

## Legal Spend and Matter Management: Best Practices for Effectively Working with Outside Counsel

Version 2.5

Legal spend and matter management systems have grown to become one of the most powerful tools used by legal department in their Legal Project Management arsenal to increase efficiency and lower costs. Through our experience, joining capabilities with strong outside counsel and third-party vendors are imperative for corporate legal departments to work more effectively and remain competitive in today's market. The savings our clients have experienced in recent years through this method of project management improvement adds up to multiple millions of dollars in ROI during their first year.

These systems require a sound implementation that addresses each legal department's specific requirements, with an eye to what others have done and are doing with their own installation. This experience adds greater value to each new client. Law departments are unique in many ways including personnel, process, corporate culture, and leadership expertise. Using these intelligently to configure a plan for building, measuring, and improving the process provides unequivocal payback when working at maximum efficiently with outside counsel. The success of any legal spend and matter management system can hinge on this.

Basic corporate legal requirements often demand outside counsel adhere to established industry rules and/or standards. All aspects of the electronic process benefit from a more proactive approach where a legal service provider, like doeLEGAL, can help corporate clients navigate towards shared responsibility, workload, and success with all outside vendors in a collaborative environment. The wealth and breadth of valuable information published and from consultants describing these benefits, speaks volumes.

Rees Morrison, a recognized expert in legal department management, points out that there is a definite lack of defined "best practices" for today's law departments. *"We can do no better than identify a solid practice at a given time for a specific context"*, says Rees. With that said, we all believe there are practices employed with greater success than others, making it useful to collect and pass these back to legal spend and matter management owners and prospective owners. *"The notion of paying it forward by passing on the shared successes from one client to the next is one of the driving forces behind our Legal Enterprise Collaboration model"*, said Tom Russo, President and CEO of doeLEGAL.

The practices shared in this whitepaper are open to interpretation, but they serve as a useful starting point for designing your system implementation, or for optimizing your existing implementation. This is by no means a complete list, only the starting point. As such, we will be adding to and publishing additional "Useful Practices" over time. If you have your own best or useful practice to share, please send it to us for inclusion. We invite anyone with great concepts to join us in our LinkedIn Group called [Legal Enterprise Collaboration](#) to openly discuss new ideas with other thought leaders.

Practice	Guidance
<b>Outside Counsel Guidelines</b>	
1. Document outside counsel guidelines (OCGs) and publish them to a central location accessible by firms and in-house	Perform a web search for "outside counsel guidelines" and find good examples of what others have done
2. Include time and billing guidelines as part of your OCGs	Be clear about what you will and will not pay for and be strict about the consequences for violations. Build these guidelines into your spend management rules engine
3. Regularly revisit and modify OCGs	At least annually
4. Your OCGs should take preference over retention letters	Sign the retention letter of the law firm but send (better yet reference your centrally located OCGs) the department's own guidelines and state that where there are any conflicts, your guidelines take precedence
5. Define the goals of the OCGs	Ex. Optimize relationship, decrease costs
6. Set regular meetings with OC in order to review guidelines, refine them if needed, to review firm performance and to reset rates, agreements and terms of engagement as required.	OCGs cannot be one sided, they must be a contract between the parties which is renegotiated on a regular basis. But remember, the law department is the buyer and its needs should be primary.
7. OCG Tips from Rees Morrison <ul style="list-style-type: none"> <li>• Shorten them. Even if you keep all of the content and structure of your existing guidelines, you can make them briefer. Cut verbiage.</li> <li>• Simplify the language and be direct in your writing. Guidelines are not the place for complicated circumlocutions. "Bill us each month if your fees on the matter exceed \$1,000."</li> <li>• Delete all the high sounding, throat clearing. Guidelines that go on and on about the glories of collaborative achievement and world-class, cost-effective productivity waste trees. Partners skim them and look for the meat.</li> <li>• Consider the order of your points. One organizing device is to state your points roughly in the chronological order of a normal retention of a law firm.</li> <li>• Avoid attachments and footnotes. Attachments, because they get separated from the agreement; footnotes, because that is pompous and reeks of law review.</li> <li>• Project how much work you are putting on the law firm as a consequence of your guidelines. Then compare that effort to what you hope to gain from it. Assume that your department will eventually, somehow, absorb the firm's cost of compliance. So, do not make unreasonable demands if you are not going to hold up your end of the bargain (See my posts of Jan. 10, 2008 on interventions in law firm management.).</li> <li>• Decide whether you are writing a constitution or a civil code. Some things may not need to be spelled out.</li> </ul>	

- Review the guidelines every few months, especially after a law firm proposes a fair and appropriate change .
- Constantly remind the lawyers in the department about the guidelines and their obligation to enforce them.

