

WHAT NOT TO OUTSOURCE TO AN LPO



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What “NOT” to Outsource to an LPO

Legal outsourcing, like any other business process outsourcing, is a tool of efficiency. When work can be accomplished effectively at a lower cost, it behooves management -- regardless of the sector -- to evaluate the opportunity.

In terms of the legal profession, legal process outsourcing is simply an extension of a dynamic that already exists in every legal office: aligning the requirements of the work with the experience and talent level of the person undertaking the work. First-year associates are not asked to fill the shoes of a litigator with a career's worth of experience and, similarly, it is inefficient to commit a senior partner to paw through hundreds of boxes of files during litigation support.

The goal of every mid to large sized firm or general counsel's office is to push work down the organizational pyramid to the most cost-efficient level for which the work can be accomplished successfully. For legal offices, that organizational pyramid is populated at the base by paralegals and administrative staff, and tapers upwards from associates to junior partners to managing partners or general counsel.

Since law offices are already aligning work to the most cost efficient layer of the pyramid, outsourcing provides a compelling logical extension to accomplish appropriate work at a fraction of the current costs. But the operative phrase here is "appropriate work," because one element of a successful outsourcing initiative is knowing what not to outsource.

The first step in the discussion is to examine which tasks are currently being outsourced **with the most success.**

- Legal Research and Writing
 - Pleadings
 - Briefs (trial and appellate)
 - Memos
 - Multi-State Surveys (research on laws of multiple jurisdictions)
- Contract Drafting and Review
 - Contract Management
 - Contract Review -- redlining against standards
 - Due Diligence work (MA transactions, etc.)
- Document Review
 - Reviewing Transactional Documents
 - Reviewing Litigation Documents

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- Privilege Review
- Substantive Review
 - E-Discovery
- Litigation Support
 - Deposition Summaries
 - Medical Summaries
 - Legal Indexing (e.g. indexing mortgages, financial transactions, etc.)

The second step in discussing what not to outsource is identifying the **common traits of the successfully outsourced work.**

- Less complex
- More repetitive
- Increased efficiencies in research, review, drafting, writing

Finally, articulating traits that are the *opposite* of the ones that are successfully outsourced produces an overview of what not to outsource.

- Complex, uniquely fact-driven cases. Work that has a very high level of complexity and case-specific data, such as patent prosecutions, are not an efficient use of outsourcing. Since each case practically becomes its own field of study, the amount of time required to bring outside attorneys up to speed would require a greater amount of time than would be supported by the reduction in costs.
- Fact-driven one-off cases. A fact-driven case by itself does not preclude outsourcing. The determining factor is whether there is long-term efficiency to be gained. Fairly complex, fact-driven subject matter can be reasonably outsourced if the case is ongoing or recurring, but is probably not advisable for a one-off case. The question to be answered is whether the duration of the proceeding supports the initial investment in time.
- Complex work without U.S. supervision. The ABA's formal ethics opinion 08-451 (*Lawyer's Obligations When Outsourcing Legal and Non-legal Support Services*) emphasized a lawyer's obligation to properly supervise lawyers and non-lawyers under rules 5.1 and 5.3. Outsourcing efficiencies are undermined without proper supervision, which is why an LPO provider with onshore presence/personnel is advisable when outsourcing more complex work.

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- Subject matter counsel is unfamiliar with. Counsel limits their ability to provide proper supervision when, due to lack of familiarity with the area of law, they are unable to judge the quality or accuracy of the work.

The first litmus test when evaluating Legal Process Outsourcing is efficiency. As legal offices across the country focus even more intently on increasing efficiencies, they are redoubling their efforts to push work down to the most appropriate level on the pyramid. And, with greater frequency, they are finding that the pyramid extends outside their office doors.
