

# In-House Legal Department Convergence Projects: A Friend or Foe to Outside Counsel?

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The answer is “both.” If the question posed is whether law department convergence initiatives are net positive or negative for outside counsel, the answer is contingent. From the outside counsel perspective, convergence produces both winners and losers. Yet even winners should proceed with caution. Convergence done right alters the nature of the inside/outside counsel relationship. The winners among outside counsel must be prepared to satisfy changed, and heightened, client expectations.

But that, of course, is the wrong question. Or, at least, the impact on outside counsel is a second-order concern. We must start with the why and the how of convergence. The core inquiry needs to be whether convergence enables corporations to better address the legal dimensions of business problems. In that regard, the answer is a definitive, emphatic: *it depends*.

**What is convergence?** Convergence is the process by which law departments consolidate their outside counsel spend. Convergence is the mechanism for creating preferred provider panels. When convergence is complete, law departments intend to send their legal work to select group of panel law firms and maintain panel discipline going forward. 64% of law departments report having some form of panel or preferred provider network.<sup>1</sup>

**Why convergence?** Convergence is a process, not an end state. The actual end state—a pruned law firm roster—can be desirable for several reasons.

Each additional firm incrementally increases administrative overhead. Thus, fewer firms eases administrative burden. Take the easy example of changing an invoice submission protocol. Communicating the change and gaining compliance is an order of magnitude easier with 30 firms than with 300 firms. Similar reductions in administrative load occur with accruals, invoice review, diversity statistics, data security audits, etc.

Fewer firms also enables law departments to leverage their spend. Consolidating purchasing power with primary providers puts law departments in a better bargaining position. Under a traditional arrangement, law departments can demand deeper discounts on billable rates. But convergence also opens the door to more diverse fee structures.

Repeat interactions with the same firms can make it easier to maintain good data practices (another administrative burden). Increased transparency combined with the smoothing effects of higher volume can result in both sides being more amenable to fixed fees and other non-hourly options. In addition, convergence can shift the focus from the transactional—i.e., matter by matter—to the relationship level. This broader view affords both sides the opportunity to explore portfolio arrangements and other creative fee structures—e.g., relationship-level performance bonuses.

Fees, however, are only one mechanism for changing incentives and the resulting behavior. And cost savings is only one potential benefit from altering the dynamic between inside and outside counsel. Consistency of quality and innovation in service delivery also rank among in-house counsels’ primary concerns with their existing law firms.<sup>2</sup>

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<sup>1</sup> [10th Annual Law Department Operations Survey](#) (Blickstein Group)

<sup>2</sup> [The Newest Obstacle to Business Development](#) (BTI); [Closing the Innovation Gap](#) (Thompson Hines)

Concentrating spend permits inside counsel to concentrate their attention. In-house departments can focus on deepening their collaboration and integration with their primary providers while weaving continuous improvement into the fabric of that relationship.

A more coherent, transparent supplier base also puts law departments in a better position to think systematically about optimizing their value chain. What work should be done in-house? What can be unbundled and sent to managed service providers? What can be automated? What need not be done at all? Untangling the thicket of work sent to outside counsel is one piece of a larger puzzle in maximizing the yield from the legal resources available to assist the corporation in achieving its business objectives.

Law firms, for their part, should not only have much stronger financial incentives to be responsive to their client's needs but also a clearer picture of what those needs are—focus should foster better communication and more consensus around concrete improvement initiatives.

**How does convergence proceed?** Some law departments gather key stakeholders in a room to decide which firms should be on their panel. Other law departments conduct a lengthy, highly structured process at the end of which they gather key stakeholders in a room to decide which law firms should be on their panel.

For some corporations, the labor-intensive version of the panel selection process is pure theater. They ignore the data they collect and make the same decisions, the same way, they would have if they had simply called a stakeholder meeting in the first instance. For most, however, the data informs their decisions in critical respects. And, prior performance *is data*. In some instances, this qualitative information will be particularly helpful in forming a panel made up of firms that represent both new and existing relationships.

A structured convergence process will vary by law department. It might start with quantitative analysis to determine what work is being sent to which firms. This analysis might then be informed by constituent interviews where individual in-house counsel identify needs and explain how those needs drive retention decisions. Interviews can be supplemented by qualitative surveys to gauge which firms are most respected and/or are handling the most mission-critical work. The interviews and surveys also reveal preference intensity—which firms do in-house counsel most want on the panel.

The resulting list of candidate firms can initiate the external phase of convergence with firms being asked for both information and specific proposals. RFIs (requests for information) and RFPs (request for proposals) lead to more internal analysis/deliberation before moving to the negotiation phase, which may or may not include presentations from candidate firms.

For many corporations, this structured process is necessary for panel design. Coverage considerations have to be understood in depth, including needs for both substantive expertise and geographic reach. There are also tradeoffs to weigh—e.g., larger firms may be able to offer broader coverage but be more expensive than their local competitors. There are few useful rules of thumb for determining appropriate panel size. A financial services company with offices in select metros might end up with far fewer firms than a retailer with operations in numerous locations, even if the former spends considerably more on external counsel.

In addition, for the more sophisticated law departments, the structured dialogue with law firms that commences with convergence does not end when the process is complete. It is the first step in an ongoing outside counsel management program that is intended to fundamentally alter the inside/outside counsel dynamic.

