

NOVEMBER 2010

**ACC PRIMER –
USING A STRUCTURED PROCESS
TO ALLOCATE WORK**
**Optimizing Available Resources
to Efficiently Provide Legal Services**

THE BUSINESS CASE

Times have changed since the days when the options for handling a company's legal work were limited. Traditionally, in-house attorneys managed outside counsel who used their discretion to identify, supervise, and manage other needed services and experience. Now there is a breadth of options to get the work done and an increasing appreciation for what a wider variety of lawyers and non-lawyers can add to the mix. In addition to inside and outside counsel, options include using temporary lawyers, seconding outside counsel, outsourcing legal processes, teaming work among several firms, and sending work offshore. This variety of staffing options gives law department leadership the opportunity to determine what work to keep in-house, what work to send to outside counsel, and what work to allocate elsewhere in order to provide the best, most cost-effective legal services.

Law departments and the firms they retain need to maximize the use of all their resources – human, financial, and technological. The foundation for ensuring that all resources are leveraged to the fullest is making sure that the right work is being done by the right people and that the processes they engage in to complete their work are the most efficient and effective. That means efficiently using the law department attorneys, paraprofessionals, and support personnel to focus on work that will have the greatest strategic impact on the company's competitive position, and allocating other work elsewhere – sending it to outside counsel, outsourcing it to other vendors, or returning it to business units outside the law department – or even eliminating it altogether. It means examining work patterns and turnover times, providing necessary training, and implementing metrics to drive greater value.

Unfortunately, in many law departments and law firms, work is not prioritized and allocated systematically. Perhaps the team has grown over time, either through mergers and acquisitions or adding personnel on an as-needed basis, and personnel continue doing the work they did before the changes. Or perhaps the team size has remained static with individuals taking on additional responsibilities as requested by business-side clients. When work is allocated in this somewhat *ad hoc* manner, the result can be over- or under-utilization of resources and disproportionate effort focused on matters that are not the company's priorities. These are situations that no law department can afford.

The solution is to systematically assess, prioritize, and allocate the legal work based on its actual value to the company. Internally, this will improve performance and generate positive results at all levels of the organization. The corporation as a whole will benefit because the law department will focus its priorities on mitigating the company's risk and on furthering the strategic goals of the company. The law department will maximize the use of its time and resources, performing services in the most efficient and cost effective manner. The department's practice groups will have a clear mandate to focus on work that has been identified as having priority for the business. And individual team members' job satisfaction will increase because they have a clear understanding of their roles and responsibilities and know that the work they do is meaningful to the company. A methodical prioritization and allocation of work will also allow the law department to more clearly communicate work parameters to its external partners, enhancing their value contributions as well.

THE BASICS

This ACC Primer, “Using a Structured Process to Allocate Work,” will outline a step-by-step process to ensure that all available resources are optimally used and focused on the right work. The Primer includes illustrations, tables, and case studies to assist users in the process. The Primer focuses on allocation of legal services – who should do what work – i.e., how to determine what work should remain in-house and how it should be distributed, and what should be sent to outside counsel, outsourced, automated, or eliminated.

PRACTICE TIP

To achieve the best results, the law department should apply the process described in the Primer to all work performed by or under the auspices of the legal department. Additionally, the principles discussed in this primer can easily be applied to smaller subsets such as specific practice areas.

The process has five basic phases:

Assessment – identifying the services provided by the law department to the business, and who is performing those services

Value Prioritization – prioritizing each service based on risk management and how the service is aligned with the competitive advantage/direction of the company

Work Allocation – determining who should be delivering the services based on their value priority

Implementation – establishing the environment for and making the desired changes happen

Measurement – using metrics to evaluate the shift to value-based work allocation



Law departments and their leadership should recognize that this process will not yield instantaneous results. Rather, it is a journey that will require a dedicated focus over multiple years to change the departmental culture and shift work allocation. The results will be worth the time and effort. By proceeding in this orderly fashion, the law department will ensure that it aligns the effort applied to each service with the actual value of that service to the organization.

ASSESSMENT



What services does the law department provide to the business, and who performs them?

A clear understanding of the services provided and who performs them is the crucial first step in ensuring that staffing is aligned to value. Without this foundation, any subsequent work reallocation may be piecemeal and potentially counterproductive. The purpose of this phase is to develop a baseline picture of the services being provided, internally and externally, in order to understand how the law department is meeting the needs of the business. When performing the assessment, evaluate not only current services, but also the demand for future services, taking into consideration business issues such as planned expansions, divestitures, or other matters that will affect the scope of work. This assessment will require taking a deep look at the department's current resources.

Data sources of information

Begin the assessment with a review of readily accessible data sources. This review will provide a factual foundation that can support intuition or demystify perceptions about the department's current workload. These sources may include timekeeping system data, matter management system data, and e-billing system data.

Use these sources to gain insight into the type of work being performed, the number of resources performing the work, and some of the cost of the work. In addition to these systemic sources of information, there is no substitute for getting information straight from those performing the work, especially if the department does not systematically track internal matters and the effort expended on them.

Internal work assessment

Internally, the assessment should focus on the type of work and staffing.

Workload survey. An efficient tool for gathering this information is a **survey** of the department staff. Depending on the desired scope, the survey can be distributed to all department members – attorneys, paralegals, and support staff – or to appropriate subsets of these groups.

Factors to address include the following:

- Estimated annual hours worked
- Current workload distribution by matter type (time spent)
- Complexity of the work
- Value, as determined by level of risk and competitive advantage (see following section for more information about value)
- Estimated changes in future volume of workload by matter type
- Internal client for whom the work is performed
- Usage of outside counsel for the work
- Estimated change in usage of outside counsel

A **sample workload survey** is included in the **Appendix**.

