When the Data Talks!
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As in-house legal departments, increasingly utilize technology to assist with legal operations management, the rules of the road for outside counsel are being reviewed and enforced not only by in-house counsel and paralegals, but by the use of data analytics and artificial intelligence ("AI").

Said more bluntly – or perhaps better, said more sharply – the axe is falling.

The obvious place where this data sophistication is being used is to enforce specific billing rules, particularly expense rules.   Software for electronic billing has generally been created with dashboards to enforce cost rules. But rarely were these rules enforced, except after attorney or paralegal review.   As the software became more sophisticated, rules were added to the dashboards with regard to attorney time and effort. But, again, these reviews generally require attorney or paralegal review.

This is where most of the focus has been in recent years: ensuring appropriate staffing and removing unnecessary fees and costs. Soon thanks to the growing use of AI, these issues will be dealt with automatically.

Each year there is more and more data flowing into legal departments, however, much of it goes unused. Many companies, for instance, require some level of the Uniform Task Based Management System (UTBMS) billing codes, but few use that data to drive decisions in the selection of firms or even to develop case-to-case comparisons.

In the coming months and years all of this data is going to be sorted and scrubbed within the departments...and in some cases this is already happening...to manage, compare, discipline, and select the law firms that are working on their cases.

Data analytics makes 'Big Data' talk. And in-house counsel will be listening. They will see which firms are effective, consistently returning good results, and which firms are efficient, working at lower costs. With this data in hand, they will migrate to the firms that can both efficiently provide the services and do so effectively by garnering the right results.

But there has been another message flowing regularly from corporate legal departments to their law firms: DIVERSIFY! Diversity is no longer a wish or just an ask. Many companies are insisting that the law firms and the case teams servicing that company be diverse , often

pointing to the diversity of their own customer base as a standard to be achieved by their own vendors, including law firms.

For many companies there has been a long-standing emphasis on diversity. This emphasis was again highlighted earlier this year, according to the ABA Journal, when 170 general counsels penned an open letter to their law firms. The letter was very direct, "We, as a group, will direct our substantial outside counsel spend to those law firms that manifest results with respect to diversity and inclusion, in addition to providing the highest degree of quality representation,"

But how will this occur? How are they going to know if their outside firms are complying? Sure, they can get pledges from law firms. There is even coverage in the legal press and elsewhere that provides statistics as to the number of diverse partners and associates working for a particular firm.

To be fair, many firms are working hard on their diversity issues, trying with true intent to meet strong diversity standards so they can become those firms getting that "substantial outside counsel spend."   Some still are just trying to check the box. Too often pitch-teams are put together with a diverse breakdown to display their commitment to diversity, but the actual work team doesn't reflect that same commitment to diversity.

As noted on its website, "ABA President Paulette Brown (2015-2016) created the Diversity & Inclusion 360 Commission to review and analyze the state of diversity and inclusion in the legal profession, the judicial system, and the American Bar Association (ABA) with the aim of formulating methods, policies, standards, and practices to best advance diversity and inclusion." https://www.americanbar.org/groups/diversity/resources/.   From this Commission, the Model Diversity Survey was developed and published, and the results are available on the ABA website. https://www.americanbar.org/content/dam/aba/administrative/racial_ethnic_diversity/ABA/2019-aba-model-diversity-survey-final.pdf.

So let's pull these two ideas together - 1) use of Data Analytics and Artificial Intelligence, and 2) enforcement of diversity standards. If there is data available, then there is a way. And law departments sure do maintain plenty of data. By taking additional steps with the data received with electronic billing, law departments have all they will need to assure their diversity directives are being met.

How? In comes the ABA Model Diversity Survey, often supplemented by ebilling systems and self-created diversity information gathering systems. It simply isn't that hard for in-house systems to be populated with very specific diversity information. Once in-house legal departments have the backgrounds of each law firm employee who might work on a case,

reports and dashboards can be created that can reflect a wide range of information. The big question being...are you as diverse as you said you would be?

What information will be used to answer that and other questions? An obvious point will be percentages of diversity broken down by levels of delivery (partner, associate, paralegal, etc.). If you said your team would be 40% diverse as a commitment at retention, the data will show whether or not that goal was reached. But that is just the beginning. Are 40% of the billing-units diverse, but was 90% of the work billed by a non-diverse biller? Or were the senior members of the team non-diverse and was the junior associate who performed the document review the only diverse member of the team? The data will show that. It doesn't take too much imagination to see the kind of information that can be garnered to test adherence to a law department's diversity standards or goals.

And what happens to this information?   Might a firm at retention be asked to agree that it will meet a range of diversity in its handling of a matter? Sure. Would they also agree that if that range was missed during an agreed time-frame during the engagement that penalties such as fee reductions would automatically be enforced? Those deals are soon to be a real negotiation point in a retention. And even in Alternate Billing work, data is still available and will be used.

So where does that leave the law firms. They had best be actively reviewing the data created by their own invoices to assure the standards in place are being met....before that bill goes out. Think of it as a marketing tool.   Firms are always looking for the best marketing material for their firm to get and keep business. Too often they forget that they send their most important marketing material to their client every month, and it's called an invoice.

They'd best know what that invoice is saying to the client, because through data analytics and artificial intelligence, their client is going to be judging the firms through the data it provides, and then acting on those judgments.