How to Formally Evaluate Outside Counsel's Performance to Improve Service

- Overview
    - Why even do this – what benefits arise?
    - Define and measure performance expectations . . . create a scorecard
    - Communicate with outside counsel . . . inform them of the new approach
    - Devise a process for internal assessment and external performance review
    - Assess the data and take action to improve performance

- Why even do this – what benefits arise?
    - Good inside counsel already evaluate law firm performance on their own – why do it "formally," in a unified way?
    - For several reasons:
        - To arrive at consistent definitions of success across the entire Legal Department, so all firms know how quality is defined and measured in serving the client. This gives them a focal point to help shape behavior.
        - To help inside counsel understand what is expected of them in terms of quality management / oversight of law firm performance (e.g. Exactly what does quality budget management look like?) – again, a focal point to help shape behavior
        - To capture input from the various client team members who interact with outside counsel and possess insight on the quality of outside counsel's performance. These can include, for example: front line attorneys, practice group leaders, the General Counsel, business people, and various legal department managers who interact with the law firms.
        - To enable periodic discussions about law firm performance, which can help to identify and address issues as they arise

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- To create a database of outside counsel expertise and performance evaluations to help drive assignment decisions in the future

  (Practice tip: the formal evaluations and subsequent assessments can also help in addressing rate increase requests. By comparing evaluation scores of "like" firms, a client can craft reference points to determine whether a rate increase request is in line with what the client is seeing from similarly situated firms.)

- Define and measure performance expectations . . . create a scorecard
  - What are the domains to be measured? That is, what are the different aspects of performance in which outside counsel must excel to deliver high quality services to the client?
  - Here is a suggested framework . . .
    - Understands client objectives/expectations (e.g. confirms understanding of engagement objectives and milestones, reflectively 'reads back' questions and task assignments to ensure client and firm are in synch)
    - Expertise (e.g. strong knowledge of substantive and procedural law, as well as judges, venues, local juries, opposing counsel, experts, etc.)
    - Responsiveness/Communications (e.g. timely responses to inquiries and deadlines; reasonable availability of attorneys; sufficient lead time for Legal Department review and comment on documents; keeps client apprised of progress and developments, responsive to any performance-related concerns client may have raised)
    - Efficiency/Process Management (e.g. tasks are completed in an appropriate amount of time; tasks are performed at the most cost effective level; work product delivered is good value relative to the amount of time spent or amount of money billed)
    - Predictable Cost/Budgeting Skills (e.g. Budget is communicated and agreed upon for each matter, project is managed within budget, variance from budget is communicated promptly and approvals are obtained)
    - Results Delivered/Execution (e.g. excellent outcome, objectives are met)

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- Compatibility with company values (e.g. Diversity, Pro Bono, Preventive Lawyering, Six Sigma, continuous improvement, effective use of technology)

- Hire again? (e.g. taking all of the above into account, be sure to pause and answer the questions: would we hire this firm again?)

ACC Members can perform firm evaluations, for internal/firm discussion and for the benefit of fellow members at www.acc.com/valueindex. The ACC Value Index is also a great resource to find valued firms.

- What are the best ways to measure outside counsel performance across the various domains? Must decide the extent to which it is objective, subjective, or come combination of both.

  - Sample objective measures focused on outcomes:

    - Win the trial or appeal
    - Close the deal
    - Settle the matter for less than X dollars
    - Conclude the litigation within X number of months

    (Practice tip: early case assessment and pre-established definitions of success can be very helpful here.)

  - Sample objective measures focused on quality / financial management:

    - Perform component piece of work X at a cost of Y dollars
    - Submit budgets and forecasts on time, as requested
    - Forecast expenditures with reasonable accuracy
    - Complete the work at or below the budgeted amount (adjusted as necessary to account for unexpected changes in assumptions)
    - Apply discounts correctly

  - Subjective measures include:

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- Inspire confidence
- Think creatively
- Respond to inquiries in timely fashion
- Perform work efficiently
- Submit quality budgets
- Adhere to the work plan
- Staff the matter leanly

[**Practice tip**: It is often most helpful to combine a subjective and objective approach – both in terms of what is measured, and how the evaluation data are captured. For each question, consider providing evaluators blank spaces for written comments, plus a numerical scale to score the firm on that question (e.g. 1 = Poor; 2-Fair; 3-Good; 4-Very Good; 5- Excellent).]

- Communicate with outside counsel . . . . . inform them of the new approach
    - Explain what the Legal Department is doing in terms of formal performance evaluations – any why
    - Describe the domains to be measured, and the information to be tracked
        - Consider sharing a blank scorecard with them
    - Explain how you will be sharing performance feedback with them, and discussing ways to improve

- Devise a process for the internal assessment & external performance review
    - Identify a person responsible for managing this process internally
        - Appoint someone – perhaps an attorney who works extensively with outside counsel

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        - Make success on this project part of goals and objectives – for that person and each member of the in-house team who will be evaluating outside counsel

    - Determine how often performance feedback will be solicited

        - Every other month? Quarterly? Semi-annually? Upon matter completion? (Suggest quarterly)

    - Establish the channel in-house attorneys will use to convey their evaluations

        - Paper? Electronic system? (Suggest electronically via Excel, Access or Ariba – no customized software is required.)

        - ACC Members are encouraged to submit share evaluations with their in-house counsel peers on the ACC Value Index (www.acc.com/valueindex)

    - Decide what will be done with the aggregated information

        - Suggest creating summary reports to share internally with: (1) in-house attorneys (so they can see which firms perform particularly well in certain areas . . . to keep in mind for future assignments), and (2) with Legal Department leadership, so they can see how firms are performing across the entire portfolio.

    - Determine how the department will share relevant information with outside counsel (suggest in-person for key firms)

        - Provide an overview document with scores and select quotes (annually is a good baseline frequency – or more frequently as needed to address performance issues)

        - Consider showing outside counsel where they stand relative to the blinded average score of their peer group

        - Ask outside counsel how they plan to improve performance in the indicated areas

- Assess the data and use it to get better results

    - Plot performance scores to assess comparative law firm performance

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- Consider a 4 quadrant matrix showing:
    - Firm's average blended rate on the vertical axis,
    - Firm's average evaluation score on the horizontal axis, and
    - Amount of total spend per firm (depicted by the size of the dot / circle)
- Firms toward the bottom right quadrant (higher performance scores, lower cost) would appear to be delivering better value as opposed to firms toward the top left quadrant (lower performance scores, higher cost)

o Determine what you will do with all of this information – what impact will it have?

- Address performance issues in the short term
- Help drive assignment decisions in the long term
- Negotiate more effectively with the firms given their relative standing

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