Analysis. After the surveys have been completed, **analyze** the data, including:

- Hours, by practice and matter type
- Number of internal individuals performing each type of work
- Number of internal Full Time Equivalents (“FTE”), based on the company’s defined number of hours, for each type of work
- Volume of work, by client
- Value of work, by level of risk and competitive advantage

The analysis will provide an overview of the work performed and the value that department members place on the work, and will form the basis for the following phases of the process.

External Work Assessment

The survey of internal personnel will not provide a full picture of work performed by external resources such as outside counsel, so additional information can be gathered from the e-billing system. If the department does not use e-billing or it has not been in place sufficiently long to provide meaningful information, it may be appropriate to gather billing information from a sampling of the company’s outside law firms representing a cross-section of practice area and firm sizes.

Analysis of the billing data, overall and by firm, should include:

- Number of law firm FTEs utilized
- Number of law firm timekeepers
- Hours worked by each level of resource (partner, associate, paralegal, etc.)
- Leverage models
- High billings by individual timekeepers
- Overall average blended rate
- Average blended rates by practice area
- Rate changes over relevant time period
- Hours/day billing in excess of guidelines
- Expenses (copies, faxes, research, etc.)
- Uniform Task Based Management System (“UTBMS”) task leverage models
- UTBMS task average blended rates

The data will provide insight into how matters are being staffed, whether outside counsel guidelines are being followed, and where potential opportunities for improvement exist.

Interviews

Interviews of select internal personnel and outside counsel are useful supplements to the survey and data results. They may add clarifying information and nuances, as well as identify key players for the transition and to build “buy-in” to the process. It is also helpful to interview the law department’s clients, who can provide insights into expectations, risk tolerance, and value, as well as potential additional desired legal services. Potential **interview questions** are included in the **Appendix**.

VALUE PRIORITIZATION



How is the value of the services prioritized in terms of competitive advantage and risk potential? The answer to this question will determine how work should be allocated or reallocated. The prioritization process allows the law department to make more proactive decisions about the services it provides and ensure that it is applying the appropriate level of effort to the right services.

The Value Matrix

During the assessment phase, personnel were asked to value each category of work in terms of risk potential and competitive advantage. These terms are defined as follows:

Risk Potential is the extent to which it is possible for specific types of legal work to negatively impact the company – financially, with respect to regulatory compliance, or by damaging the company’s reputation.

Impact on Competitive Advantage is the degree to which the type of legal work drives competitive advantage and supports the company strategy.

A value matrix using these two variables as axes is a useful means of identifying the relative value placed on the work done by the department.

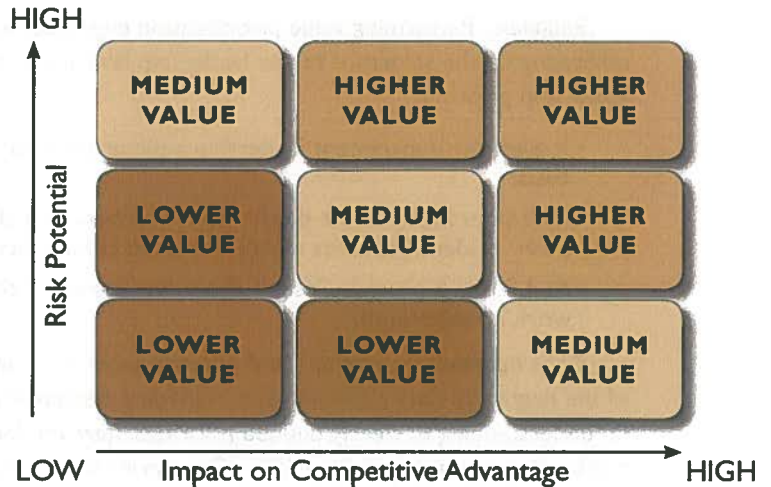
As can be seen in the matrix, work with both high risk potential and high impact on competitive advantage is perceived to have the highest value, while the lowest value work has lower risk potential and strategic impact.

VALUE is combination of:**Risk Potential**

The extent to which it is possible for specific types of legal work to negatively impact the company, e.g. financial, regulatory, reputation.

Impact on Competitive Advantage

The degree to which the type of legal work drives competitive advantage and supports the corporate strategy.



Comparing the individual survey assessments of risk potential and competitive advantage to the value matrix, each type of work can be categorized as **higher value**, **medium value**, or **lower value**.

Calibration

Once individual value assignments have been identified, it is useful to calibrate the value assignments among different levels of the department to be sure that value is defined consistently throughout the department.

Practice group calibration. The first calibration should be done at a practice group or other departmental subset level. This can be done through workshops where the groups meet to review the assigned value by matter type and agree on a value. Within a practice area, the assigned value may vary by matter type or even within matter type on a case-by-case basis, so the practice team should assign a value that represents the majority of that type of work.

Leadership calibration. An additional calibration at the legal leadership team level, calibrating the value assignments by practice area, will develop a departmental perspective on resource allocation.

PRACTICE TIP

Team calibration meetings can also be used to look further down the line. Team members can identify ideas for:

- Meeting the department's objectives of balancing work effort and priorities
- Reducing the specific level of effort required for specific categories of work
- Other efficiency or cost-saving ideas

Rationale. Performing value prioritization beginning at the individual team member level and then calibrating up the structure to the leadership level is more useful than a top-down imposition of leadership priorities.

- It gives the department leadership a picture of what is really being done on a granular, day-to-day basis.
- It demonstrates to the department members that the effort is collaborative and not a top-down push. It identifies areas where there are communication gaps regarding the organization's priorities.
- And finally, it provides insight about the degree of change management required in various areas as work is reallocated.

Gaps between leadership's and practice areas' or individuals' assessment of priority are an indication of the degree of clarity or confusion regarding department priorities. When department members have no understanding of clearly defined priorities, they will focus on what they think is important, which may not be the organization's priorities. Once priorities are calibrated they can be defined, communicated, and understood, and department members will focus on the correct, higher priority work.

Case Study

In this Primer, we will provide several illustrative examples regarding a hypothetical law department, based on the law departments of several Fortune 500 companies in a variety of industries with differing priorities.

