Convergence From the Inside and Out: Two Veterans Look at an Evolving Trend

Law Department Management

CHEAT SHEET

- ***Know your objective.*** Companies don’t do this once and stop; the process is ongoing and

evolving. It's important for both sides to be clear about each party's goals.

- ***Face time.*** Both data and face-to-face interviews will shape the selection process. Procurement staff can be helpful with RFPs, but in the end, it's lawyers who will call the shots.
- ***Reset button.*** Once the contracts are signed, both sides need to have their teams in place and ready to get down to business. Even for companies and law firms who've done business in the past, convergence can be a "reset button."
- ***Talk often.*** The process can help increase diversity, save money and build closer relationships. They key to those goals is effective communication, so performance issues can be addressed early.

"Convergence," which means to consolidate legal work to a smaller cadre of law firms, was first popularized by DuPont in the 1990s and was subsequently adopted by many companies around the world. Legal departments have been motivated to run convergence processes in order to better manage their outside counsel budgets, leverage their spend, build stronger relationships with fewer law firms, and to implement performance and quality metrics for their outside counsel.

Two things are clear. First, the convergence process is here to stay. Second, the process is continuously evolving — a company doesn't do it once and stop.

Over the last several years we have each worked on convergence projects (one of us from the inside and the other from the outside). Whether you are in a company that is considering a convergence project for the first time, a company working on a new round of convergence, or in a law firm preparing for convergence, here are 10 points for you to consider — from the perspective of both in-house and outside counsel.

1. It's going to take longer than you think.

Inside: Running a convergence process is time-consuming. In-house legal teams have many demands on their time. A thorough convergence is going to include developing a project plan, identifying how the company uses outside counsel, developing a process for requests for proposal (RFP), identifying the firms that will receive the RFP, reviewing and scoring of RFP responses, and ultimately, selecting the panel of law firms. For busy lawyers, running a convergence project can seem like taking on a second job as a procurement specialist.

Out: The good news here is the longer the process takes, the longer you remain in the game. The key is to devote all the time necessary up front to understanding the company's goals and key metrics. Take the time to know your client (or potential client) and to study your own firm. Many companies have informational calls and webinars to go over the process and answer questions. These meetings are vital and should not be delegated. The relationship partner should be front and center. You need to know the targets before you prepare your proposal.

2. Be clear about what your objective is for convergence.

Inside: Legal departments need to think strategically about their convergence objectives. For example, is your primary goal to reduce the overall number of firms you work with? Perhaps your

legal department wants to track its outside counsel spend more closely, and improve its ability to forecast legal expenses. Some legal departments may decide to use less Big Law representation, and focus on law firms with regional or specific subject matter expertise. Regardless of the motivations, be clear about what goals you want a convergence process to accomplish. The RFP and selection process should support your legal department's objectives.

Out: Listen carefully. Most companies will tell you what they are after, if you listen. If the company's goals are not clear, do not be afraid to ask questions. Your firm's competitive position can vary depending on how you align yourself with the client's objectives. Your approach should also be specifically tailored to the type of convergence being considered which may be a major convergence (like DuPont going from 350 law firms to 41), a super-convergence (some Fortune 500 companies have reduced their outside firms to single digits), a practice area convergence (for example, product liability litigation), a geographic convergence (which involves splitting the country into regions where a firm or firms will be the primary outside counsel) or some combination of these approaches. If you want to compete in a convergence process, it is vital to understand what the objectives are as well as what is not part of convergence (e.g., certain practice areas might be exempted).

3. Data is your friend.

Inside: Just like other strategic initiatives, your convergence process should be driven by data. One of the initial steps should be to thoroughly analyze ow much your company spends on outside counsel. A good measure is how much you spent with each law firm over the past three fiscal years. Identify trends in your spending and in what subject areas you spend the most. Your analysis may be eye opening. For example, if your company has seen a surge in fees for employment and labor matters, this will tell you that you need to place an emphasis on employment and labor talent among your law firms.

