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Best Practices and Tips in Law Department Administration

Bethany Appleby
Partner
Appleby & Corcoran, LLC
North Haven, Connecticut

Brian Balconi
Chief Legal Officer
Authority Brands
Columbia, Maryland

Kathleen Panek
General Counsel
U.S. Business Holdings, Inc.
Lakewood, Colorado

I. INTRODUCTION

Running, or even just working in, an in-house law department has been described as "drinking from a firehose" or continually "putting out fires." The fire metaphor is apt; it conjures up an image of something that mere mortals cannot tame or control but are trying their best to wrangle anyway. Being in the constant state of high alert (and sometimes panic) can raise anxiety levels, sap productivity, and lead to burnout and law department attrition.

Law school teaches the law. A law department leader may be incredibly skilled at legal writing, research, and analysis. But so many of the issues law department leaders must master are not "legal" in the usual sense of the word. In-house lawyers must weave their way through the sometimes competing forces of business, politics, power dynamics, budgets, and so many others. Law departments are also often siloed from the organization's business teams. Some law departments have found these silos more pronounced with increased remote work because of reduced casual hallway interactions, and have had to make special efforts to foster and maintain meaningful connections and camaraderie with the company's business teams in order to maintain effective collaboration.

Too often, in-house lawyers and business team members point fingers at each other, with counsel throwing up their hands at business team members whom counsel perceive to be unresponsive, inefficient, or unable to make a rational decision; simultaneously, business team members perennially complain about their important initiatives being "stuck in legal." Is everyone even speaking the same language, let alone aligned and working toward common goals?

So how can in house counsel and business partners get on the proverbial same page, and how can outside lawyers make themselves irreplaceable in this resource-constrained and confusion-rich scenario? Many modern processes and technology can help create a common language to get things done, find efficiencies, and reduce stress at the same time - but, those tools can be relatively foreign to the legal professionals in an organization. In addition to teaching the law, law schools (at least nowadays) teach technology. But law schools teach the wrong technology for quenching the fires raging in most law departments. Lawyers reading this paper probably learned how to use Westlaw and LEXIS, and perhaps other platforms for finding, synthesizing, and verifying that legal documents, cases, and principles are still good law. While indispensable when writing a motion, those tools are not the technology that will improve the law department's relationships and accountability with the business teams they support or help move a business initiative from a great idea to a great reality. While this paper cannot identify the magic bullet or tool for your particular law department or situation, it will – hopefully – help you design a way to identify and implement the right tools, systems, and processes to reduce misunderstandings for a particular organization, and make the law department's coordination with business teams more transparent, effective, and ultimately more satisfying and successful for all involved.

This paper discusses the following types of available tools:

- Franchise Administration Tools
- Legal billing platforms
- Claims and Litigation Management (“CLM”) technology
- Contract drafting software and contract lifecycle platforms
- E-signature platforms
- Document management and collaboration, and document sharing platforms
- Customer Relationship Management (“CRM”) platforms
- Project management platforms
- Lease administration systems
- Trademark and intellectual property management platforms
- Due diligence platforms
- Calendaring systems and communications/video platforms
- E-discovery platforms

II. ONE SIZE DOES NOT FIT ALL – LAW DEPARTMENTS COME IN ALL SHAPES AND SIZES

Some surprisingly large enterprises staff their law departments very leanly – perhaps too leanly in the eyes of the lawyers working within those departments. It is not unusual to learn that a franchisor with broad brand recognition has a legal staff of just a few lawyers. Sometimes, this means that the franchisor is either heavily reliant (and perhaps overspending) on outside counsel, or that the law department may not be able to effectively meet the organization’s legal needs. The enterprise may also be taking unreasonable legal risks it does not even realize it is taking, until it is too late.

Some franchisors go in the opposite direction. After analyzing a bloated outside counsel budget, leadership may astutely realize that many tasks could be handled much less expensively with a larger internal legal team. Sometimes, though, those anticipated savings turn out to be theoretical only. Adding more people does not always naturally solve an inflated outside spend. The more people involved in a given project – or cooks in the kitchen – the more chance for friction in the system, or inefficiencies. We have all seen the baseball play where two outfielders collide, resulting in a dropped ball and chaos on the field. Now imagine doubling the number of outfielders. Yes, there is the theoretical increased probability that one of them will catch the next pop fly, but what about the possibility that they will collide or, alternatively, that the outfielder best positioned to catch the ball will assume that one of the others will catch it and therefore not even try to do so?

