

Making the Most of “Free” Hours

Free is a fraught concept. The traditional ECON-101 dictum is that there is no such thing as a free lunch. And, being the target of offers for many “free” lunches, in-house counsel can certainly attest that there is always a cost (i.e., our time) and often an expectation of reciprocity (i.e., some future purchase of goods or services) when something is advertised as free. Still, I am here in praise of free.

At free lunches, I am sometimes offered free work. A firm who does not currently have my business offers me some quantity of “free” hours on any matter I subsequently assign them. Of course, that’s the rub. I need to assign them a matter to take advantage of the free hours. Most cases would quickly consume any quantity of free hours I have ever been offered. Thus, what I am really being offered is a discount. Discounts are fine, as far as they go, but are rarely a substantial factor in retention decisions.

Let me, however, submit an alternative use of free hours that can confer real benefits. Rather than using the free hours on a matter, use them on an internal process improvement. That is, take outside counsel up on their offer and task them with upgrading your legal department. There are always templates to be revised, processes to map, workflows to engineer, information siloes to breach, backlogs to be cleared, technologies to be investigated, etc.

Outside counsel should be capable of assisting on process improvements. Indeed, taking on a process improvement is similar to taking on a matter. It entails client communication, understanding the client’s problems, and achieving the client’s explicit and implicit objectives. Outside counsel’s free hours can augment resources that are too often diverted from the important to the urgent.

Using free hours for process improvements is also, in many ways, better marketing for outside counsel. It does not deliver the immediate revenue. But it should serve as a stronger foundation for the relationship. Working with the client on a process improvement should provide more access and face-time than what is likely to be a geographically distant and unimportant matter (free hours from untested counsel are not going to be used on crucial cases). There are also increased

opportunities for demonstrating creativity and a client-centric perspective tailored to the needs/wants of the particular client. Later on, the client is more likely to think of the outside counsel who has added value in a discrete area. Who better to handle a dispute involving a particular policy than the lawyer who last revised it?

All of us have a long list of process improvements that we intend to get to eventually. And most of us have a crushing workload to attend to immediately. But few of us (author included) are able to remain mindful of the power of the aggregate impact of marginal improvements. For example, if your department can shave off one hour per week, that’s a time savings of 10 full days worth of time over the next five years. Make it a collective 30 minutes per day, and that’s an additional five weeks of collective productivity.

As they scale, these numbers can get silly rather quickly. Moreover, they ignore the cost of the improvement. That is, the proper framing is that, over a five-year period, the break-even point for an improvement that yields five additional minutes per week is 21 hours (i.e., over five years, you would be net positive on time if you devoted five hours to something that saves you five minutes per week). But those five hours are hard to find. And they are impossible to get back if the time savings do not materialize. This is why the use of free hours makes so much sense. If the time ends up being wasted, it wasn’t yours.

Outside counsel are gambling that they will be able to deliver something of sufficient value that you will be convinced to engage them on paying work. If they’re right, they will likely provide something of greater value than a routine matter gone right. If they’re wrong, the downside of a stillborn process improvement is simply the status quo. The status quo is less costly than a routine matter gone wrong. Free work isn’t free in the sense of being completely without cost — nothing is. But deploying resources with no budgetary impact to drive internal process improvements is an idea worth considering. **ACC**



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