**Other guidance:**

- Model your OCGs within your ebilling/spend management system. Your vendor can automate many of your guidelines with their rules engine

<b>Planning</b>	
8. Require a case plan and budget must be submitted within X days of initiation of a matter	Vendors can check this with a business rule and send reminders/alerts and/or prevent submission of invoices or warn if these are not in place within X days
9. Require a conflict check	Require that OC deliver a conflict check for a matter before billings begin. Simple checkbox.
10. Require a risk profile for the matter	Require that outside counsel (OC) and internal staff complete a matter risk profile within X days of matter initiation
<b>Matter Management</b>	
11. Right source matter staffing	Decide in advance what kinds of work get done in-house v. outsource. For outsourced matters, have a predefined list of firms you will work with along with pre-negotiated rates and fee arrangements. Use existing spend management and other data to understand each firm's performance and modify your list of firms, rates and arrangements based on that information.
12. Regular matter status reporting	Require that OC issue a case/matter report at least X days prior to invoice submission. This would be a function of allowing OC access to a matter update screen. Once the invoice is received, check whether the report has been entered by OC and warn or reject invoices if not
13. After Action Assessment	Require that in-house evaluate and grade a firm before closing the matter. Also require an evaluation by your staff of how the matter progressed between OC and in-house.
14. Require a case or matter plan for at least your	A case plan and budget go hand in hand.

complex or high risk matters	A good budget form will also allow for simultaneous development of the case plan
<b>Spend Management</b>	
15. If experts are to be used, or if any particular UTBMS expense item is billed in excess of \$X, apply a warning so that you can review the expense or check to see whether a particular expert was pre-approved before you approve an invoice	
16. Mandate firms submit regular (annual, bi-annual) timekeeper rate sheets for approval	The vendor should facilitate electronic timekeeper submission and updates.
17. Mandate establishment of budgets for matters	Whether you mandate budgets for all or just some of your matters, identify what budget form will be used and for which matters. Though the use of budgets varies wildly, those who use them universally find them useful and spend management systems make budgeting easy. To request a copy of doeLEGAL's budget/case plan spreadsheet <a href="#">click here</a> .
18. Establish reasonable expense and disbursement guidelines as part of OCGs	Discuss these with some of your firms to reality check your view of "reasonable"
19. Place limitations on law firm staffing practices	Ex. You may not want firms training associates on your dime.
20. Mandate a billing frequency	Monthly billing with one invoice per matter is routine. Also set a rule that if time is not submitted within X days of a time entry (stale time) that the entry will be warned on and may be rejected
21. Require supporting documentation	The IRS requires you document many expense items that you pay for and so require firms to submit this "back-up" with their invoice submission
22. Share vendor preferences and require firms use of your national contracts	Electronic research, copy services, shipping, etc.
23. Use a standard bill format	If electronic, LEDES is the only standard. Don't deviate from the standard. If hard copy, share your preferences with firms
24. Benchmark billing rates based on industry benchmarks and your own historical data	Once you begin to accumulate billing data in your spend management system you can begin to understand what rates you have paid in order to decide what to pay in the future
25. Establish a reasonable fee arrangement (Hourly or alternative fee arrangement (AFA))	Whether hourly or using an alternative fee mechanism, pre-establish these arrangements from which you will

	choose, discuss and agree the structure with firms, and finally automate these AFAs within your spend management system
26. Initiate law firm self-servicing through your spend management vendor	Your vendor should have the ability to turn over reports, views, and some data entry to law firms. The more work and information that you can give to firms, the fewer calls you will get and you will also be able to shift some of your work to firms. E.g. Draft timekeeper maintenance, budget and case plan drafting, matter status updates
27. Quick pay and bulk discounts	Your firms and vendors highly value being paid quickly. In fact, most vendors have already built in payment delays into their hourly rates. If you can pay invoices more quickly, recoup the firm's time value of money increase in the form of quick pay discounts.
28. Establish a set of law firm metrics, build them into your spend management system and work with firms to ensure compliance. By example: <ul style="list-style-type: none"> <li>• How frequently are budgets, case plans and matter updates late?</li> <li>• How frequently does counsel exceed budget?</li> <li>• How does a given firm's cost and outcome performance compare to peers on similar matters?</li> </ul>	The metrics selected should be selected in order to refine outcomes, not in order to punish firms. These metrics should be available to the firm so that you can work together to achieve pre-defined results.

As we mentioned, this list is only a starting point to build your own foundation of collaborative workflow. There remain many other sound practices in use which are not described here. If you have your own thoughts or best/useful practices to share, please send them to us. We will continue to collect these and reflect them back to the marketplace with attribution to those who share their ideas. Send your ideas to [doeLEGAL at info@doelegal.com](mailto:info@doelegal.com), or feel free to call us at 302-798-7500.

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