

ACC Value Challenge

SUMMARY REPORT SAN FRANCISCO SESSION- July 30, 2009

A. Redesign legal services: participants at the session were asked to identify how they would restructure and provide legal services if the client's budget was cut in half.

IDEAS /ISSUES IDENTIFIED BY THE GROUP:

1. **Identify what the work is and what the business clients need-**
 - look at what is currently on the law department's plate;
 - discuss with business clients what work needs to be done;
 - discuss what success means and what the outputs will be;
 - determine which matters have the highest legal spend.

2. **Deconstruct processes and identify opportunities to eliminate work and change staffing mix to save costs and enhance efficiencies.**

3. **Determine appropriate staffing mix inside and out-** assess the current staffing mix and whether there are opportunities to change the mix to enhance efficiencies and save costs.
 - consider the need for the 'right person, right time, right level' (and that a more experienced and expensive person could be the right resource if that means enhanced efficiencies and good results);
 - determine whether partner-associate ratios are right;
 - assess whether certain work may be brought in-house;
 - consider possible roles for contract lawyers (maybe engaged directly by the law department with a set fee for outside counsel to perform supervisory role);
 - leverage use of non-lawyers;
 - explore secondments of newer lawyers (who could be brought in at lower salaries with lower billable hour expectations and a greater emphasis on training); notion that law firms and law departments need to be sensitive to not creating a second tier; maybe consider this to be the 'premier client track' arrangement.

4. **Perform a risk assessment; engage in strategic discussions-** consider how the law department and law firm would balance risk and who would bear the risk; look for ways to incentivize/institutionalize risk-taking; consider shared risk model. Determine whether certain matters should be settled or maybe even not pursued. Determine whether business clients can handle certain matters with the right tools.

5. **Re-balance/adjust mix of external legal service providers-**explore whether the right firms or legal service providers are handling the work. Consider whether certain types of work could be handled by non-law firm legal service providers. Consider whether efficiencies may be gained by providing firms with portfolios of work. Evaluate opportunities to send work to lower cost jurisdictions (on or off-shore); consider whether ‘national counsel’ or ‘regional counsel’ relationships can help enhance efficiencies and save costs.

6. **Maximize use of relationship partners-** use relationship partners as ‘general contractors’ to help look at the best cost and allocation of staffing and services; consider whether a set fee is appropriate to help provide incentives for relationship partners in this role.

7. **Explore technology efficiency/opportunities-** consider whether contracts can be automated; clients can receive tools to perform work that may not necessarily require lawyers to do first drafts, etc.

8. **Find opportunities to bundle vendor services-** determine whether any opportunities for efficiencies of cost/scale may be achieved by bundling services across the organization.

9. **Explore opportunities for law departments to pool resources to access law firms-** to provide regulatory update services or other services—to the pool or through a trade association.

10. **Review insurance portfolios to see if any products exist to shift costs.**

11. **Consider whether clients can offer firms non-monetary value for services-** examples include referrals to firms, etc.

B. Sample Success Stories: Several participants offered brief insights into practices their law departments/firms are implementing that focus on value. Following are summaries of these practices:

- ***Preferred Provider Summit-*** The Allstate Corporation went through a convergence process, starting with hundreds of law firms and

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identifying a resulting preferred network of 13 firms to handle 90% of the company's corporate legal work. Representatives from the 13 firms were invited to attend a day-long 'summit' to get a better sense of key initiatives, operating philosophies, pressure points and issues of importance to the company and law department, including diversity and flexible work options. The CEO, CFO and Head of the Property Casualty also participated in the conversations. The idea was to enhance the firms' understanding on the front end so that the firms can deliver better legal services.

- ***Deconstructing/segmenting transaction services-*** The Clorox company's law department currently has around 50% of its legal services performed on an alternative fee arrangement. In specific, the General Counsel provided a summary of how services were structured for an acquisition transaction: first, client expectations regarding legal service providers were re-set; and second, the law department identified various phases of the transaction and related costs tied to outcomes. End result was significant cost savings on legal services and value since costs were tied to results.
- ***Law firm fellowship approach-*** As a by-product of the ACC Value Challenge, the law firm of Drinker Biddle & Reath created a Value Task Force within the firm to evaluate proposed initiatives and decisions within the firm to assess how they impact and deliver value to clients. In specific, the law firm revamped its program for incoming first-year associates: rather than deferring start dates for first years (viewed by the firm as not adding value since that would simply delay the on boarding of first-years who would come to the firm without enhanced training but at a later date—a practice that doesn't add value to clients), the firm decreased salaries, relaxed billable hour requirements and is implementing a training program that includes structured client visits, shadowing more experienced lawyers and learning about client value.
- ***Multi-disciplinary teams-*** The law firm of Allen Matkins is implementing practices that include putting together multi-disciplinary teams of professionals to provide services to clients. An example includes bringing together accountants, construction professionals and lawyers to assess for lenders (that may now have

troubled projects within their portfolios) whether/how to proceed with certain projects, etc.

