

7 Steps to Better Profitability: Integrating Process Improvement, Legal Project Management and Pricing





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EXECUTIVE SUMMARY

Imagine you worked in a business where demand for your services was mostly flat. Where your centuries-old monopoly crumbled as new competitors entered the market. Where downward pressure on price was eliminating your once-strong margins. Where your business model incentivized short-term thinking and the status quo. What would you do?

This is the situation in today's legal market. But despite these real, measurable threats to our industry's traditional models, most firms aren't doing anything about it. In fact, most law firm partners actively resist change.ⁱ

For firms that are trying to overcome the challenges in today's legal market, the most important question is this: *Can you remain profitable and still deliver top-quality legal services in less time and at less cost?*

The answer is yes. Recent evidence reveals that "the market will reward law firms who focus on operational efficiency in the broadest sense — not just managing expenses, but transforming the way they run their firms and deliver legal services."ⁱⁱ

This white paper describes how you can integrate three key strategies — process efficiency, project management and accurate pricing — to improve your competitiveness, your profitability and your client service.



INTRODUCTION

Process Improvement and Project Management, Defined

Process improvement is the act of optimizing a process or workflow to eliminate the waste and increase the value added by the process. It requires you to:

1

Examine how you undertake a task or a series of tasks.

2

Identify everything that interferes with your ability to perform the task efficiently.

3

Eliminate or at least reduce that interference.

The outcome is an optimized process that delivers better, faster and/or cheaper results for the client.

Legal project management (LPM) is “the application and adaptation of professional project management tools/techniques to managing matters in the practice of law.”ⁱⁱⁱ

Every legal matter is a project. According to Lean and LPM specialist Arthur Wilson, good LPM involves actively managing 10 different aspects of your matter:^{iv}



You can certainly undertake project management in your legal matters without first optimizing the workflow. This will give you and your clients some visibility into the matter and how it’s progressing, but it won’t ensure you are delivering the services effectively, at the right price, with the right team or in the right amount of time.

LPM is a popular topic these days, but project management alone is only a first step toward improving profitability. Integrating process improvement and project management ensures you are actively managing the most efficient and effective process you can.

BACKGROUND

Why Should You Change How You Practice?

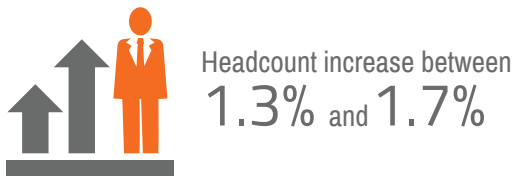
For the last decade, the legal industry has struggled with sluggish demand for its services. Key market indicators illustrate both the stagnation and the danger to our industry.

1. DEMAND IS FLAT

Prior to 2008, law firms could expect a 4 to 6 percent uptick in demand annually. Since then, it's been essentially flat.^v

Although the largest firms — those in the Am Law 100 — saw some growth in 2017, smaller firms did not. For firms in the Am Law 200, demand was down in 2017. For midsized firms — those outside the Am Law 200 and with an average of 146 attorneys — demand was flat. Some practice types, particularly litigation, fared worse than others.^{vi}

2. THE NUMBER OF LAWYERS IS INCREASING



In 2017, firms added to their headcount at a rate of between 1.3 percent and 1.7 percent.^{vii} Typically, firms are adding associates, not equity partners. This increase in leverage could be a good thing, except that salaries are going up. One firm just pushed first-year associate salaries to \$190,000, and other firms are starting to follow suit.^{viii} The upward pressure on salaries has meant increased expenses and poorer margins for many firms.^{ix}

3. PRODUCTIVITY IS DOWN

Too many lawyers and not enough work is a recipe for financial disaster. Thomson Reuters reported a downward trend in the number of hours worked per lawyer per month, which costs law firms about \$74,000 per lawyer per year.^x

Importantly, the big earners — partners — are working less. More than half of all law firms surveyed by Altman Weil reported that their equity partners were not busy enough. Profitability is suffering. Almost 60 percent of firms reported that overcapacity was diluting profitability.^{xi}

4. CLIENTS ARE DEMANDING MORE

At the same time, clients are increasing the pressure on external counsel. They're demanding more for less. They want predictability. They want accurate budgets, more fixed fees and better cost and time estimates. But they're not getting them.

