

Game Plan for Controlling Costs

Spending too much for outside counsel? Peer pressure can be a useful tool.

BY REES W. MORRISON

Cost control efforts, like diets, are only effective if you stick to them. Ay, there's the rub: How does a general counsel get individual lawyers to care about how much is spent on outside counsel for their matters?

This article presents nine techniques that help each in-house lawyer promote effective budget management and trim outside counsel spending. To be sure, saving money cannot be the primary goal of a law department; winning and succeeding count more than fees. But in the effort to balance costs and outcomes, these techniques can make a difference.

Jawbone. Keep talking about costs and measures to get on top of them. A general counsel's exhortations to

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mind the pennies to groups of lawyers or in one-on-one discussions are important—all leadership consists of repeating key messages. But cheerleading alone

has limits. After a period of time, members of the law department will pay lip service to the reminders from the top but will have come to realize that there is nothing backing up the words.

Report efforts of other law departments. Another technique to make cost control more relevant to the lawyers responsible for spending on outside counsel—because not all in-house counsel manage outside firms and approve their bills—is to ask each of them to call one other law department every quarter and find out what efforts they have taken to moderate external spending.

A good practice is to have each lawyer write a short summary of what he or she has learned. The summaries create a knowledge base, they show who has done the exercise, and they add a fillip of peer pressure. To complement this research, the lawyers might be urged to cite specific examples of cost control that are drawn from articles, conferences, and online material (including my blog, LawDepartmentManagement.typepad.com). The

point is to stimulate in them an awareness that there are many tools to control law firm invoices and that collective knowledge of those tools will help the entire department.

Include cost control in evaluations. A general counsel can ratchet up the incentive by explaining that cost control efforts will be a major element of year-end performance evaluations. That's all well and good, but how will a general counsel keep track of individual activities and successes during the year? How will the general counsel weigh that set of contributions against all the other expectations of counsel? The next technique answers these questions; the point here is to create some level of awareness of incentives.

Collect periodic reports on efforts and results. A general counsel should ask lawyers in the department to submit a quarterly summary of what they have done in the preceding quarter to rein in outside counsel spending. The reports serve to keep cost control more in the line of sight of lawyers. They give some contemporaneous evidence for cost-saving efforts if those are important in evaluations, and when compiled, the various actions may provide good examples for others in the law department and stimulate additional efforts.

Unfortunately, as with matter status reports, lawyers will tend to prepare them at the last moment, repeat each quarter the same efforts, and, shall we say, exercise the full panoply of lawyer creativity. It is crucial that the general counsel insist on specificity: "Reviewed invoices carefully" won't do.

If the law department were to hold a cost control conference once a quarter, people could be asked to give presentations about their efforts. They could summarize what they have learned that other law departments are doing. It could be useful to bring in a consultant for additional insights or to ask partners from law firms to explain what they have tried to do or their reactions to cost control efforts.

Establish so-called SMART goals. Personal goals that are "specific," "measurable," "attainable," "realistic," and "timely" push lawyers who have signed up for them to

pursue cost control efforts. Each lawyer who is responsible for managing outside counsel and reviewing their bills faces a different set of circumstances and spending drivers. A litigator responsible for a class action faces a spending profile vastly different from an environmental lawyer who's overseeing two Superfund cleanups and a dispute regarding a site.

To address the wide range of circumstances, a general counsel might ask each lawyer to come up with two or three metrics or activities that further cost saving and that the lawyer will commit to during the coming year. For example, one lawyer might strive to reduce the total number of law firms retained. Another person's goal might be to reduce the effective billing rate of a law firm that is used extensively (the effective billing rate comes from dividing the total professional fees by the total professional hours). A third might seek to hold billing rate increases to less than 4 percent. A fourth might strive for a better ratio of associate-to-paralegal time in relatively routine matters. A fifth might try to lower the average billing rate of lawyers who work on her matters.

If people choose goals and metrics, there's more buy-in, and if those metrics reflect actual improvements in the cost situation, everyone wins.

Hold back a portion of bonuses. A general counsel who is serious about cost control might say to the law department that 15 percent of the bonus pool for the year will be held back. Half of the money will be distributed in six months based on the cost control efforts of the department or of individuals. For example, if the monthly average spending rate is less than the average of the previous year, some or all of the bonus held back will be distributed. There are many possibilities for measures of success. Unlike SMART goals, which individuals strive for, this technique encourages the entire department to work together to reduce outside counsel expenses.

A disadvantage of this method is that there can be free riders and circumstances beyond anyone's control that cause metrics to change. Even so, this method puts money on the line, and many people respond to a clearly defined bonus situation.

In a sophisticated refinement of the method, the general counsel might create an index of cost control performance. Such an index would have multiple components, such as effective billing rates, percentage of matters with budgets, performance against budget, settlement dollars paid, concentration of spending, and initiatives completed. Measures of effectiveness could be given different weights. If the entire department understands this index

of performance, there will be a collective effort to achieve success on the index. Although it is extreme and perhaps even visionary, this extension might appeal to some large law departments.

Delegate authority to a committee. The general counsel should not have to bird-dog all efforts in outside counsel cost control. In some situations, a committee of peers means much more insight and pressure to initiate. Appoint three or four people to oversee the cost reduction program, give them some authority, and even allow them to allocate some portion of the bonus amounts, and you can unleash some dramatic collective action.

Analyze spending data. If one or more lawyers are given the task of using data from a matter management system to identify cost-saving efforts, the department will benefit. As these lawyers have to look at numbers and figure out trends or anomalies or patterns, they will become more aware that management can make a difference and how it might make a difference.

There are many ways to learn from matter management and e-billing systems. For example, you can calculate effective billing rates and assess patterns of delegation. You can call upon procurement staff who might be very pleased to help crunch numbers. They can calculate how much firms diverged from their original budget estimates or pull together comparative data on billing rate increases, for example.

Set procedures and policies. The final technique aims to codify knowledge, raise the standard level of performance, and improve efficiency. Examples of these procedures that can push lawyers toward compliance with cost-saving mandates include guidelines for law department lawyers regarding the use of outside counsel. Other instances include forms for budgets, training on bill review methods, reports from databases on spending information, and efforts after matters have ended to tease out how they could have been handled more cost-effectively. Standardized ways to do things help keep people aware of the importance of those steps.

Those are nine reasons, and there are probably more and certainly an infinite number of variations and combinations. If a law department puts into practice some or all of these ideas, it will see a general reduction in its baseline spending on outside counsel bills. Get into the hearts and minds of the individual lawyers who direct the law firms and you are more likely to achieve your cost-saving goals.

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