All of the law department's attorneys completed workload surveys and questionnaires as described above. Once the calibration was complete, it became clear that there were some obvious discrepancies between the priority that leadership placed on certain work and the priority placed on it by the survey participants or practice groups. The two charts below illustrate some of these gaps. The first chart is a list of work categories that the law department leadership deemed to be of **higher value**, and shows the value that the individuals and practice groups assigned to these same categories. The second chart is a list of work categories that leadership deemed of **lower value**, and the priorities assigned by individuals and practice groups. Moderate gaps are highlighted in yellow and significant gaps in red.

Leadership Higher Value

Leadership Determination: Higher	Individual Rankings	Practice Group Value
Audit Execution - Fieldwork	* 2-Medium	I-Higher
Audit Annual Risk Assessment/Plan	I-Higher	I-Higher
Audit Execution - Planning	* 2-Medium	I-Higher
Audit Execution - Report	* 2-Medium	I-Higher
Audit Committee and Board Meetings/Reporting	I-Higher	I-Higher
Business Unit/Contracts: Mergers and Acquisitions	I-Higher	I-Higher
Business Unit/Contracts: General Advice and Counsel	I-Higher	I-Higher
Business Unit/Contracts: Special Projects	I-Higher	I-Higher
Business Unit/Contracts: Training to Business Partners	I-Higher	I-Higher
Corp Gov & Sec: SEC/Disclosure	I-Higher	I-Higher
Corp Gov & Sec: Board/Committee/Share Owner	I-Higher	I-Higher
Corp Gov & Sec: Finance/Treasury/IR	I-Higher	I-Higher
Ethics & Compl: Policy Development	* 2-Medium	I-Higher
Ethics & Compl: Training and Communication	* 2-Medium	I-Higher
Gen Corp: Corporate Development/Due Diligence	I-Higher	I-Higher
Gen Corp: Special Projects	I-Higher	I-Higher
Gen Corp: Data Privacy/Security	I-Higher	I-Higher
Gov't Rel: Reporting Requirements	I-Higher	I-Higher
Gov't Rel: Industry Group Participation	I-Higher	I-Higher
Gov't Rel: Government Relations/Business Strat	I-Higher	I-Higher
IP/TMs: Special Projects	* 2-Medium	* 2-Medium
IP/TMs: Unsolicited Ideas	** 4-None	** 3-Lower
IP/TMs: Training to Business Partners	* 2-Medium	* 2-Medium
IP/TMs: TM Mgmt/Maintenance (and Customs Recordation)	I-Higher	I-Higher
IP/TMs: General Advice and Counsel	I-Higher	I-Higher
L&E: General Advice and Counsel	I-Higher	I-Higher
L&E: Special Projects	I-Higher	I-Higher
L&E: Labor Union Matters	I-Higher	I-Higher
L&E: Legal Updates/Changes in Law/Training	* 2-Medium	* 2-Medium
L&E: Legal Reviews/Restructures	I-Higher	I-Higher
L&E: M&A Due Diligence	I-Higher	I-Higher
Lit: Commercial (and Class Action)	I-Higher	I-Higher
Lit: Employment	I-Higher	** 3-Lower
Lit: Product Safety	I-Higher	I-Higher
Lit: Crisis Mgmt	I-Higher	I-Higher
Marketing: Advertising and Packaging Review (and Labeling)	I-Higher	I-Higher
Marketing: Claims and Substantiation-new and existing products	I-Higher	I-Higher

** Indicates major gap

* Indicates minor gap

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For more information on the ACC Value Challenge, please visit: www.acc.com/valuechallenge.

ACC thanks Nancy Jensen of Huron Consulting Group for her work on this ACC Value Challenge Resource.

For example, in the higher value chart, there is an obvious gap in the perceived value of intellectual property work related to unsolicited ideas. While the individuals rated it of no value and the practice group rated it lower value, the department leadership considered it higher value work because it is an emerging area.

Leadership Determination: Lower	Individual Rankings***	Practice Group Value
Audit Tracking	** 1-Higher	3-Lower
Audit: Special Programs	3-Lower	3-Lower
Audit: Other - Section 404 Testing	3-Lower	3-Lower
Audit: Gen Advice and Counsel	3-Lower	3-Lower
Gen Corp: Gen Advice and Counsel	3-Lower	3-Lower
Gov't Rel: Congressional Hearings and Meetings	3-Lower	3-Lower
Gov't Rel: Other - Communications Development	3-Lower	3-Lower
IP/TMs: Budget Tracking (Cost and Cost Recovery)	** 1-Higher	* 2-Medium
IP/TMs: Permission Requests	3-Lower	3-Lower
IP/TMs: Other - Right of Publicity	** 4-None	3-Lower
L&E: Background Checks	* 2-Medium	* 2-Medium
Lit: Asbestos	** 1-Higher	* 2-Medium
Lit: Third Party Subpoena	* 2-Medium	3-Lower
Lit: Risk Mgmt Group Support	** 1-Higher	3-Lower
Lit Escalated Consumer Complaints/Claims	** 1-Higher	3-Lower
Marketing: Training to Business Partners	** 2-Medium	1-Higher
Marketing: Other - Premiums Quality and Safety	** 1-Higher	1-Higher

*** Completion of Individuals Survey Contributor Rankings

** Indicates major gap

* Indicates minor gap

The lower value chart is even more telling. There are numerous categories of work that leadership identified as having lower value, yet the individuals doing that work considered it higher value work. For example, department attorneys working on “escalating consumer complaints” assessed that work as higher value. From the leadership perspective, because the company manufactures a variety of small consumer products, consumer complaints do not typically pose a high risk to the company and giving them significant legal department attention does not advance the company’s strategic goals. A more appropriate allocation of that work might be to train the consumer relations department to better handle complaints, and to assign a legal assistant to monitor them. If the complaints were to become significant issues or turn into litigation, they might then be sent to outside counsel.