Thompson Hine recently surveyed general counsel and business executives from 176 companies and financial institutions across the United States. Their survey identified a stunning "innovation gap" between what firms say and what clients perceive:^{xii}

- Although law firms claim they are innovating, only 4 percent of in-house counsel reported "a lot" of actual change.
- Fewer than 30 percent of in-house counsel reported seeing any significant improvements that helped them alleviate the growing demands from their Chief Executive Officers (CEOs) and Chief Financial Officers (CFOs) and from the business units they serve.
- Only 34 percent said their external firms were using more efficient work processes.
- Although process improvement and legal project management are hot topics at law firm conferences, only 38 percent of law firm clients reported receiving better budgets and work plans.

These are shocking statistics.

When you decide to renovate your kitchen, you get a work plan and a budget. You know what's in scope and what's out. You know, at least approximately, how much the various elements are going to cost, how the work is going to be performed and the basic timeline. Yes, there may be some scope changes along the way, but if you and the contractor have done your homework, you will have some sense of what the contingencies might look like and what they might cost. If a surprise does occur, you expect your contractor to come to you to discuss it before spending a fortune fixing the issue. You don't wait to know the price after all the work is completed.

Legal services should not be any different. There are enormous opportunities for law firms who can get this right. The most successful firms are proactively developing ways to deliver more value to their clients. They're doing it through improved efficiency; more appropriate staffing; predictable, transparent pricing options; and better customer service.

SOLUTION

Seven Steps to Success

This white paper will guide you through a seven-step methodology to integrate process improvement, project management and pricing.



By following these seven steps, you can deliver your legal services in less time and at less cost. You will improve the value you offer your clients and the profitability you deliver to the firm.

1. IDENTIFY YOUR TARGET PROCESS

Where you begin depends on cultural and economic factors in your firm. We recommend you start in a practice group that includes attorneys, managers and staff who express a strong interest in innovation, and a willingness to try new things or adopt new technologies.

It should also be a group with strong incentives for change. Look for a practice group that is under financial or competitive pressure, or faces demands from clients to deliver budgets or offer flat fees. It may be a group whose legal services are increasingly obtained through requests for proposals (RFPs) or auctions. High-volume practices and practices that operate under strict billing guidelines also provide good starting points.

Next, select the process — the matter type — you want to price and manage. It can be a litigation matter, a transactional matter or any other advisory matter. Don't be put off by claims that the work is bespoke or that there is no "process." Any type of legal matter can be improved. As Ken Grady says, anything that happens outside the brains of the attorneys can be improved.^{xiii}

If this is your first initiative, start with a relatively straightforward matter that presents a clear business case for change. Select, for example, a low-margin matter for a repeat client who imposes strict billing guidelines or demands fixed fees, or where you face increasing competition. The key is to select a practice group and a matter type where you can make a solid business case for change and where firm, client and attorney incentives are aligned.

2. MAP YOUR MATTER

Process mapping allows matter teams to visualize how they work across functions and across the life of a matter. Depending on the complexity of the matter you've selected, you can map at a high level, looking at your work at the phase level, or dig deeper into each phase and map out the individual tasks as well.

Regardless of the level you choose, a matter map gives you valuable insight into who does what work, when they do it and how they do it. Lawyers tend to work in silos. They may not realize the time and effort put in by other members of the team. They often don't know the full extent of what legal assistants do. But a map — a clear, visual representation of the workflow — never fails to identify pain points, duplications of effort, missing resources, bottlenecks and other inefficiencies.

We recommend you map on paper, using large adhesive flipchart pages and colored sticky notes. Color-code your stickies: yellow for process steps; pink for problems, wastes and frustrations; and blue for improvement ideas. While you may eventually want a digital version of your map, the large scale of a paper map will give you and your team the necessary big picture and the flexibility to easily add, remove or reorder steps as you work.

Once you have a clear picture of your current state — how you actually work today — you can move on to the next step. Figure 1 shows a current state process map above, and an optimized future state map below.

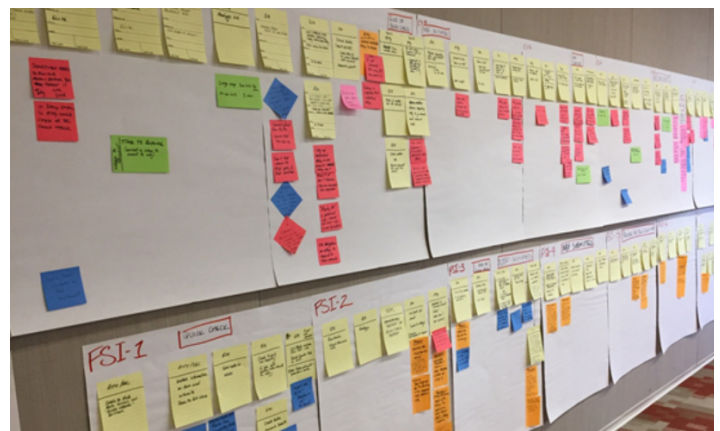


Figure 1.

