discount fees.

NOTE: The data can be collected manually or electronically, whether by spreadsheet or other application, or with the use of internal accounting clerks or outside vendors. The number and types of data fields needed is quite limited; perhaps a dozen or so. The data should be collected for at least two years. Capturing data from prior years may be useful and expedite the collection process, but only if it is reliably accurate.

- 2 Analyze the data for trends; category; cost per case or type; comparison of similar service providers by cost and outcome; and quality assessments.
- 3 Select a few categories of current, regular spend items, or of an upcoming initiative or project for active competitive consideration.
- 4 Identify 6 to 10 current and potential law firms qualified to provide the service for each of the proposed categories.
- 5 Prepare a detailed request for proposal (“RFP”) including the legal services needed, the expected volume, direction, outcome, obstacles, prior experience, and expectations for the work. Include a description of the method for reviewing the proposals, how questions will be answered, flexibility or firmness of “outlying” and unanticipated work, and commitment to fairness, etc.
- 6 Submit the RFP to qualifying firms with the response due 10 to 20 days.
- 7 Carefully review all RFP final bids and prepare a list of clarifying answers.

8 Contact and schedule meetings with 3 to 5 of the qualifying finalists and begin detailed refinements and negotiations, subject to final agreement, further discussions, as appropriate, with internal clients etc.

9 Select the winning law firm and finalize the agreement with it.

10 Notify and thank all participants, as well as affected clients and colleagues.

11 Administer, monitor, and audit performance of the agreement, including careful consideration of necessary improvements in the process.

Senior corporate attorneys may say that "I did not become a lawyer to manage money or other lawyers, let alone to engage in the rough and tumble world of negotiating fees with other lawyers." Yet that is precisely what is required of corporate officials, including its lawyers. Just as the law firms are in business to make money and maximize profits, so is the corporate client. There is nothing crass, undignified, or unprofessional about bargaining for cost-effective legal services. Your client expects no less. The current and prospective law firms that want your business are happy for the opportunity to try to keep or win it. Many even have established committees and policies within their firms for managing these opportunities.

The legal department should strive to instill a culture requiring the best quality legal services for the lowest possible cost. Once the culture is in place - particularly when the inside and outside lawyers and other professionals learn that you are serious about a true meritocracy for legal services - the establishment and maintenance of a rational, fair, objectively defined program for determining which among the scores of law firms eager for your legal business, will be well worth the investment in time and relationship.

Years utilizing this technique, individually and across my staff, has yielded millions of dollars in savings merely by allowing qualified law firms to compete with one another to win or keep our corporate client as one of theirs.



As the GC of Ally Financial for over 17 years, Bill Solomon is a recognized leader in the legal field and experienced in navigating changing industries. Recently, Bill joined a team of leading former GCs and CCOs at BarkerGilmore to lend his expertise in building law departments and advising rising talent. He has lectured around the world and is now an adjunct law professor at the University of Detroit Mercy School of Law.