

## Clients Are Happier, But Offer Less Legal Work with a Tiny Fee Increase

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For the second year in a row, a majority in-house counsel indicate that their more satisfied with their law firms -- but they're assigning less legal work and expecting to pay fee increases of only 1.52%, according to the 2010 ACC/Serengeti Managing Outside Counsel Survey.

### Other high points of the research:

- The most pressing concern of corporate counsel is reducing the cost of law firm fees.
- Clients want e-billing.
- Although hourly rates still predominate, the use of alternative fees is growing.
- A minority of in-house counsel are pursuing "convergence" (reducing the number of outside law firms) but a majority of corporations have increased the number of firms they use.
- Companies are issuing more RFPs.
- Clients expect discounts for early payment.
- Most corporations require budgets for at least some of the legal matters.

### Demographics

Serengeti surveyed members of the ACC to obtain the new data.



Serengeti is the most widely used system for legal project management and electronic billing, with more than 120,000 users in 180 countries worldwide. Serengeti includes online bill review/auditing, legal project collaboration (including documents, contacts, deadlines, and status updates), automated budget management, and contract management.

The Association of Corporate Counsel (ACC) has 26,000 members who practice in legal departments of corporations, associations and other private-sector organizations. In-house members work in 70 countries and more than 10,000 organizations.

Now in its 10th year, the 2010 ACC/Serengeti Managing Outside Counsel Survey is based on 178 responses on an online questionnaire. Of the respondents, 56% were general counsel; 27% were assistant general counsel and staff attorneys.

### First the good news

For the second year in a row, the survey collected data regarding the ACC Value Challenge. In a reversal of last year's results, for 2009, a majority of in-house counsel (59%) believe that the value of **the work performed by their outside counsel, taking into account the cost of their services, did *not decline* during the past year**, perhaps due to greater focus on value being brought to bear by in-house counsel through means such as the ACC Value Challenge.

Just over half of in-house counsel (54.5%) provided specific suggestions to their outside counsel for increasing the value of their services. 45.3% of in-house lawyers reported that 100% of their outside counsel implemented their suggestions. These numbers are up significantly from last year when 22.9% said that 100% of their firms implemented their suggestions. "This could indicate that competition is greater for corporate work and that firms are working harder to provide value to their corporate clients," the report says.

### Less work, tiny fee increases

**Alas, more legal work is staying in-house.** Law department spending as a percentage of company revenues increased by 35%, but spending on law firms as a percentage of company revenues increased by only 14%.

**Corporations will allow mini-fee increases.** "Over the last decade, the annual increase in law firm hourly rates has fallen dramatically from over 9% in 2000 to this year's increase of 1.48%, the lowest in the survey's history. Furthermore, in-house counsel predict that this record will hold at least for the coming year—projecting on average an annual increase of only 1.52%. These numbers clearly show the impact that in-house counsel and a weak economy are having on their law firms' power to increase revenues each year simply by raising their rates."

"In past years, in-house counsel have projected a median increase in the 5–6% range in law department spending for the coming year, which has been in line with the actual increases. This year's projected median increase in law department spending was the same as last year, perhaps reflecting the weak economy and continuing pressures on law departments to cut costs: a prediction of no increase for 2010," the report says.

The table (see *next page*) illustrates the significant break in the data for the past two years compared to prior years: Although this year's reported increase in hourly rates (1.5%) is the lowest in the history of the survey, it is still more than the prediction for 2009 which was no change. In addition, the prediction that hourly rates will increase by 1.5% in 2010 is the second lowest (compared to last year's prediction of no increase) in the history of the survey.

**Table 1: Projected & Actual Outside Counsel Hourly Rate Increases**

Projected & Actual Outside Counsel Hourly Rate Increases		
Year (of Rate Increases)	Projected Increase	Actual Increase
2000	Not available	9.27%
2001	5.57%	6.28%
2002	5.19%	5.44%
2003	3.57%	5.02%
2004	2.95%	5.74%
2005	4.14%	5.15%
2006	4.76%	5.95%
2007	5.28%	6.47%
2008	5.02%	4.76%
2009	0.00%	1.48%
2010	1.52%	tbd

**What clients want**

Lawyers can increase their business by tapping into their client's **most pressing concerns**, which are:

1. Reducing the cost of outside counsel.
2. Keeping apprised of company activities that may have legal implications.
3. Having too much work for too little resources or legal budget.
4. Keeping management apprised of legal developments.
5. Staying apprised of changes in the law.