3. OPTIMIZE YOUR PROCESS

We use Lean's DMAIC methodology for process optimization. With its emphasis on quality, clients and value, Lean adapts well to the practice of law.

DMAIC stands for Define, Measure, Analyze, Improve and Control.^{xiv} It provides you with a framework for process improvement and ensures you understand the root causes of problems you are trying to solve before moving on to the solutions.

One easy way to think about **DMAIC** is this:

- Define:** What does the client want, need or value?
- Measure:** How do we work now to get that result for our clients?
- Analyze:** What is causing us to work that way?
- Improve:** How can we work better to achieve that result for our clients?
- Control:** Are we following our new process and is it delivering the intended benefits?

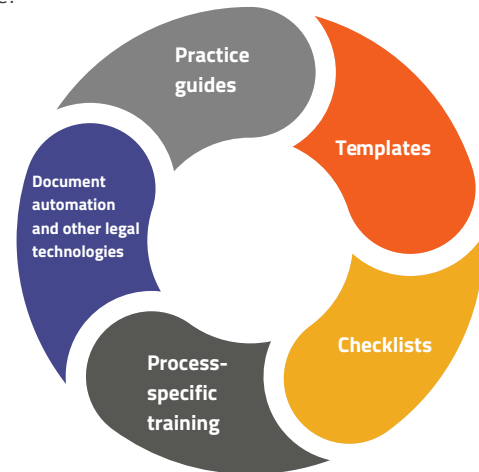
The current state map is part of Measure. It shows you how you work now. Using your current state map, look for any steps that frustrate your team. Frustrations usually fall into one of eight categories of waste represented by the acronym **DOWNTIME**.^{xv}

- Defects:** Errors, omissions and anything requiring rework
- Overproduction:** Doing too much, too soon
- Waiting:** Delays and interruptions caused by people or machines
- Nonutilized talent:** The wrong people doing the work
- Transportation:** Inefficient movement of documents and information
- Inventory:** Too much work in progress, or work processed in batches
- Motion:** Inefficient movement of or by people
- Extra Processing:** Doing more than the client requires or is willing to pay for

Each frustration or problem your team identifies is an opportunity to improve your process. In our experience, when you are working to make a process more profitable and competitive, one of the most important things to look for is nonutilized talent.

Look for places where partners do work that juniors can (and should) do, where attorneys complete tasks that a well-trained paralegal can do, or where humans are doing something that could be automated. Time spent on these tasks often gets written down or even written off, particularly when you're operating under strict billing guidelines.

Wherever possible, you should try to shift work to lower-cost resources and identify the tools those resources might need to produce quality work effectively and efficiently. Standardize the way work is carried out, and then develop tools to error-proof processes, minimize the time to draft and edit, and reduce handoffs and authorizations. Common solutions include:



An optimized process allows you to eliminate wasteful steps, free up attorney time for higher-value work and improve your overall margins. You can reduce administrative waste and, most importantly, reduce the write-offs and write-downs that come from partners and senior attorneys with higher billable rates doing lower-value work.

4. SCOPE YOUR MATTER FOR PRICING AND LPM

The first step in LPM is careful scoping. The future state map you create of your optimized process gives you a clear picture of your *typical* process. Working closely with your client, you will tailor that typical process to meet their specific needs. You may not need to delivery every element of your typical process, or you may need to build in others.

Use your map as the starting point for scoping your matter. It's a powerful tool to determine costs, work allocation and work breakdowns that you'll need to effectively manage your matter:

- ➔ Establish what tasks are and are not included in the matter.
- ➔ Identify the people you require to staff your matter, ensuring that you are using the most cost-effective resources (remember, it's about the right resources, with the right tools, at the right cost).
- ➔ Identify any assumptions you're making about the matter.

Once you have a clearly defined scope, you can move on to costing the work.

5. COST YOUR MATTER

Typically, a lawyer will estimate what a matter will cost based on their experience with similar matters in the past. While they may not be far off the final number, that number is rarely based on any understanding of profitability. Is the firm making money at that price? What's the firm's margin for the work? And what happens if the current matter doesn't go the same way as the previous matters on which the price was based?

