



Partner With Outside Counsel to Drive Value

CFOs have the opportunity to participate in more direct, strategic discussions around legal strategy and legal spend.

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» When it comes to managing outside counsel, the CFO is usually concerned with the cost of outside counsel and the general counsel (GC) is responsible for finding a way to manage legal strategy within an often shrinking budget. The increased use of alternative fee arrangements (AFAs), however, presents an opportunity for CFOs to participate in more direct strategic discussions around legal strategy and legal spend with their internal legal departments and outside counsel.



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Often the first question outside counsel is asked is, “How much is this going to cost?” or is told by the client that “I want to do this as a fixed fee.” Of course, there are a variety of options to accommodate every kind of pricing pressure, and much ink has been spilled on this topic in other forums. If the conversation between a company and its outside counsel starts with economics, however — whether on an hourly or AFA basis — we are all starting in the wrong place. The proper starting point is a discussion of the company’s value expectation.

But how can a company measure value at the outset of a legal engagement? Value is a dynamic concept that is comprised of three elements: synergy, efficiency, and cost.

Synergy. To arrive at a unified value expectation, the CFO and the GC must align the company’s business purpose with its legal goals for each engagement of outside counsel. Once a company does

this, then, together with outside counsel, the parties need to evaluate where there are or can be synergies between the client and its outside counsel. The synergy should be around how to accomplish the company’s stated goals and align the respective organizational behaviors accordingly. For example, the parties can use phase- and task-based billing, and budgeting tools and reports, to project and measure this alignment.

Efficiency. The second component of value is efficiency. In order to maximize efficiency, the client and the outside counsel need to determine who should perform which task. Should there be a greater role for in-house counsel, paralegals, technology, or a lower cost third party (including contract attorneys), rather than all work being done by the lawyers at the outside firm? Is there a client team that can be deployed by outside counsel that has worked on similar matters for another client or for this client in the past?

Cost. In light of the synergies to be achieved and the efficiencies created, the client and the outside counsel should discuss the cost of the representation and agree on a fair price and pricing structure. If a client expects certain aspects of a matter to cost a certain amount of money, the client should communicate this to outside counsel. Law firms have numerous strategic pricing options that they can and should be prepared to offer clients, including volume discounts, fixed fees, success fees, fees for particular phases of a matter, and holdbacks.

No one approach is right for every matter and every client, though. It is important that the client (GC and CFO) and the outside counsel discuss the risk that each party will undertake and how to best align their interests. Pricing legal work, if done properly, aligns the objectives of the company and its outside counsel, for immediate and future engagements.

There is no one-size-fits-all model for optimizing value for any particular matter. Rather, value is fluid throughout the relationship. Parties must be able to adapt to changing goals and priorities inherent in legal representation and a changing business environment. A savvy CFO plays a critical and strategic role in this conversation. Here are some tips and best practices to help drive (and maintain) the value discussion.

- Discuss with the GC and outside counsel how the legal matter fits into, or disrupts, the business. Agree on a strategy between the two organizations to achieve both the legal and business goals.
- Develop an appropriate scope for outside counsel's role in the matter in light of efficiency and costs. Have regular and direct communications with the GC and outside counsel about scope and its fluidity.

- Look for ways to build from one matter to another with outside counsel. Both the CFO and outside counsel should be interested in long-term relationships.
- If the company has "customary" counsel, engage in regular dialogue with the relationship partners on the business challenges and opportunities that the company is facing, even when not related to a particular matter. The more outside counsel understands the inner workings of a business and its sector, the more synergies are created in future legal representations.
- Do not be afraid to suggest ways to enhance the relationship that can help develop a deeper understanding of the business by outside counsel. This could include, for example, secondments of attorneys from outside law firms to work at the company for a period of time. Management may also want outside firms to give in-house CLE programs to attorneys inside the company. Law firms should want to find ways to partner with their clients and invest in them so that the relationships grow over time.

- Partner with the business side of a law firm. In addition to speaking with the legal team, speak with the firm's business team. Ask to attend a business-side meeting with the COO and CFO. Engage and build a relationship with the pricing and project management team. Ask them about the trends they see in the legal industry. These discussions will help the company predict costs over time.
- Demand transparency. Insist on regular reporting on legal spend from law firms. This will help you achieve the cost efficiencies and keep management better updated on the status of matters.

As law firms and their clients continue to move away from a discussion of discounts and cost to a more holistic discussion of value, there is an opportunity for CFOs to take on an enhanced strategic role in bridging the gap between legal strategy/cost management and business knowledge/operations. By fostering and encouraging an open dialogue on these issues the CFO, GC, and their outside counsel can work together to drive value for a company. **CFO**

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