The data you gather should go beyond the financial cost. Examples of other issues you should consider include how many lawyers your outside law firms typically use for each issue, how much partner time versus associate time is devoted to your matters, and whether firms write off large amounts of attorney time. You should also look at trends which affect your need for outside legal services. For example, you may be experiencing a spike in trademark enforcement. Maybe you determine that you need a new regional expert because you are tracking an increase in wage and hour claims at your new facility in California, but your go-to labor and employment law firm is based in North Carolina. Perhaps your company has expanded its operations in other countries, requiring an increase in trade compliance expertise or immigration expertise. The more data you gather about your outside counsel usage and developing legal needs, the better your RFP questions and decision-making will be.

Out: If you are dealing with an existing client, then you go into the process knowing how you might be able to effectively manage costs on the work in play. If that is the case, your historical information is a huge advantage. Use it to model future work, set your staff (over the life of the contract), and determine your break-even rates and fee structure. Some companies will even ask for this information. Be ready with that information if they ask for it — and provide hard historical numbers. If you want to truly partner with your client, you need to act like a partner. In the end, for your firm, the bottom line is the bottom line — know your break-even point and then make a business decision on the kind of margin you need in order to earn or keep the work.

4. Face-to-face interviews are valuable to the process.

Inside: In-person interviews are a useful tool in the selection process. Interviews are particularly helpful if you are trying to decide whether to engage a firm that you haven't used. To the extent possible, the interview setting should be relaxed. It should not have the tone of "us" versus "them." After all, your legal department is looking to build stronger relationships with the law firms you select. Give the law firm notice of the topics you want to discuss in the interview as well. This will help the in-house team stay focused on the information you want to gain in the interview, and it helps the outside law firm identify the right team members to bring to the interview.

One additional point: Don't interview a firm that you have already decided will be successful in the RFP process. The interview should be used for clarifications and gathering additional information.

Out: Most interviews involve teams. To put together the right team, know whom the clients want to see and what topics they want addressed. Again, if you are not sure what topics will be addressed — ask. A good rule of thumb is that an existing client should not meet anyone new at a convergence interview. Regardless, make sure that everyone who attends for your team has something to contribute. This will require preparation and involve a significant investment of time and energy on your part but it is an investment you have to make to remain competitive.

5. Procurement input can be helpful, but legal owns the process.

Inside: In recent years, quite a bit has been written about the role of procurement staff in legal convergence processes. The legal and procurement departments should clearly define their roles and responsibilities up front. Attorneys are the functional experts on how to select the most appropriate legal counsel to meet your company's business needs. The procurement team has the functional expertise to run efficient RFP processes for the selection of outside vendors. A well-structured approach, with the legal team leading the process, will help legal and procurement employees work together to obtain the best results for the company. Further, if the legal team sets fee guidelines, procurement staff can effectively negotiate the fee structure used by the law firms selected in the RFP process.

Out: Understand that there is an ongoing wrestling match in many companies between the legal and procurement teams over which group controls legal spending. It is generally easy to see the procurement questions in the convergence packet. Give those questions the same consideration as questions from the legal team. The key for outside counsel is to give each question (and each team) equal weight and stay out of the spending scrum. In the end, legal departments almost always retain control over outside counsel, but procurement remains a vital part of the process.

6. Create an effective plan for implementation.

Inside: After firms are selected, set up a strong plan to control and manage implementation. For example, create internal rules which require the use of approved law firms. Establish a clear set of billing guidelines. Generate regular reports to monitor fees and spending to ensure that law firms are following the newly negotiated fee structure. Require communication between the legal department and the engagement partner of the law firm so issues can be addressed in real time. Think about the objectives you identified for your convergence process. Your control plan should measure whether your legal department is achieving those objectives.

Out: It is absolutely essential that the team you promised is ready and in place if you prevail. Stumbling out of the gate can be fatal. In addition, be ready for new forms, budgeting requirements

and processes — even for clients you have represented for years. Convergence is a whole new game and can be a reset button for law departments. If you promise a specific partner/team, be ready to deliver that team from the start. Firms that try the bait and switch approach are doomed. If you promise project management personnel — have them ready to go, just like your lawyers. The same goes for gathering and reporting metrics. For example, if you promise to provide a discount at a certain level — track it and honor it.