WORK ALLOCATION



Who should be delivering the services? Once the value of specific legal services has been calibrated and prioritized, the department can move to next step – determining who should do the work. This determination is based on strategic decisions related to the value assignments, and identification of areas where the current level of effort is not aligned with the value ranking.

PRACTICE TIP

When determining who should do the work, consider the following factors:

Culture

What is the role of in-house attorneys: “managers,” “doers,” or a combination?

Business needs

Is the work essential to achieving the company’s business goals?

Does the work involve high risks that could affect the company as a whole?

Work

Is the work properly defined as legal services?

Should the department perform the work?

How has the work been valued and prioritized?

Complexity

Is the work routine or commodity work?

Does the work require an attorney? At what level of experience?

Is the work complex, requiring a specialist?

Can the work be leveraged to paralegals or other non-attorneys?

Process/Technology

How can process and technology be used to streamline and leverage the work?

Resources

Is the work recurring, or a one-off situation?

Will it continue into the future or end soon?

What is the expected go-forward volume?

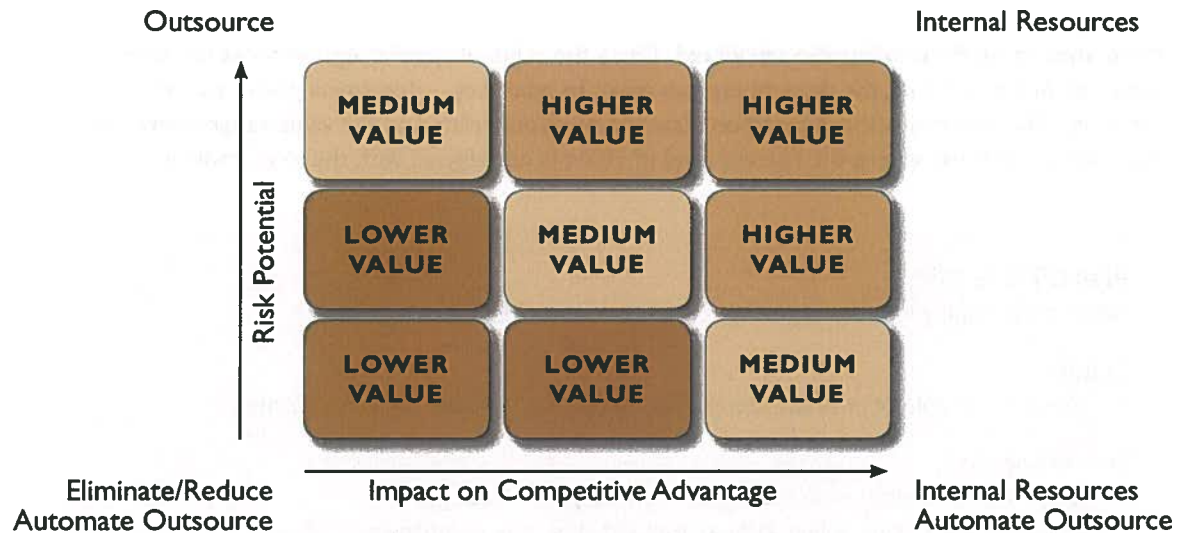
Is it best handled internally or externally?

If externally, does it require a law firm or can a non-firm vendor perform all or part of the work?

If it requires a law firm, what are the necessary attributes of the appropriate firm, e.g., size, reputation, geographical presence, specialization?

Work Allocation Matrix

The following diagram illustrates an approach to making resource allocation decisions. Of course, each organization's sourcing decisions may vary based on the culture, legal needs, resources available, and budget of the department.



- **Upper right corner.** Matters that have a significant impact on the company's competitive advantage as well as high risk potential are often better handled internally at a high level because of their strategic importance. For example, a company's proposed entry into a new geographic market has potentially high risk and a high impact on competitive advantage. Although some detail work might be delegated internally or externally, higher level internal counsel needs to work with the corporate development/M&A team to assess strategy, potential risk, regulatory and legal issues.
- **Lower right corner.** Lower risk matters that still have a high competitive advantage impact are also often best handled internally. The higher alignment with competitive advantage indicates that knowledge of the company's business and perspectives are necessary. Because of the lower risk, however, the department should attempt to leverage its resources to handle those matters at a lower cost. Many types of contracts may fall in this range. They advance the company's direction but may not bear a high risk because of either the lower dollar value or subject matter. Training internal business clients to handle these contracts themselves (with proper controls and escalation points) is one way to keep this work inside the company but at a lower cost.
- **Upper left corner.** Matters with high risk potential but without significant strategic advantage are better handled by well-qualified outside experts, since they are not likely to move the company forward in its strategic plan. SEC investigations or some major litigation, for example, may be an appropriate type of work to be performed by strong outside counsel. They require a degree of expertise and have high risk potential, but because they are related to past history, they do nothing to advance the company's future strategic direction.
- **Lower left corner.** Finally, matters with low risk potential and low strategic value should be eliminated or reduced, automated, performed by others in the company, or outsourced. For example, simple human resources matters such as background checks do not need to be performed by the legal department.

Some additional considerations are as follows:

Questions to Consider

HIGHER VALUE	<ul style="list-style-type: none"> • Are these the most important priorities for Legal and the Company? • Are these sufficient resources allocated to the high value work?
MEDIUM VALUE	<ul style="list-style-type: none"> • How can work be performed more efficiently? • Can work be leveraged to other resources? • Can the number of resources involved be consolidated or reduced? • Can technology be used to optimize involvement?
LOWER VALUE	<ul style="list-style-type: none"> • Are the identified categories of work truly lower in value? • How can effort be reduced or eliminated? • Can technology be used to automate the work?

Using these broad principles, the department can determine what work should be performed in-house and externally. From there, the next determination is the level at which the work should be performed.

