



**TOPICS COVERED**

// *Program Advice & Strategy*

I've learned through experience that it can be hard to let go of a cherished initiative or goal. Lawyers are typically conservative by nature. I'm no exception. As in-house counsel, we learn to be vigilant stewards and protectors of the companies that employ us. For most of my in-house career, practicing law was the most important aspect of my job. No longer is that the case for me or for my team.

When recruiting lawyers, I look for people who bring an entrepreneurial approach to the practice of law...business people who happen to have a law degree. People whose attitudes and demeanor are aligned with the businesses they will serve. Admittedly, this is a vast change from the talent I recruited years ago. Back then, I looked for lawyers. Now, I want people who deeply understand that we are an organization run by entrepreneurs who put customer service at the forefront of all that we do as an organization, and we expect to be held accountable for our performance.

It is incumbent on today's GCs, and those aspiring to be such, to communicate the value their teams deliver to the businesses they serve. Business leaders typically report on key metrics that seek to measure the success of their operations: P&L results, gross and net revenue, EBIT, units sold/installed, customer service feedback, among others. It should be no different with the legal department. Most everything we do as in-house counsel helps drive sales, support or enhance customer service and protect the bottom line. Beyond the lawsuits fought, cases won or settled, deals closed and counsel offered, today's GC should evaluate what performance standards or metrics will help communicate that value. It's an entrepreneurial approach to the practice of law, fueled by the role of the GC as a business leader, not just a lawyer. I've implemented successfully a number of such metrics since becoming a GC, some of which are mentioned later in this article.

**Changing Dynamics of the Legal Industry**

Corporate law departments of decades past primarily acted as liaisons between their organizations and the company's outside counsel. Legal work was almost entirely outsourced, and the vast majority of legal spend was devoted to outside counsel. With growing sophistication,

*Business leaders typically report on key metrics that seek to measure the success of their operations: P&L results, gross and net revenue, EBIT, units sold/installed, customer service feedback, among others. It should be no different with the legal department.*

greater business savvy and new budget models, legal departments today insource the majority of their work. The ACC Chief Legal Officers (CLO) 2016 Survey found that among more than 1,300 Chief Legal Officers surveyed, an average of 53 percent of their budget was spent on internal resources, while the remaining 47 percent was spent on external counsel fees. (See figure 1 below)

Complementing insourcing is the evolving in-house attitude towards outside counsel. Entrepreneurial GCs are holding their external counsel accountable. They are evaluating outside lawyers much in the same way they do with their internal team, with performance reviews and agreed-upon goals and standards. Performance metrics, set initially and then reviewed at consistent intervals, align objectives and yield the intelligence; law departments need to be change agents for the businesses they serve, ultimately functioning as the foundation for measuring their own value.

**Getting Started with Metrics**

Despite general increases in total legal spend in the US, the GC is certainly not immune from senior management's continuing demands to "do more with less." Knowing that change and process improvement starts with metrics is not enough. Metrics need to remain consistent and objective in order to sustainably track progress.

In my department, one of our priorities has been the overhaul of our outside

counsel hiring and evaluation processes. When I joined the organization in 2009, the number of firms with whom we worked was unmanageable. We had no standards for hiring and no means of evaluating which firm was performing well and which ones were not. We had no visibility to whether we were investing in high or low performing firms. So, we changed our methods. It wasn't easy and we got significant pushback from a number of firms. Our methodology was relatively simple and was based on an approach I developed and implemented prior to joining DHL. The overhaul proved to be challenging. First, our small team was doing their best to keep up with a growing workload. Second, we had no technology to assist us. Everything about our evaluation process was paper-based and proved to be time-consuming.

Our approach was (and still is) to rate each of our law firms on seven key performance indicators (KPIs; metrics) each of which are clearly defined:

1. *Understands our Objectives/Expectations*
2. *Expertise*
3. *Responsiveness/Communication*
4. *Efficiency/Process Management*
5. *Predictable Cost/Budgeting*
6. *Results Delivered/Execution*
7. *Compatibility with Company Values*

Members of my team who work with each firm assign a score of 1 (does not meet expectations) to 5 (far exceeds expectations) for each KPI. We flag for further review any firm that has an average aggregate score below a 3 (fully meets expectations).

There's a method behind the metrics, and the scores are not the only factor for outside firms. But, the data frame objective conversations about performance, goals, billing rates and continuous improvement actions. Among my team, we've significantly lowered our spend on day-to-day matters we refer to outside counsel since holding our firms accountable to these metrics. We now have an established panel of 19 high performing firms whose rates/compensation are directly tied to their performance.

**How to Make it Happen**

Accept that you will continue to be under pressure by your management to do more with less. In a world where the GC is expected (and oftentimes now prefers) to spend time providing strategic advice to the business, evaluate opportunities to implement meaningful changes that help drive value, particularly those changes perceived as valuable by your CEO or CFO. In our organization, in addition to reporting on financial and budget performance, claims and litigation status and accruals, among others, I report on external counsel spend and performance trends. This assures management that my team is spending valuable resources with high performing law firms whose performance is measured objectively against our 7 KPIs.

**EMBRACING CHANGE**

**Mark Smolik on the Efficient Approach to Maximizing Success**

Written by Mark A. Smolik

Growing up I wanted to be a doctor. My reasons were simple – to help people in need. All that changed in college when my career advisor “suggested” I would make a better lawyer than a doctor. Initially, I was reluctant to change. After considerable “soul searching,” I realized she was right. Three decades later, I have the privilege to serve as the General Counsel (GC) at DHL Supply Chain leading a diverse team of associates all of whom are incredibly dedicated and talented. In 2009 we were a team of five. Today, we are a team of 58. I now help others with their business and legal challenges. It's a dream job.

**Figure 1**



Of the more than 1,300 Chief Legal Officers surveyed, an average of **53 percent** of their budget was spent on internal resources, while the remaining **47 percent** was spent on external counsel fees.

Source: The ACC Chief Legal Officers 2016 Survey

**Expert Biography**

**Mark Smolik** is VP, General Counsel, at DHL Supply Chain Americas where he leads the legal, commercial contracts management, compliance, and economic development teams. Previously, Smolik served as Senior Vice President, General Counsel and Chief Ethics Officer of Safelite Autoglass, where he also led the Human Resources and Government Affairs teams. Prior to Safelite, Smolik served as Senior Corporate Counsel with The Sherwin-Williams Company. Mark can be reached at [masmolik@gmail.com](mailto:masmolik@gmail.com)