Being able to provide an estimate or a fixed fee doesn't mean you're doing project management. Arthur Wilson suggests this one-step test: Do you ever have to deal with clients who are upset about a bill? If yes, you're not doing legal project management.^{xvi}

By integrating process improvement and LPM, you can provide clients with a transparent and accurate budget. You can also develop fixed fees that appeal to clients and ensure healthy margins for the firm.

You can do this because you'll have an optimized, effective and defined process. You won't be costing your matter based solely on extrapolations from what the firm charged similar clients for similar work. Instead, you'll have a richer picture of your input costs. For every step, you will know who does the work, how they do it and how long it should take. Your price can include time spent by otherwise nonbillable resources and can capture the costs associated with any technology you use.

Determining matter cost based on inputs rather than hours will permit you to create more accurate budgets for matters billed hourly. It will also help you develop robust fixed fees for all or some elements of a matter. And finally, it will illustrate your margins under given conditions and assumptions. When you need to adjust a price quickly — for example, during a reverse auction — you will be able to shift resources, redefine scope and recalculate margins to determine how low you are willing to go.

The Association of Legal Administrators' open-source code, the Uniform Based Process Management System (UPBMS), provides a standard framework for legal operations to develop, implement and maintain successful management and operational strategies, and encourage the use of a common language and approach to legal support operations across the industry. It addresses consistency in billing, process improvement, project management and overall benchmarking. Learn more about the UPBMS and its functions through this *Legal Management* article (legalmanagement.org/features/decoding-upbms) and on ALA's website (alanet.org/upbms).



6. COMMUNICATE THE SCOPE

Good LPM requires good communication. Your optimized process map provides you with a useful visual for talking clients through a matter and ensuring they have a clear understanding of the work that will be done for them — of what's in and out of scope — and how it will be done.

Your own team members also need to understand what is and isn't included in the services being delivered. If you priced discovery based on 3,000 documents and the other side delivers 4,000, your team needs to know enough about the scope that they come to you before they start on document 3,001. Similarly, if you estimated six hours for a particular element, team members need to know so that they can report anticipated time overruns before they occur and are billed.

Changes in the scope of a matter should have an impact on the price paid by your client. This is especially true in fixed-fee matters. If you don't communicate clearly to clients and team members, work will creep outside the agreed scope and directly impact your margins. It doesn't take long for a project operating under tight margins to turn unprofitable when people aren't equipped with the knowledge required to capture and leverage changes in scope.

7. MONITORING

To manage the work to scope, you need to be tracking two things: the work people are doing and the time they're taking to do it. How you do this will depend on the tools available to you at your firm. The key is to monitor regularly, not at the end of a billing cycle.

If your monitoring reveals scope changes — for example, tasks that weren't included in the original scope or assumptions agreed to in the original scope that have proved to be false — you need to actively manage such changes. Some scope changes may be inevitable as the matter progresses. Perhaps the matter was much more complex than represented by the client or there were more witnesses than expected. These will need to be flagged for the client as soon as possible so that the additional cost and new timeline can be calculated and agreed upon.

Note that not all deviations from the original work plan warrant a formal scope change. You've got to build in some sense of materiality. Deviations that are material (however you and your client choose to define that) require a formal scope change. Each formal scope change will help inform the conversation you have about scope the next time you're retained from a similar project in the future.

Some deviations will result because you may not have estimated your time accurately or set appropriate assumptions. Your initial decision-making about what is in or out will improve over time. So, too, will your ability to price and allocate resources and time — that is the iterative nature of legal process management. You and your team will get better at it over time as you refine your legal processes and build up more cost and time data.

CONCLUSION

On their own, process improvement, LPM and legal pricing will each help you deliver better value to your clients and maintain healthy margins for your firm. Integrating all three will give you an even bigger boost,

- 1** Process improvement will ensure you are conducting your legal matter in the most effective and efficient way possible, using the right people to do the right work at the right time and the right cost.
- 2** Use the information from your process improvement to price your work for better margins and profitability, and develop more accurate matter budgets, whether you are billing hourly or using some form of alternative fee arrangement.
- 3** Apply LPM to your already efficient matter to give clients the most effective legal service on time and on budget — making you more profitable and more competitive.



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For more information on the roles of legal assistants and similar personnel, check out ALA's white paper "*The Changing Role of the Legal Secretary*": alanet.org/whitepaper.