Allocate Internal Resources

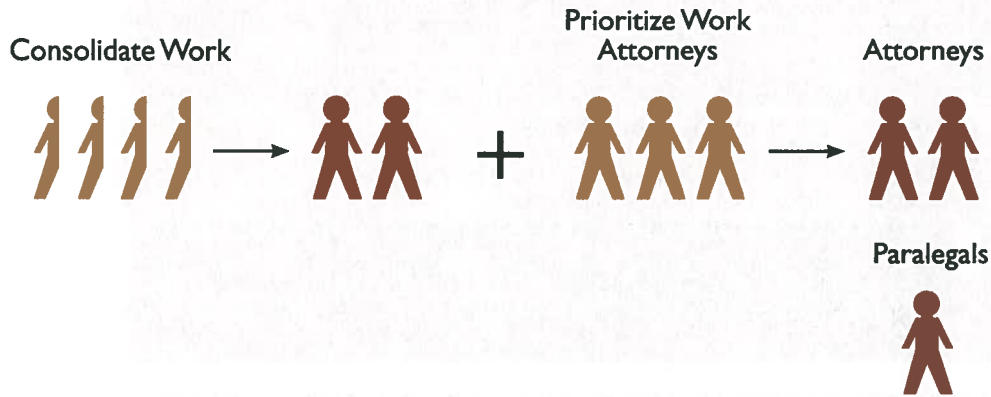
Two primary strategies can make a significant difference in internal resource alignment: (1) consolidating work as appropriate, and (2) ensuring the work is prioritized and leveraged to the correct resource level. When work is consolidated to fewer resources and leveraged appropriately, the law department may generate additional capacity among its internal resources or, if necessary, consider headcount reductions. The illustration below demonstrates this principle. In the example on the left, work previously spread among four different people, each spending a portion of their time on it, may be consolidated to two dedicated individuals, resulting in increased efficiency and elimination of redundancy. In the right example, work previously shared among three attorneys is prioritized such that some routine work is now shifted to a paralegal.

PRACTICE TIP

Consider the following when assessing internal resources:

- Culture of the company and department
- Existing business issues
- Work currently performed by the internal legal team
- Skills required for the work
- Estimated hours required to execute specific work
- Future variability of the need
- Current roles and responsibilities of the internal team
- Use of outside counsel
- Use of other vendors
- Use of technology

The cumulative effect of consolidating and prioritizing work not only frees up personnel but can also generate cost savings and ensure that department personnel are working at their full capacity.



Outsource.

The same overall principle applies to the decision to use outside counsel and other external vendors: *align the price point of the work with the value of the work.*

Outside counsel. With respect to outside counsel, this means reserving the use of higher dollar firms for higher value matters, and using less costly firms for repetitive, “commodity” work. It also means ensuring that the law firms’ staffing of matters is leveraged appropriately to the value and complexity of the work (for example, using paralegals or more junior attorneys as appropriate), and that guidelines exist (and are enforced) regarding expenses, staffing, etc. Additional resources regarding outside counsel management are listed below.

ACC Resources

InfoPAKSM – Law Department Strategy: Balancing Immediate Cost Savings with Sustainable Results (Huron Consulting Group)

<http://www.acc.com/legalresources/resource.cfm?show=700508>

Effective Outside Counsel Management

<http://www.acc.com/legalresources/resource.cfm?show=19805>

ACC Value-Based Fee Primer

<http://www.acc.com/advocacy/valuechallenge/toolkit/upload/acc-value-based-fee-primer.pdf>

Outsourcing/Offshoring. In today's market a number of services traditionally performed by law firms can now be outsourced to other providers, typically with significant cost savings. A proven example is document review. Other areas where non-firm providers are commonly used are e-discovery, immigration, IP services, and due diligence.

Sending work to offshore providers is also an option that is becoming more common. Offshore services can include document review, contract review, basic patent drafting, basic legal research, and more. Whether it is appropriate to send a given company's work offshore will depend on a variety of factors, including the viability of the offshore contractor, its physical and electronic security, the type of data that will be involved, and any applicable laws and regulations.

For additional information about outsourcing and offshoring, please see these ACC resources.

ACC Resources

Legal Process Outsourcing: A How-To Guide on Legal Process Outsourcing

<http://www.acc.com/legalresources/resource.cfm?show=1112956>

Informal Outsourcing Checklist for In-house Counsel

<http://www.acc.com/legalresources/resource.cfm?show=402344>

Outsourcing/Offshoring First Level Document Review in an Era of eDiscovery

<http://www.acc.com/legalresources/resource.cfm?show=19871>

Automate/Reduce/Eliminate

Low risk work, with low to moderate impact on the company's competitive advantage, is typically appropriate for less costly alternatives – automation, reduction or elimination.

PRACTICE TIP

To best leverage process and technology, the law department can ask itself the following questions:

- Do defined processes exist?
- Are they clearly understood?
- Are they used consistently?
- How could they be more efficient?
- Are there any redundancies?
- What is the current workflow?
- What administrative tasks and repetitive tasks could or should be automated?
- Who has or needs access to information in various applications?
- What collaboration and knowledge-sharing is there or should there be among the department's lawyers, business units, and outside counsel?
- As to technology,
 - What systems are in use?
 - What is their purpose?
 - How are they used?
 - Who uses them?
 - What are the limitations?
 - How much IT support is needed?

• Automate – work suitable for automation includes work of a repetitive nature for which processes are in place. Commercial systems are frequently available. Some types of work suitable for automation include:

- Contracts that can be completed on a self-service basis using pre-approved forms and guidelines;
- Discovery management; and
- Compliance training.

• Reduce – work can be reduced by outsourcing or leveraging non-lawyers or more junior/lower cost lawyers. Examples of work that may be reduced include:

- Immigration work, outsourced on a wholesale basis;
- Contract review leveraged to non-lawyers; and
- Advertising review leveraged to non-lawyers.