7. Use convergence to cultivate diversity.

Inside: More and more, in-house legal teams are demanding that outside legal representation is diverse, and legal departments and outside firms can use convergence as a way to partner on these initiatives. Many corporations have diversity procurement targets which apply not only to their suppliers of raw materials. Procurement targets often apply to legal services. Legal departments can set goals for the percentage of their legal work being performed by diverse lawyers. Diversity metrics may also be used to evaluate the overall performance of the law firm.

Out: Once again, it is important to know the company's specific goals (primary and secondary) for the convergence process. Diversity is often one of those goals. If this is an existing client and you do not have a diverse team already in place, or you cannot field a diverse team in a specific area, acknowledge it and be clear about how you will work to put the right team forward. It is also important to show ways in which your existing diversity is meaningful and that you have a process in place to build and expand your diversity efforts.

8. Leverage your spending.

Inside: Legal departments continue to be under pressure to do more with less and reduce outside counsel budgets. A convergence process can certainly help legal departments decrease costs by providing more work to fewer law firms at negotiated rates. Legal departments can also use their convergence process to negotiate alternative fee arrangements such as flat fees, blended rates, and volume discounts. Selected law firms may be required to offer a certain amount of value add services such as training, or lawyer secondments. Law firms may also be asked to offer some of its resources — such as electronic data rooms — at reduced rates. Legal spend can also be managed by establishing a pool of hours which are billed at a reduced rate which in-house lawyers can use for a quick phone call to the firm. Legal departments and law firms can be creative in how they allow legal departments to cost-effectively use certain law firm services, while also allowing law firms to generate revenue for those services.

Out: Companies demand outstanding service, quality and results at the most cost-effective rate possible. The key for a law firm is to determine what that team should look like. Some firms do this with dedicated teams who know the client and its business and use that knowledge to increase efficiency. Other firms bring in staff attorneys and increase the use of paralegals. The former is clearly preferred, but the latter can become a necessity if the rate structure dictated by the process cuts too deeply into the firm's margin.

Keep in mind how your firm can add value to the partnership. Some examples include offering alternative billing proposals, such as blended rates or tiered discounts, providing free research, and conducting in-house CLE seminars. Be creative in your proposals.

9. Build stronger professional relationships.

Inside: Using a smaller number of firms provides the opportunity to spend more time with fewer outside lawyers. This helps outside lawyers learn more about the company's strategy and risk-tolerance, making them more effective legal counselors. In-house lawyers can also make sure that the outside firm is developing a deeper pool of talent that will focus more of its time on the company's matters.

By contrast, relationships can be put to the test if a law firm fails to meet the expectations of the in-house legal department. With fewer firms, a poorly performing law firm can have a big impact on a corporate legal department, and even increase risk to the company. If the relationship is strong, a legal department will raise the performance issue promptly with the law firm engagement partner. The partner should address the issue right away. But, sometimes, a legal department must acknowledge that it simply did not choose well even though it ran a thorough convergence process. In those instances, the legal department needs to act in the best interest of the company, which could mean disengaging from the poorly performing law firm.

Out: One great way for law firms to attract and retain legal talent is providing opportunities to really get to know and work with Fortune 1000 companies. These companies generally have a consistent flow of work, which is typically complex, challenging and very interesting — the kind of work lawyers love to do. Convergence also allows outside counsel to build long-term professional relationships with in-house lawyers, another attractive opportunity for prospective talent.

10. Communicate, communicate, communicate.

Inside: Set up regular feedback sessions with panel law firms to help build the post-convergence relationship. The most effective feedback sessions happen face-to-face, and at regular intervals. Having an annual law firm review may sound good, but an annual review may allow issues to linger and not be addressed in a timely manner. Having reviews twice per year may be the ideal frequency for law firm performance feedback. If you hold a midyear review by video conference, and an annual review in person, you will be providing real time feedback to your law firms. Legal departments can use these sessions to clearly communicate how they are measuring the law firm's performance. By keeping the channels of communication open, in-house lawyers can identify and address performance issues sooner and possibly stave off larger problems down the road. In addition, law firms should remember that these meetings are a good time to make sure that associates get exposure to their clients.