**Does convergence work?** Sometimes.

Again, convergence is a process, not an end state. Convergence, by itself, achieves very little. And even those modest, immediate gains can evaporate quickly.

Convergence becomes necessary because the proliferation of outside counsel is not an accident. Instead, without structure, individual in-house counsel make one-off retention decisions. These decisions may be locally optimal. They are sensible for the singular matter. But, in the aggregate, these rational, isolated decisions create a collective burden that reduces the law department's effectiveness.

After convergence, the factors that make a specific retention decision locally optimal do not disappear. There will always be cogent reasons to use a non-panel firm for particular matters. Indeed, there is no expectation that 100% of legal work will flow to panel firms. Every well-designed panel program has reasonable step-out procedures.

But if a majority of matter volume—and, often times, it should be closer to 90%—is not being handled by panel firms, the benefits of convergence are lost. Maintaining panel integrity involves reducing the autonomy of individual lawyers within the law department. Lawyers, even in-house lawyers, do not like to be managed. Unless law department leadership enforces panel discipline, convergence will be a wasted exercise that consumes more resources than it saves.

Moreover, even with panel discipline, the reduction in administrative burden is the only benefit of convergence that is (almost) guaranteed. For the other benefits—cost savings, alternative fee structures, supply-chain improvements, value-chain optimization—convergence is merely a precondition. Convergence does not confer those benefits, it sets the stage to pursue them. Convergence is a beginning, not an end.

But enough caveats. When it is part of a comprehensive change to retaining, managing, paying, and integrating outside counsel, convergence can deliver considerable return on investment. The stories of successful convergence initiatives and their benefits are myriad.<sup>3</sup>

**What should outside counsel understand about convergence?** The hardest realization for many outside counsel is that they are not so special as to be immune from competition. Which is not to say they aren't good at what they do or not well regarded by their clients. They simply aren't so good or so well liked that those advantages are dispositive vis-à-vis the select group of firms against whom they will be competing for panel positions.

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<sup>3</sup> See e.g., [3M](#), [7-Eleven](#), [AIG](#), [Archer Daniels Midland](#), [Avis](#), [Bank of America](#), [Barclays](#), [BASE](#), [DHL](#), [Marsh & McLennan](#), [Medtronic](#), [Microsoft](#), [Pfizer](#), [Royal Dutch Shell](#), [The Home Depot](#)

The go-to move for most outside counsel is to explain what superb lawyers they are. This is important, but legal acumen is a prerequisite. Once that prerequisite is met, domain expertise ceases to create separation.

The resulting shift in emphasis can be disconcerting. Many outside counsel find it hard to discuss that which they consider ancillary: fee structures, diversity, value services, staffing, resource allocation, data/analytics, process re-engineering, continuous improvement, project management, knowledge management, billing hygiene, technology, etc. The resulting dissonance can lead to a lot of *bullshit* (in the academic sense of the word).<sup>4</sup>

Because legal acumen is only a prerequisite, outside counsel that cannot or will not consider, thoroughly understand, and communicate about these ancillary topics fall by the wayside in any data-driven convergence process. The firms that advance are those that utilize data accumulated over years of electronic billing across numerous clients, focus on increased efficiency (not increased hours) in delivering service, and measure success by outcomes that are valuable to their clients.

Moreover, many outside counsel presume that winning the work is final, instead of first, step. That, once they've won, life will return to the status quo ante except that their corporate client will send them more work. With some corporations—those only seeking to reduce administrative burden or get slightly deeper rate discounts—this assumption is accurate. But for more sophisticated clients, convergence is only the beginning.

Sophisticated clients will collect, analyze, and act on quantitative and qualitative data. They will create feedback loops through processes like site visits, quarterly business reviews (QBRs), communities of practice, and annual supplier summits. They will find ways to weave continuous, measurable improvement into the fabric of the relationship. In short, there will be no finish line. By seeking a panel position, outside counsel are signing up for a perpetual process.

**So, for outside counsel, is convergence friend or foe? Yes.**

Convergence offers many potential benefits for the law firms that win. But, of course, the fact that some law firms win means that other law firms lose. This can be a bitter pill to swallow.

Assuming the law department follows through after convergence, the winners are likely to see more volume/revenue. But few of the other potential benefits—better margins, lower marketing costs, better client relationships—flow automatically from convergence.

The failure to realize the full benefits of convergence may be the client's fault. Poor panel design can negatively affect both parties to the relationship. Or the law firm may find itself unprepared to make the changes necessary to take full advantage of panel participation. Often, there is enough blame to go around.

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<sup>4</sup> [On Law Firm Marketing Bullshit](#); [On Bullshit](#) (Professor Frankfurt's classic essay defining "bullshit" as a term of art)

Eventually, everything degenerates into hard work. Convergence is hard work. Post-convergence discipline and the attendant sustained attention to continuous improvement is even harder. But, done right, convergence can be well worth it for both inside and outside counsel.

### **Recommend Further Reading**

- [Unless You Ask: A Guide for Law Departments to Get More from External Relationships](#) (ACC)
- [Service Delivery Review Primer](#) (Buying Legal Council)
- [Why Panel Programs](#) (ACC Docket)
- [Strategic Selection](#) (ACC Docket)
- [Value Services in Panel RFIs](#) (ACC Docket)
- [On Convergence](#) (Legal Evolution)
- [Guide to Managing Outside Counsel](#) (ACC)