- Eliminate – work that is not truly “legal services” can be shifted back to the appropriate business unit. Examples include:
 - Human Resources work
 - Contract templates with defined escalation criteria, enabling trained internal clients to work more autonomously

ACC Resources

System Implementations - It's More than the Technology - Improve Adoption through People and Process (Webcast)

http://www.acc.com/education/webcasts/systemsimplementations_improveadoptionthroughpeopleandprocess.cfm

How to Assess Your Law Department's Technology Deployment

<http://www.acc.com/legalresources/resource.cfm?show=39532>

How to Assess Document Management Needs and Technology

<http://www.acc.com/legalresources/resource.cfm?show=38984>

Using Technology- Law Department Best Practices Survey

<http://www.acc.com/legalresources/resource.cfm?show=16303>

Strategic Implementation of Law Department Technologies

<http://www.acc.com/legalresources/resource.cfm?show=19843>

Case Study

Our case study law department identified a variety of areas where the work effort was not aligned with priorities, leading to its determination to reallocate work more appropriately.

Contracts. As illustrated in the two tables below, the assessment and prioritization revealed that attorneys were spending a disproportionate amount of time on lower value contracts, as defined by both the type of contract and dollar value.

Where is Attorney time being spent? (Case Study)

Need to question if Effort is appropriately aligned with Value

Value	Effort	Type of Contract/Work (FTE %)
Higher	27%	<ul style="list-style-type: none"> • Mergers and Acquisitions (9%) • General Advice and Counsel (6%) • Information Technology (6%) • Special Projects (3%) • Construction (1%) • Co-Manufacturing (1%) • Training to Business Partners (1%)
Medium	68%	<ul style="list-style-type: none"> • Advertising, Marketing and Promotion (23%) • Non-Disclosure/Confidentiality (13%) • Consulting (11%) • Sales and Distribution (11%) • Supply of Goods and Services (6%) • Real Estate (4%)
Lower	4%	<ul style="list-style-type: none"> • Outside Counsel Management (4%)

Where is time being spent?

Dollar Value	Attorneys				Paralegals			
	Cur. FTE %	Cur. FTE	Opt. FTE	Diff. FTE	Cur. FTE %	Cur. FTE	Opt. FTE	Diff. FTE
< \$100K	21%**	0.22	0.03	-0.19	61%	0.41	0.43	0.02
\$100K < \$500K	23%**	0.25	0.12	-0.13	32%	0.20	0.22	0.01
\$500K - \$1 Million	23%	0.25	0.31	0.06	11%	0.07	0.07	-
> \$1 Million	32%	0.36	0.16	-0.21	0%	-	-	-
Total	100%	1.09	0.62	-0.47	100%	0.68	0.72	0.04

* FTE based on 1,900 hours

* Total # of Pple will not equal the sum of the number by type because each person responded to multiple types of work

* 26 people entered a % of time for at least one of the Contracts subtypes on the Analysis tab

** Almost 50% of Attorney time on low dollar value contracts

Based on these findings, the law department determined that it needed to reduce the amount of attorney time spent on contracts by defining criteria for departmental involvement, increasing reliance on templates so that some of the work could be done by business-side personnel, and reallocating other work to paraprofessionals and outside counsel.

Intellectual property. The company's intellectual property group also presented opportunities for reallocation of work. The department's goal was to focus the use of its IP attorneys on higher value work rather than on work of medium and lesser value. The practice area attorneys felt that the volume

of day-to-day work was a barrier to working more closely with their business unit clients.

In the calibration phase, a major gap had been identified between leadership’s “higher value” prioritization of the review of unsolicited ideas and the practice group’s and individuals’ priority assignments. To close this gap, the department determined to develop a strategy and policy for unsolicited ideas to align with the company’s view of open innovation. The strategy would include details for solicitation, review, and response processes.

To free up attorney time to handle higher priority work, the department decided to reallocate some work of lesser value by sending some search work to outside counsel and by leveraging some work to paraprofessionals. Examples of some of these reallocations include the following:

1. *Trademark* - Reduction of lawyer time dedicated to trademark challenges and objections by eliminating some level of the effort to monitor watch services. The department decided to accomplish this by leveraging the work to paraprofessionals and reducing the overall amount of time dedicated to the effort through the use of standard policies, procedures and guidelines.
2. *Preliminary Searches* - Utilization of paraprofessionals for preliminary searches, with criteria to escalate questions to lawyers. For consistency, the department also decided to consolidate to a single, uniform tool and process for conducting both preliminary and full searches.
3. *Full searches* – Limitation of the number of full searches and opinions to those that are critical. The department also determined to conduct a cost/benefit analysis of bundling full searches and opinions to outside counsel on a retainer or flat fee basis.
4. *Advertising* - Expansion of trademark paraprofessional’s role to include initial advertising and packaging review with criteria to escalate questions to lawyers.

IMPLEMENTATION



How does the department make the transition to the new work allocation? Once priorities have been established and decisions have been made about the appropriate reallocation of work, the department must make the transition to the new work distribution. This is not a simple hand-off procedure – the best laid plans will be of no benefit if they cannot be smoothly implemented. Steps to successfully implementing the change include defining specific roles and responsibilities, reviewing and revising the departmental organization chart as appropriate, developing work distribution and work transition plans, and establishing a communications strategy.

Defining Roles and Responsibilities

If changes to roles and responsibilities are not clearly defined, they can cause uncertainty and reduce productivity. A roles and responsibilities matrix can be a useful tool to bring structure to work assignments by setting clear expectations. An example of a **roles and responsibilities matrix** for litigation is included in the **Appendix**.

PRACTICE TIP

Depending on the degree of change sought and the existing departmental mind-set, a successful change may require some overall changes in how the department is managed and operates. These can include the following:

- Willingness by the entire law department to limit involvement in Lower Value work.
- Willingness to delegate work.
- Creation of agreed upon criteria with business-side clients to define when and how the law department should be involved in business matters.
- Investment in additional training to position internal business-side clients to work more autonomously.
- Increased reliance on technology and standard processes to streamline lawyer and other personnel involvement and increase consistency.
- Change in both leadership approach and direct report responsibility acceptance. Clarification of roles, allowing:
 - Leadership to operate as experienced mentors and focus on knowledge transfer, risk judgment and practice development, and
 - Direct reports to assume more decision-making authority and appropriately delegate upward.
- Use of metrics to monitor on-going allocation of time to Higher, Medium and Lower value work.