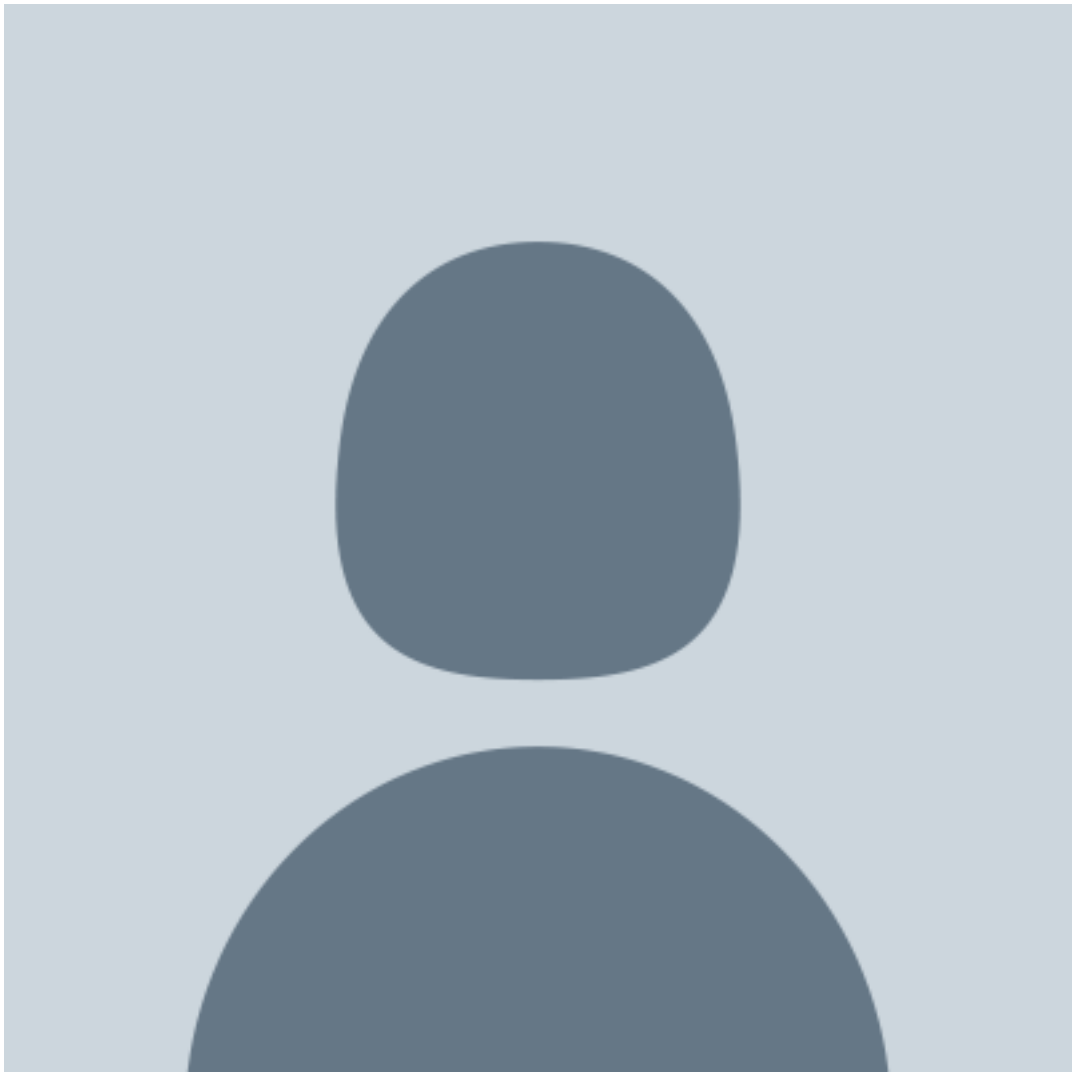
Out: Most companies have monthly and quarterly reports. Use these to supplement the day-to-day communication for ongoing cases and projects. In addition to these reports, go see your client. Do not wait until the annual review to see a performance evaluation or to receive constructive criticism on how you can better serve the client. Also encourage the client to hold regular meetings for convergence counsel — either at the client's headquarters or at events like ACC's Annual Meeting. It is important that panel counsel cooperate and coordinate whenever possible.