And of course, franchise businesses also differ widely, in ways that require precise and distinct legal and risk management attention. A large global franchisor with multiple offices around the world will have very different needs, problems to solve, and budget than a small franchisor with a single U.S.-based headquarters. Similarly, brick-and-mortar businesses will have different needs than service-based industries. And businesses with remote workforces will need to pay special attention to mobile platforms and data security.

Although budgets, sophistication, and staffing levels may vary widely, identifying, choosing, developing, and implementing the right processes, standardized systems, and technologies-and enlisting outside attorneys prepared to utilize those tools to the benefit of the enterprise - can dramatically improve law department productivity and service levels, regardless of the department's or the franchisor's structure or size. This paper discusses how to go about doing this in a way that works for you, whether your goal is to "do more with less" for a small law department or to more effectively "herd the cats" in a larger department and organization. Regardless of the law department's size, implementing the right processes and technologies, particularly those that improve communication and transparency with the business teams, can pay immediate and dramatic dividends.

We could not possibly address all platforms or systems in this paper. Moreover, today's tools are constantly evolving, and new ones appear every day. To the extent that this paper or the presentation accompanying it uses product names when discussing various available tools, please do not take this as an endorsement of any particular brand or product but rather simply a starting point for considering the types of tools that could work for your organization.

III. TYPES OF SYSTEMS TO CONSIDER

This paper does not contain an exhaustive list of all possible types of systems a franchisor's law department might consider useful, but instead, addresses those tools that are most commonly used with proven benefits. Most franchisors will not be in a position to purchase all of these and will likely have to prioritize based on needs and budgetary constraints.

A. Franchise Administration Tools

Legal professionals providing franchise sales support can add enterprise value by implementing tools that accelerate and streamline the franchise sales process. Prospective franchisees may be quitting their jobs and investing their life savings in the brand. Most franchisors' lifeblood is franchise sales, the sales team has goals to achieve, and the salesperson may receive a commission only when the deal closes. It is therefore not surprising that one of the most important systems for franchisors to establish early and properly is the system used to support franchise sales and administration. In many cases, a franchisor's goal when selecting and implementing a franchise administration system is to make the process fast, transparent, and "consumer friendly." An added bonus would be if the system can function seamlessly with the franchisor's other systems and platforms, such as those discussed in Section III.B below.

Below is a discussion of tools based on a chronological approach, following the flow of a franchise deal.

i. Franchise Sales Process

(a) Franchise Sales and Disclosure

The franchise sales and administration process lends itself to several different systems or platform components, discussed in rough chronological order based on the typical sales process below. Systems and platforms implemented for franchise sales and administration may also have many useful applications for the in-house legal team and other departments. The franchisor may obtain new systems or processes to fill gaps in functionality, or it can contract with a franchise-specific vendor to provide an end-to-end solution.

First, the franchisor's sales team likely uses some sort of Customer Relationship Management ("CRM") platform to keep track of potential franchise leads. CRM platforms are discussed in more detail in Section III.B.vi below. At the appropriate time, the prospective franchise should receive e-disclosure in a process where they electronically acknowledge receipt of the Franchise Disclosure Document ("FDD"). E-signature platforms are discussed in Section III.B.iv below.

The CRM is also typically used to gather information and documents from the prospective franchisees, which may include application materials, licenses, and financial information.

Documents must be stored, accessible, and easily found and retrieved using a document management system. See Section III.B.v below.

(b) Hand-off to Legal

Once the franchise sales team needs a draft franchise agreement to present to a candidate, it is time to involve legal support. Franchisors take different approaches as to when the franchise sales process moves to the legal team. Whenever that handoff occurs, however, hopefully (using some of the tools described above), there is a "clean" hand-off to the in-house legal team, with a properly disclosed prospect.

Misunderstandings and delays can occur when multiple teams are involved in any multi-step process, including franchise sales, but effective tools can help mitigate those challenges. There can be a lack of clarity or transparency as to who is responsible for what task along the way, and when each task will be completed; however, software that includes workflows enables all stakeholders to have clarity on this point. Manual management of drafting can result in many emails, phone calls, and other messages, which can be difficult for all to track. However, even basic project management systems, discussed in Section III.B.vii below, can be a tremendous help in creating an efficient, transparent process among the sales and legal teams, and capturing the decisions of those constituents along the way to add clarity. Further, the appropriate project management tools and processes can provide visibility between the sales and legal teams so that everyone can see a deal's status in real time without frustrating and time-consuming manual inquiries. If follow-up is needed, project management systems can make it easier to identify the proper team or individual to contact, and follow-ups can even be scheduled to occur automatically if tasks are not done by a certain date.