Using the roles and responsibilities matrix as a starting point, the department can then develop specific job descriptions to further document roles and responsibilities, providing additional clarity.

Organizational Structure Review

Once roles and responsibilities have been defined, it is a good time to review the departmental organization chart to see if it will support the newly defined strategy. Changes may be necessary, and the department may need to develop not only a future organization structure but also a transitional structure with step-by-step explanations of the interim changes. These will clarify the proposed changes and their reasoning as well as serve as a tool for communicating changes to the department. Considerations for changing the organization structure can include the following:

- Alignment with the company structure
- Enhancement of client satisfaction
- Current internal resources

ACC Resources**Reconstructing the Legal Department for Productivity**

<http://www.acc.com/chapterleaders/upload/reconstructing-the-legal-department-for-productivity.pdf>

InfoPAKSM: Strategic Planning: Why a Plan Is Needed and How to Develop One (Huron Consulting Group)

<http://www.acc.com/legalresources/resource.cfm?show=699365>

Work Distribution Plan and Work Transition Plan

A work distribution plan describes the strategy for assigning existing and future work and for distribution among available internal and external resources. It can also specify how work will be distributed among firms when more than one firm provides service. The structure of the department's outside counsel management program will influence the distribution to external resources. An example of a work distribution plan follows.

Sample Work Distribution Plan

Matter Type	Internal/ External	External Work Distribution		
		Firm A	Firm B	Firm C
Corporate	20% / 80%	Firm A	Firm B	N/A
Commercial	70% / 30%	Firm A	Firm C	N/A
Environmental	60% / 40%	Firm A	Firm C	Firm C
Regulatory	25% / 75%	Firm D	Firm E	N/A
Litigation	30% / 70%	Firm A	Firm C	Firm C
Labor & Employment	80% / 20%	Firm B	Firm B	Firm B
Real Estate	65% / 35%	Firm A	Firm B	Firm C

To achieve the desired work distribution, it will be necessary to transfer work between internal personnel, between internal and external resources, or from one external resource to another. A transition plan will assist in the smooth migration of work. It can detail work to be transitioned, the timeframe for transition, and information expected to be provided by the transitioning individual.

Communication Plan

The most thoughtful, detailed strategy can be ineffective if it is not communicated properly to all involved parties. Communication builds buy-in, so a detailed communication plan is essential for each phase of the implementation. A good communication plan should answer the following questions:

- To whom will the information be communicated – department, clients, outside counsel, etc.?
- What will be communicated – organizational changes, roles and responsibilities, work transition and distribution plans, etc.?
- When will it be communicated – specific timeframes?
- How will it be communicated – in person, email, telephone, etc.?

MEASUREMENT



After implementing the plan, it is important to measure performance to make sure the desired results are being achieved. “What gets measured gets managed” is a tried and true axiom. With any new initiative, both the effort expended to implement change and the impact of the change need to be measured.

Measuring performance will:

- Communicate the department’s specific objectives and direction;
- Demonstrate the value of the effort;
- Promote the desired behavior and drive continuous improvement; and
- Justify current or future spending and staffing levels.

Measurement against established metrics will allow the law department to test whether the targeted changes are being made and their effectiveness, and to tweak the plan if necessary to achieve the desired results. The specific metrics will depend on the individual program, but the goal is to measure both the effort and the impact of the program.

Effort. Measuring effort demonstrates progress in implementing the defined strategy and will keep team members focused on the key tasks. Effort measurements can also be used to communicate to leadership that change cannot happen overnight but requires a series of steps to achieve the desired impact.

Impact. While it can be more difficult to measure impact, impact measurements tend to be more substantive in nature and therefore more meaningful to the organization. The focus is on the value of the change in work allocation, e.g., lower cost, increased quality, or more time spent on higher value work. Impact measurements can be considered in terms of the results related to:

- The satisfaction and career development of the individuals involved;
- The practice group efficiency and cost effectiveness;
- The law department’s contribution to the company; and
- The company’s ability to achieve its strategic goals.

Whatever specific measurements are developed, they should (1) define the expected results; (2) measure the current state; (3) set improvement goals; and (4) measure progress towards the goal.

ACC Resources

How to Utilize Metrics

<http://www.acc.com/legalresources/resource.cfm?show=745892>

How to Align Competency and Performance Measures

<http://www.acc.com/legalresources/resource.cfm?show=38896>

Developing and Implementing Law Department Metrics that Work

<http://www.acc.com/community/1del/DevelopingImplementingLawDepartmentMetricsThat-Work.cfm>

Case study

Again we look to our case study law department for some potential metrics to measure progress toward work reallocation and to measure the impact of these changes.

Consumer complaints. Recall that the value calibration for our case study company revealed that the individual attorneys initially placed considerable value on escalating consumer complaints, an area to which department leadership assigned a lower value. One element of the action plan was to improve training of the customer service department regarding how to deal with these complaints. To measure **effort** toward that goal, the department could assess whether the training was actually being done, e.g., measuring how many training sessions were conducted per year, and how many or what proportion of the customer service department received training. The **impact** measurement could assess the number of escalating complaints or the number of matters requiring legal department involvement, beginning with baseline numbers and over time measuring whether these numbers decreased toward targets.

Contracts. The contract group targeted reduced involvement of the legal department in lower risk or lower dollar value claims. **Effort** metrics might address whether standard templates were developed or updated for various types of contracts, or the amount of training provided to business-side personnel. **Impact** measurements could assess the number of individual contracts requiring attorney involvement, beginning with a baseline and measuring progress over time toward the targeted numbers.