Conclusion

The convergence process is a great tool for lawyers. From an in-house perspective, it is a chance to see what your current outside counsel has to offer; put potential new outside counsel through their paces; and, regardless, consolidate your legal work in a way to increase quality and efficiency. From an outside counsel perspective, it is an opportunity for you to show your existing clients how much you know and value their business; potentially develop new business if you are not yet a panel

counsel; and take a new, fresh look at how to best serve your clients. It is a process to embrace, not dread, and one that is here to stay.

Joseph Perkins



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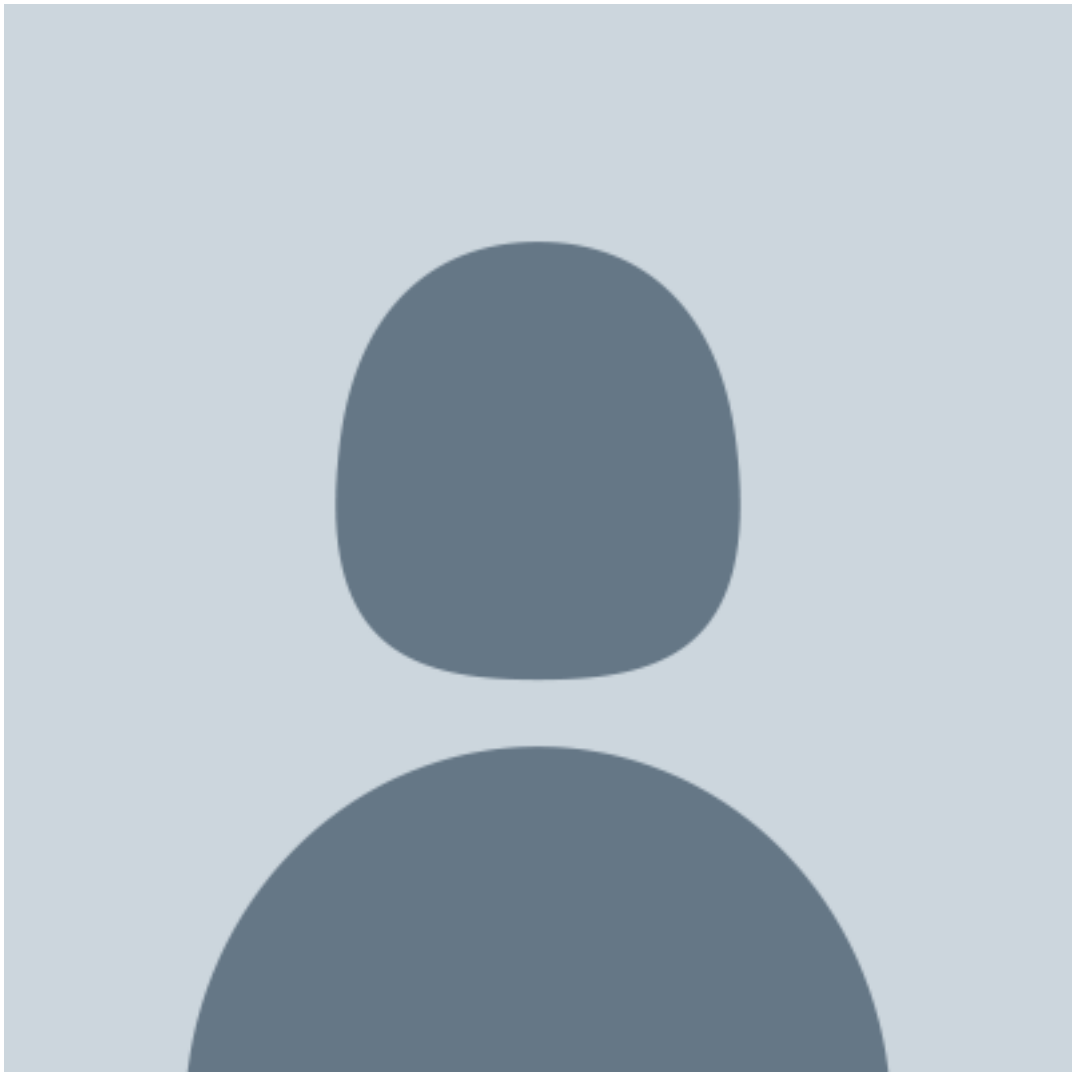

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