The franchise agreement will also need to be drafted, with the proper dates, names, territories, and other customized information. Contract drafting software, discussed in Section III.B.iii below, can drastically reduce the time, manual work, and even human error involved in drafting without such a tool. Once the franchise agreement is drafted, it can be sent out for electronic signature, and signatures can be collected instantaneously from around the globe. See Section III.B.iv below.

As a result of following these or similar steps, the deal should be signed promptly, and franchise sales can be a great and frictionless experience for everyone involved. The sales team can enjoy great customer service from the legal department, and members of the legal team involved in sales support can feel satisfied by helping their business partners and the company achieve their sales goals!

B. Other Systems and Platforms to Consider

As discussed in Section III.A above, a successful franchise sales and administration process can include multiple components, either packaged in an all-in-one end-to-end tool, or in separate processes and platforms with two or more tools that work together. Discussed below are some systems and platforms that could be part of that process (or provide other efficiencies) and that also could have application far beyond the franchise sales and administration process.

i. Legal Billing Platforms

Managing outside counsel relationships and spend can take a lot of time, some of which can be hard to delegate to non-lawyers. Legal billing platforms can help in this process by offloading some of the more labor-intensive tasks involved onto outside law firms, automating others, and organizing information in a way that reduces the lawyer time necessary for reviewing and approving bills.

First, in-house legal department leaders may consider requiring outside law firms to use a Legal Electronic Data Exchange Standard ("LEDES") billing format to help ease processing of bills and analysis of legal spend. Most law firms are familiar with LEDES, which is an electronic billing format used by multiple well-known legal billing platforms.

LEDES formats have been used since the late 1990's. LEDES files break outside counsel work down into uniform categories such as client communications, written discovery, depositions, etc. Having outside legal work categorized in uniform predictable categories lends itself to more efficient review and easier comparison of spend between firms and billing matters.

Next, in-house legal department leaders might consider implementing legal billing software, enabling outside law firms to submit bills electronically, and empowering internal teams to streamline review and processing. Good legal billing software reduces the inefficiency of receiving multiple types of bills in multiple formats from different law firms, and then coordinating the (otherwise manual) process of reviewing, approving, and paying those bills. The inefficiencies and delayed payments stemming from these manual processes often frustrate law firms and create more inefficiencies, lost productivity, and annoyance when in-house lawyers and staff need to investigate and respond to law firm follow-ups on unpaid invoices. Using legal billing software, law firms can upload their bills in a uniform way, invoices can be reviewed and approved (or rejected) electronically, and payment can be automated once final approval is given. As a further benefit, law firms and authorized in-house users can log in to view the status of a particular invoice, which can reduce time wasted in unnecessary inquiries and calls or emails to determine the status of approval or payment.

Besides easing review and payment, billing software also automates reporting and can reduce many hours of legal or administrative staff time, making it possible at a touch (or two) of a button to determine ratios of amounts spent for different types of matters or regions, amounts paid to different law firms (for example, by percentage spend or average rates charged), and other helpful information.

Legal billing software also allows legal departments to better forecast and manage legal spend, and to control costs. Billing platforms can be tailored to varying budgets, as some vendors base the cost on the amount spent on outside counsel. Billing platforms can also be used in conjunction with other coordinating "modules" sold by the same company or combined with other companies' platforms. These other modules or platforms can perform a wide variety of tasks, such as automatic bill review for reasonableness of fees or adherence to the franchisor's legal billing policies for various types of charges, such as travel or administrative costs. They can also handle document management for litigation or other legal matter management and can include platforms for information sharing and reporting that outside counsel can access.

ii. Claims and Litigation Management Platforms

Franchisors with a substantial number of claims or litigation matters may want to consider a Claims and Litigation Management ("CLM") platform. These platforms help streamline the process of tracking, evaluating, valuing, and organizing information about claims and active litigation or arbitration. Outside counsel may also have full or limited access so that they can upload documents, information, or requests, and review updates and view information input by the franchisor. CLM platforms can also coordinate with other calendaring systems to keep track of key deadlines and dates and may also include built-in decision-tree or other software to help the company make settlement or other decisions or more clearly communicate about the matter with business team members, mediators, or others.