For example, law firms can present private CLE programs for corporate clients, send e-newsletters and alerts about breaking legal news and audit a company's facilities and procedures to ferret out risk.

**As always, corporations try to keep law firms on a tight leash.** The most common rules of engagement are to:

- Encourage alternative dispute resolution.
- Require associates to have a minimum level of experience.
- Technology requirements -- such as putting matter information on a client-centric site used by multiple firms -- not a patchwork of individual law firm extranets.
- Impose policies regarding diversity of service providers.
- Require discounts from standard rates.
- Take ownership of work product.
- Require budgets for all projects.
- Prohibit any change of assigned lawyers without client consent.

- Limit Travel expenses.
- Expect early case assessments.

"They are now more likely to require periodic status reports showing progress against the plan and budget, an analysis of progress toward potential exit points in litigation, and a summary of results achieved and lessons learned at the end of the project. In-house counsel also expect outside counsel to keep them informed when there are unexpected developments that require strategic decisions and if there is a change in projected costs or staffing," the report says.

### **Finding new law firms**

**"The number of companies that issued RFPs jumped from 20% to 25%.** "A significant change in this area from past years was the number of responses by law firms. In past years, the response rate was about two responses for each RFP, but responses from the last two years indicate far more competition among firms—the average number of responses in 2008 and 2009 were 15.5 and 14.7, respectively.

"Consistent with past years, almost three-fourths of in-house counsel (70.8%) expect to issue the same number of RFPs during the coming year, and more than one-fifth (21.35% — compared to 18.46% in 2008)—expect to issue more. This upward trend in the number of companies that anticipate sending out more RFPs could be a result of more competition and responses from outside counsel," the report says.

**Just under 1/3 of law departments reported that they engaged in convergence in 2009, down slightly from 2008.** "The median number of law firms used in the U.S. by law departments during 2009 was 12, which is up significantly from last year's median of 8 and matches the high of 12 in 2005. In 2009, 17.4% of companies used more than 50 law firms. These numbers, which apply primarily to larger law departments, are much higher than prior years," the report says.

There was also an increase in the number of companies that engaged in secondment: 14% compared to 9.5% in 2002. the median number of hours worked by secondment attorneys in 2009 was 380 hours.

### **Alternative fees**

**A majority -- 83.7% -- of in-house counsel use standard hourly rates for a majority of their outside legal work.** This year one-third of respondent said that they do not use alternative fees. "Despite a significant amount of negative publicity regarding the conflicting incentives associated with billing by the hour, the vast majority of corporate legal work is still done under hourly rates, either standard or discounted," the report said. "There still remains a wide disparity in attitudes about alternative fees between corporate clients and their outside counsel."

When corporations did use alternative fees, they preferred:

- Fixed fee - 45.5%

- Blended hourly rate - 21.2%
- Retainer for certain work during a certain period - 18%
- Contingency fee dependent on results -- 11.8%

In-house counsel consider alternative fee arrangements most often for: routine/repetitive matters (35.4%), “all” types of matters (24.2%), large business transactions (12.9%), and smaller matters – business transactions (12.4%).

Resistance within companies to alternative fees is relatively small, with a majority of in-house counsel (58.4%) reporting that there is no internal resistance. However, this response indicates a slightly higher resistance than the previous year.

Resistance of law firms to alternative fees is much greater than at companies, but lower this year: 14.0% of in-house counsel reported no resistance from their law firms (compared to 12.3% who reported no resistance last year). Overall, on a scale of 1 to 5 (with 1 being no resistance and 5 being a great deal of resistance), law firm resistance to alternative fees was an average rating of 3.0, while company resistance was an average of only 1.8. This confirms a continuing large divergence of opinions between in-house and outside counsel regarding alternative fees.

The full report is for sale at <http://www.serengetilaw.com/Survey/default.htm> for \$500 for ACC members.

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