

Trim the Fat From Your Law Department

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Quasi-legal work is the cellulite of law departments. These are the tasks in-house counsel can do -- but shouldn't -- if their legal department wants to reach peak effectiveness.

Quasi-legal tasks include peripheral lawyer activities such as drafting and reviewing routine correspondence for executives, managing projects that involve several departments in the company (such as marketing, a business unit, and the patent group), and responding to routine claims that should be dealt with by the business unit. These kinds of tasks are larded throughout the productive work that lean, efficient law departments should concentrate on instead.

Not that quasi-legal work wears a scarlet Q and is always immediately detectable. Rather, it's a question of separating higher-value legal work from lower-value work that a lawyer can do. These are not water-tight definitions. Nor should paralegals fill in and do these tasks. The improper activity falls outside the boundary of the optimal role of a legal department.

Who makes these demands? For the most part, the managers and executives of the company often trigger quasi-legal work. What is the solution? A department with a clear understanding of how it best contributes to the company's success, along with internal clients with the same understanding, will keep quasi lawyering to a minimum.

WHAT'S VALUABLE?

The most valuable work of in-house counsel is giving legal guidance to business executives; interpreting regulations, statutes, and decisions; reviewing documents and activities for legal risks; and managing outside counsel. Quasi-legal work advances none of these goals.

Instead, quasi-legal work at its rawest has lawyers doing tasks that anyone could do. Tracking the number of company advertisements that need to be reviewed for regulatory compliance, for instance, can and should be done by someone other than a lawyer and, indeed, outside the law department. Preparing run-of-the-mill sublease extensions ought to fall to the real estate group, not to a lawyer.

Although these are a few good examples, it's nearly impossible to catalog the suspect tasks, since many really depend on the particular lawyer and the particular task. The gray area teems with tasks that lawyers might be trained and experienced in, such as writing, fact organization, and analytical thinking, but that do not make the best use of their legal training and experience.

Lower-value work sometimes includes writing documents, when the document is not legal analysis or pleadings; organizing facts, when the facts have more to do with business or administration than law; thinking through a problem, when the problem should be solved by another department; and coordinating a team, when the legal elements of the team's work are small. What the lawyer is asked to do (or takes on) has a legal veneer, but the core of the task should be someone else's responsibility.

I would not be surprised if in most law departments quasi lawyering gobbles up 5 percent to 10 percent or more of lawyers' time. Shed this fat, and your lawyers will be much fitter contributors to the company.

ASK QUESTIONS

Companies benefit when they can prevent their lawyers from being sucked into quasi-legal work. But how can a company determine the boundaries if the edges are unclear? Here are some questions to ask:

- Would the company hire an outside firm to do the work? If the client (the company) wouldn't think of paying outside counsel their rates to accomplish the task, the inside lawyer should probably not do it, either.
- Could a person who did not graduate from law school handle the task just as well?
- What happens in other law departments? For example, if no other law department in your industry requires that a lawyer review every contract, you have stumbled upon a quasi-legal waste.
- Are the legal risks infrequent or small in relation to the amount of time lawyers spend sniffing them out? Reviewing plain-vanilla confidentiality agreements falls into this category.

How does a department rout these time wasters? Simply understanding and articulating the concept can help lawyers spot and sidestep less-essential work masquerading as "the law department's responsibility."

TRACK THE TIME

Another technique adds more precision. For four weeks, have the in-house lawyers track how they spend their time. They should use five to seven categories of tasks, and make sure they indicate for each task whether -- compared with all the tasks done during the period -- the particular one is a good, medium, or poor use of their legal talent. Gather the lawyers together and have them discuss which of the activities they are asked to do, or choose to do, fall into the suspect category of quasi-legal work. Once they are aware of these drags on their time, they need to talk with their clients about alternative resources or alternative ways of accomplishing the tasks. Thereafter, much like an exercise regimen, law departments need to periodically sweat off their quasi-legal flab.

Besides tracking lawyer time, another option is to charge in-house clients, perhaps only for the most egregious examples of quasi-legal work. Although it's a heavy-handed solution, it will make these clients more sensitive to diverting their lawyers to ancillary tasks. On the other hand, the solution raises the possibility that the company will push back. Some might even consider firing some lawyers, which would ultimately force the survivors to eliminate the lowest-value work. Sometimes that approach works, but most would argue that the cure is worse than the disease.

In my consulting experience, consciousness raising and exhortations do well to tame the problem, but for lawyers to push back when asked to take on quasi-legal tasks, or to drop those tasks they are doing, the general counsel must stand up for them and support them in the face of client discontent.

Ironically, sometimes resistance to stopping quasi-legal tasks comes not from clients but from the lawyers themselves. In one insurance company law department that tried to trim some quasi-legal time, the lawyers resisted the change. In fact, the lawyers argued that it was better if they ingratiated themselves with the clients in-house and gave them the services they wanted. They believed that the more the lawyer does, the happier the executive client. Many companies, for instance, use their lawyers as notary publics. If there is no cost of lawyer time to clients, clients will be grateful for the services. But in the end, we're still talking about what amounts to corporate waste.

Lawyers also argue that you can't tell when a legal issue will show up in otherwise nonlegal functions. They feel it's worth the effort to spot the "wheat" of a legal risk mixed in with the "chaff" of low-value quasi-legal activity. But, for the most part, although reading through piles of documents and creating summaries make some use of lawyers' competencies, these tasks mainly divert lawyers from putting their skills to the best use.

There's another reason lawyers sometimes like quasi-legal tasks. Although few might admit this publicly, these duties can be a reprieve from more difficult work. There's nothing like a few minutes of proofreading and initialing standard form leases to let the stressed mind recover. It is said that "No good lawyer is idle," but, unfortunately, busyness is no good if it simply involves lower-value tasks. For lawyers of limited ability or energy, the ideal day is filled with peripheral puttering.

How do quasi-legal burdens arise? These problems arise most commonly in decentralized departments, where lawyers report to a business executive. When lawyers are beholden to a non-lawyer executive, they can find themselves slipping down the slope of handling tasks that don't make good use of their core competencies. Running the crisis management program or business interruption program could be examples of activities outside the sweet spot.

The problem also turns up when companies are forced to lay off employees. Then, business managers are tempted to use lawyers for tasks that can no longer be accomplished within the manager's group. Administering contracts is an example. The lawyer should explain to his or her manager that the task is inappropriate. An uncomfortable discussion? Yes. But rooting out quasi-legal time sappers requires making sometimes -difficult decisions.

Some quasi lawyering survives as an anachronism. Many years ago, it may have been important for lawyers to handle workers' compensation filings because the law was less settled, but now the task has sunk to administrative levels.

Reporting to non-lawyers, headcount shortages outside the law department, misguided notions of client satisfaction, tradition -- all of these encrust quasi-legal tasks in a law department. Most crucial to the buildup of these diversions, it should be stressed, is misunderstanding by clients and law departments about the highest and best use of lawyer talent.

Quasi-legal tasks bloat and encumber most law departments. Productivity and focus on the law department's core competencies drift away when there is an infestation of quasi-legal work. The price of fitness is eternal vigilance, a dose of self-discipline, supportive clients, and the conviction that quasi-legal work hobbles a law department.

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