

Law Department Management

Managing The Business Of Law: Moving Your Team Forward To Third Generation Budgeting

By Matthew W. Den Ouden

The Meeting – The Problem

The year end reports had finally been finished, and the reporting team assembled in the large conference room vowing “never again.” The reporting process had to be changed and everyone had disparate ideas of what needed to be different. What they did agree on was that they should not be pulling the critical information they needed for their internal clients and the Board out of twenty different data sources and ten different business processes. Phil, the new General Counsel, got things started. “I know how hard you all worked to produce our year end reports and next year’s budgets. I just think we should find an easier way – a better way.” There was a quiet pause and Patricia, the long-standing Assistant General Counsel dove in, “What I really need is a way to have a separate process for my high risk cases. I don’t mind putting my firms through all the necessary paces on these. The rest of the dogs and cats, I don’t know.” “I just can’t do a budget on every case, every patent, and docketed trademark my team works on with counsel,” said Lorraine from IP. “What is the point of the flat fees we have negotiated for most of our IP cases if we have to do budgets on every case we have?” John, the paralegal offered, “All I know is that the paper forms we use mean triple data entry, when you think about it. We create the form, outside counsel has to type in their work, we always amend it, and then we have to put in our spreadsheets. If we are honest with ourselves, by the time it kicks around in the mail, on our desks, and is input, the information is stale and we are on to the next quarter.”

Finally, Andrew the law department CFO stopped biting his lip, “I know the existing process is not easy, but we have to have this information. We cannot really find out what we spent on legal fees and costs only after the close of the year ever again. I don’t want to hear the number from somebody in Accounts Payable at the same time our CEO spills his coffee when he sees it. I have to make a prediction. We have to get ahead of this train. We all do. Maybe it’s not the same process for everyone, but we are all in this together.” Phil reached into his briefcase and pulled out a print out of a budget-to-actual report he had from a colleague at another company who had begun an e-billing and matter management initiative the year before. He said, “I want this. It’s this simple. But we have to decide together how to get there.”

The History – Three Generations Of Budgeting

Budgeting within the law department

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is entering its third generation. First generation budgeting often proceeded on the basis of cumbersome exchanges between the in-house team and their outside counsel. It was a process of questionable effect and was typically employed in large one-off cases where the client did not know what to expect in costs. Budgeting was typically generated on paper and most often included little objective data against which to evaluate the proposed budgets.

In its second generation, collaborative matter management tools made it possible to generate budgets electronically. This made it easier to prepare, exchange and comment on budgets, but often caused in-house teams to increase the number of budgeted matters, expanding the budgeting process far beyond the extraordinary cases. Not only were more matters budgeted, but more people became involved in the budgeting process. Often at some point in the evolution, there would be a desire to have a budget on every case – sometimes every case of a certain kind and sometimes every case in the law department. As companies came to figure out what they wanted to accomplish with budgeting, the pendulum would swing between asking for very detailed (sometimes task or phase-based) budgets to asking for more general budgets in each and every case. Companies occasionally saw the budgeting task become counter-productive, when detailed budgets were sought in every case or budgets were updated quarterly. Sometimes the budgeting process was emphasized mindless of its business purposes.

In recent years, a third generation of processes and tools for budgeting expense and risk projections is emerging. New on-line systems like TyMetrix 360° have taken nearly all of the process friction out of this information exchange. More importantly, systems such as TyMetrix 360°, automatically build bi-directional warehouses of data which allow both outside counsel and the in-house team to compare the matters being budgeted to historical and normative measures – vastly enhancing the value of the budgeting exercise. Clients who have had these systems in place for some time are rapidly creating more accurate and powerful budgets. They use technology tools to segment their matters and exposures into meaningful categories, choosing practice area specific templates, and marrying disposition strategy and outcome information. With TyMetrix 360° each practice area or business unit can choose the mode and manner of budgeting that is of the most value to them and have the system merge all of the data into a unified company budget. The combination of these previously untracked or disparate threads of core management information creates a powerful new paradigm for not merely budgeting, but managing the business of law.