CONCLUSION

Following these steps – assessment of legal work and who is doing the work, prioritization of the work according to its value to the company and allocation of work to align with those priorities, then systematically implementing the reallocation and measuring both the effort and impact over time – will allow a law department to focus its internal efforts on work that is of true strategic value to the company and to allocate other work in an efficient and cost-effective manner. As stated at the beginning of this Primer, the process is a journey that takes time. The best results will be achieved with regular re-assessment and measurement of progress as that journey progresses.

APPENDICES

Sample Interview Questions

Law Department Interview Questions

- Who are your clients?
- How would you describe the culture of the Law Department?
- What percent of the work is Proactive/Preventative vs. Reactive? Please provide examples.
- What changes would you recommend to move toward doing more proactive work?
- How do you determine when to use outside counsel?
- How would you describe the relationship with outside counsel?
- What types of internal resources are available to you? To your team? (e.g., Administrative staff, dedicated Project, IT, HR staff)
- How do you use Paralegals/Administrative Staff in your work?
- How is your performance measured? How do you measure the performance of your reports?
- How would you rate your client's satisfaction levels (using a scale of 1-5, with 1 as lowest and 5 as highest)? Please explain.
- Are there departmental processes and/or use of technology with regard to:
 - Matter Management
 - Document Management
 - Records Management
 - Contracts Management
 - Corporate Entity Management
 - Time Management
 - Financial Management
- What additional processes and/or technology could improve the productivity and effectiveness of the Department?
- What is the Law Department doing right? What should the Law Department do differently?

Sample Workload Survey

Master	Master Sub Type	% Spent	Total # Hours Automatically Calculated	Risk Potential (Low) 1-6 (High)
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1800 = Annual FTE Hours

0% Total Time Spent Must = 100%
100 Remaining % Must = 0%

Litigation	0	0	
Breach of		0	
Claim		0	
Collections/Credit		0	
Commerce		0	
Employment		0	
Personal		0	
Product		0	
Property		0	
Waters		0	
Wrongful		0	
Type in Nam of Other		0	

Commercial	0	0	
Contract		0	
Contract		0	
Contract - Software		0	
Contract		0	
Fin/Corp.		0	
Fin/Corp.		0	
Fin/Corp.		0	
Fin/Corp.		0	
Fin/Corp. - Trust		0	
Fin/Corp.		0	
Fin/Corp.		0	
IP		0	
IP		0	
IP		0	
Real Estate		0	
Real Estate - Right of		0	
Real Estate		0	
Real Estate		0	
Real Estate		0	
Real Estate		0	
Type in Name of Other		0	

Business Client Interview Questions

- What is your role/scope at [Company]?
- What are your legal needs/challenges?
- Who do you work with in the Law Department?
- What is your decision making process in determining when to get the Law Department involved?
- Are there any challenges in this process? If so, what are they?
- What is the Law Department doing right? What should the Law Department do differently?
- What, if any, interaction do you have with outside counsel? Do you hire outside counsel directly?
- How would you rate your satisfaction with the delivery of legal services? (Scale of 1-10, 1 is poor 10 is exceptional)
- How would you recommend that the Law Department ensure quality and accountability with regard to attorney work-product?

Roles and Responsibilities Matrix (Litigation Sample)

Type of Work	Sourcing Strategy	Primary Attorney	Paralegal	Admin/ Support	Outside Counsel
<p>Unique Specialty (High Impact/ High Effort)</p> <p>Material Litigation Investigations</p>	Primarily handled by (Selected Firm or Preferred Provider) with close in-house attorney supervision and involvement	<ul style="list-style-type: none"> • Develop and lead strategy to ensure resolution is consistent with corporate objectives. • Act as primary contract with internal management, business clients and outside counsel. • Respond to requests for information and data with assistance from Paralegal and Admin. • Oversee maintenance of internal file. • Work with outside counsel to develop budget and prepare early case assessment. • Manage outside counsel budget. • Draft legal hold and ensure compliance with retention. • Evaluate disclosure and reserve threshold and work with accounting/ finance to establish as necessary. • Review and comment on all pleadings and correspondence prepared by outside counsel 	<ul style="list-style-type: none"> • Respond to requests of information and data under the direction of Primary Atty's. • Maintain physical and electronic files. • Maintain legal holds list under direction of Primary Atty's. • Act as primary contact for legal holds process. • Act as liaison for matters which are considered more than routine, as well as, assist in day to day maintenance. • Provide assistance for document and/or data review under the direction of Primary Atty's. 	<ul style="list-style-type: none"> • Manage invoicing process for assigned matters. • Upload documents to document management system. • Open matters in matter management system and input matter information as appropriate. • Draft attorney correspondence and transmittal letters. • Coordinate administrative issues with outside counsel's administrative contact. • Handle all necessary mailings courier services and copy services associated with in-house matter management. • Create an submit attorney expense reports. 	Under supervision of Primary Attorney, implement case strategy consistent with business objectives, prepare milestone matter budgets and early case assessments and regularly communicate with Primary Attorney on all active matters.
<p>Experiential (High Impact/Low Effort) (Low Impact/ High Effort)</p> <p>Commercial Litigation General Litigation</p>	Handled by (Selected Firm or Preferred Provider) with in-house attorney strategic involvement				
<p>Commodity (Low Impact/Low Effort)</p> <p>Advice & Counsel</p>	Primarily/Exclusively handled internally	<p>In addition to above responsibilities where appropriate:</p> <ul style="list-style-type: none"> • Provide advice and counsel regarding various issues. • Partner with business clients to develop strategy to avoid litigation or minimize risk of exposure. • Partner with key internal clients on ordinary course issues 	<ul style="list-style-type: none"> • Participate in training/ update sessions for department tools/ systems. • Provide notary services. • Provide general assistance to Primary Atty's whenever needed and perform one off tasks as they arise. 		Advise and assist Primary Attorney where necessary.



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