C. Alternative Fee Structures: participants were asked to identify how they would determine how to structure and manage fees and firm relationships on an alternative fee structure basis for the law department's litigation, employment and intellectual property portfolios.

1. **Identify key outside firms who do this work for the law department and what types of engagements exist-** organize information in 'buckets' – consider type of firm, firm culture, compensation approach; then bid work or engage firms based on existing relationships.
2. **Identify necessary information; review historical data from law department and firms to value matters-** law departments have historical information on what types of matters (and sometimes phases of matters) cost; law firms also have the ability to pull this data for services provided across a broad spectrum of clients.
3. **Define the underlying assumptions of the relationship; relationships are key** -define what the relationship/structure will look like; include shared risk arrangements (perhaps collars with shared upside or downside risk) whether there will be opportunities to re-evaluate the relationship, etc. Ensure that the people involved in structuring the relationship are vested in ensuring that the arrangement works.
4. **Implementation-** notion that 'one size does not fit all;' need to consider whether the move to alternative fee structures in this scenario should be all at once or over time.
5. **Types of alternative fee arrangements-** includes broad spectrum; some specific ideas noted are: full contingency fee arrangement; partial contingency fee arrangement; fixed fees for matters; retainers paid on monthly or quarterly basis; significant discount with a holdback (quarterly or at the end of the project; considerations include paying for performance compared to budget or results).
6. **Identify levers within the relationship; everyone needs to take more risks-** idea that both law departments and law firms need to take more risks (both in terms of efficiencies and results); portfolios of work can help law firms with comfort on risk taking.
7. **Firms need to consider how they value fixed fee work-** notion that there may need to be a paradigm shift within firms because if service providers are judged by those within the firm who are not involved in the arrangement and held to

performance/compensation standard of realization against standard rates, this may not work for lawyers within the firm providing services on an alternative fee basis.

D. Preferred Provider Relationships: participants were asked how to structure programs to select preferred providers.

1. **Identify why the law department is interested in implementing a preferred provider program; are there any sacred cows-** understand and discuss up front the goals of moving to a preferred provider network (costs, outcomes, etc.).
2. **Define the legal needs for this type of relationship; consider ‘slicing the need’-** needs to happen early on and up front and be clearly scoped; perhaps ‘bet-the-company’ matters are not within the scope of these relationships
3. **Procurement department- consider whether to involve-** determine whether/when to involve procurement professionals in the process (broad spectrum of views on this); consider whether need RFI in addition to an RFP.
4. **Identify inventories of firms/matters-** who are the firms that are currently handling the work, what is the work, how is it being performed, what are the results, etc.
5. **Select firms to invite to participate-**should all of the existing firms be invited or only some; should new firms be invited to respond to the RFP; face-to-face meetings are important—firms should demonstrate knowledge and understanding of the company and its culture (more than what can read in the annual report) and should be excited and energetic.
6. **Peer outreach-** reach out to peers at other companies that may have recently gone through a preferred provider selection effort; consider ACC resources to help inform the process.
7. **Internal communications plan-**as part of implementation, law departments should consider creating an internal communications plan to assist with change management; understand the audience for the plan and tailor accordingly.
8. **Develop an RFP-** establish the process for creating and implementing the RFP; determine whether it will relate to new matters or include existing matters; give and ask for enough information that gives outside counsel the ability to properly respond.

Suggestions for information that companies might provide include:

- identify the nature, volume, historical costs of work
- define the selection criteria and how it is weighted; what is most important
- describe electronic storage information protocols; how the law department will keep information provided in response to the RFP
- provide resumes of lawyers within the in-house law department- consider providing these as part of the RFP so that outside counsel has a better sense of who they will be working with and the available in-house expertise

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-describe important characteristics of the firm- such as diversity, demographics, geography, etc.

-state relationship expectations

Suggestions for information that firms might provide include:

-caliber and quality of people firm would staff on the matter/portfolio and bench strength

-rate structure and flexibility

-history with and willingness to work on an alternative fee basis

-historical data/costs for handling similar work

-information on geographic span, diversity, flexible hour arrangements

-knowledge/expertise of the company (including its culture) and the industry

9. **Exceptions policy-** determine whether the law department needs an ‘exceptions policy’ so that in-house lawyers know how to handle matters that may require going out of network.