The New Opportunity – Budgeting As An Engine To Manage The Business Of Law

The third generation of budgeting largely differs from its predecessors in

two ways. First, it treats the budgeting exercise not as some clerical chore but as a chance to frame and manage outside counsel spend. Second, it eliminates the historic “double blind” practice of the outside preparing a proposed budget and then the in-house team reviewing and adjusting it in an isolated manner. The new method provides a more transparent and informed collaboration. Budgeting, when done properly, is the striking of a business deal and relationship. To make it work for both sides there must be dialogue, the exchange of meaningful information, and clear statements of assumptions and expectations.

All along the path of rolling out a budgeting process and technology-aided interchange, the law department has the opportunity for budgeting to strengthen the relationship among itself, its law firms and its internal clients. The aggregated reports that can be offered about budget-to-actual information allow the law department to make its evaluations, budgeting, cost control and outcome management transparent to the rest of the company. In TyMetrix 360° these reports can be segmented by case, law firm, business unit, product line, risk level and type and so on. As the passage of time increases the accumulation of cost and loss information, the budgeting exercise becomes better and better, enhancing best practices and benchmarking.

Such lessons learned from budgeting presuppose, however, that one is comparing like kinds of cases and their budgeting history. Often it is found that matter specific budgets in a given arena are unnecessary. Often many cases which might otherwise benefit from budgets are even more closely controlled by alternative fee arrangements or simple flat fees. Nonetheless, the need to predict total expense for the department, practice area, line of business, or exposure persists. Here a more top-down approach of making a predictive “forecast” across a group of cases may be the best practice. For instance, the aggregate outside counsel legal spend on Human Resources claims may be predicted (“forecast” in TyMetrix 360° parlance) to be \$5.2 million for the coming calendar year. Or part of the litigation cases may be budgeted matter-over-matter “from the bottom up” while the rest are collectively forecast “from the top down.” Taken together, a departmental or practice area total budget emerges.

The question remains how to enforce and interrelate these budgeting and forecasting practices? The best budgeting systems, like TyMetrix 360°, alert different layers of management to matters threatening to go out of budget or are approaching forecast thresholds.

Looking across the broad spectrum of budgeting needs and practices, we at TyMetrix have built our system around what our clients have historically found to be best practices. At the highest level, there are three management and alerting paradigms which govern the budgeting and forecasting controls:

A. Top-down controls with the budgeting/forecasting power vested at the top of the organization and notifications

about changes and risks rolling all the way up. Here the total budgets below may not exceed the forecast without approval from top down and the change of the forecast;

B. Bottom-up with approval works on the basis of notification and allows lower level forecasts and budgets to exceed the top line with approval, but clearly makes the managers above aware of the issue;

C. Bottom-up with notification merely sends the top forecasters notification of changes below but does not require permissions to come down from them.

None of the above models need be to the exclusion of the other, but a policy decision must be made on the front end as to which part of the law department has the most knowledge and information about the budgets or forecasts and, thus, should be vested with management control over the budgeting process. Decisions must also be made about the desired level of transparency and interaction among the various levels of the law department. All of these models are available in TyMetrix 360° and different departments and practice areas can even choose different methodologies, while still having all the information merged together for reporting.

Returning a year later to the same conference room, the team at our law department found that they could not all agree on how to do budgeting, but that with TyMetrix 360° they did not need to. Some groups forecast, others created detailed budgets and still others combined the practices.

Their firms were thankful to be relieved of the old paper process and were more engaged in the conversations around the largest cases. The highest exposure cases had come in individually both above and below budgets, but the close level of communication between the inside and outside teams meant that the budgets were refreshed quarterly. As a result, there were no surprises and the company stakeholders were pleased because the overall budget figure for the combined high risk case was nearly spot on its target.

Most importantly, all agreed that with even just a year’s worth of e-billing information, the team was prepared to put together budgets and forecasts for the coming year based on the deepest pool of data they had ever had – and it was all in one place. They spent more time analyzing and discussing the trends and implications of the information they had now gathered, rather than gathering it. The Board was pleased to see legal expenses under control. And across the department – from the General Counsel to the paralegals – what had been a chore had now become a process around which the department rallied and took pride, just like any other business unit would when they beat their numbers – departmental numbers they had been able to more directly control and frame.