As with other types of platforms discussed in this paper, CLM platforms can save time and frustration by providing a window into a matter's status to reduce the time spent responding to email or telephone inquiries from outside counsel and others. Care should be taken, however, when giving access to CLM platforms to those other than outside counsel or in-house law department members because of privilege concerns.

CLM platforms can stand on their own or be combined with billing or more general document management systems to increase their effectiveness and reduce the number of separate places that information, or different versions or formats of information, are kept or accessed.

iii. Contract Drafting and Contract Lifecycle Management Software

Contracting poses numerous challenges for in-house lawyers. The most obvious challenges, and those most likely familiar to lawyers fresh out of law school or from a law firm background, involve contract drafting. But in-house lawyers quickly learn that there are many stages of the contracting process, and the in-house law department often touches all of them. There are many systems available to help.

(a) Contract Drafting Software

Routine contract drafting *should* be easy. A franchisor with a high-volume of a particular kind of contract, such as non-disclosure or franchise agreements, should just be able to swap out names, dates, and a few other pieces of key data from a template version and, voilà, a new signature-ready contract is drafted. Anyone who works in a law department knows, however, that preparing recurring contracts is often not as easy as it seems like it should be.

In the rough and tumble of modern-day law departments, something is bound to fall through the cracks in contract drafting. Perhaps new names are plugged in, but an old address or territory boundary remains. Perhaps the signature blocks are forgotten, and they remain blank or, worse yet, are set up for a prior franchisee's signature. Even the most rudimentary contract drafting software can greatly improve the odds that the new contract will be error-free by requiring an administrative or other law department employee to complete separate fields with all contract-specific information to generate the new contract using a franchisor-prepared or approved template. Contract drafting software can also assemble and organize multiple versions of a particular provision, such as indemnification, dispute resolution, assignability, or others, so that pre-approved variable content can seamlessly be inserted as appropriate for different deals.

Platforms can also require the user to input the jurisdiction where the contracting party resides or does business to ensure that a jurisdictionally appropriate template is used.

As with all systems, though, the garbage in/garbage out caveat applies. Systems are not foolproof and cannot fully eliminate human error. It is therefore important to properly select the individuals who will be responsible for using and maintaining the system and then train them well, as well as creating an appropriate review process for agreements once they are drafted. For more on implementation, see Section V below.

(b) Contract Lifecycle Management

As important as contract drafting is, it is only a piece of the puzzle. There are many stages of contracting, and various platforms can help franchisors manage some or all of them. Take, for example, a vendor contract for new franchise equipment. After conducting a request-for-proposal ("RFP") or otherwise narrowing vendor options, due diligence must be performed. Getting necessary quality and financial documentation, insurance certificates, and the like can be cumbersome. But what if the franchisor has a portal that automatically requests standard due diligence materials from the vendor once the vendor is entered into the system, and allows (or requires) the vendor to upload that documentation itself? These systems exist, and they can even automatically follow up on the request if the vendor does not comply by a particular date. The system can then request vendor approval from the appropriate individual or team after the documentation is uploaded. The contract can then be drafted (potentially using the same system and artificial intelligence ("AI" capabilities), and various further approvals and execution can be requested and tracked through the system. After electronic execution, the contact can be stored in the system or linked to the company's broader document management system. Key dates (expiration, renewal notice deadlines, compliance, service level agreement ("SLA") deadlines, and so on) can also be tracked and calendared through the system. Other important provisions (indemnification, insurance, dispute resolution, etc.) can also be summarized and retrieved in a streamlined way without having to scroll through the whole contract.

As with many of the systems discussed in this article, the transparency provided by a contract lifecycle management platform can allow appropriate business team members to see whose virtual "desk" the contract is on and also allows for automated follow up and notification.

iv. E-Signature Platforms

It is now well-established that properly obtained electronic signatures are valid and enforceable throughout the United States.[1] As a result, companies, and even customers, have embraced electronic contracting, which can be accomplished through a variety of secure and reliable platforms. Companies fully embracing and leveraging

[1] For more information on this point, *see* The Electronic Signatures in Global and National Commerce Act ("ESIGN"), 15 U.S.C. § 7001, et seq. and the Uniform Electronic Transactions Act ("UETA"). Electronic signatures are also often also valid for international deals.

their electronic signature platform can use it for internal and external agreements in a wide variety of ways, often in conjunction with other platforms discussed in this paper.

v. Document Management, Collaboration, and Sharing Platforms

Law departments, and companies generally, waste a lot of time searching for important documents, from signed contracts to Word versions of correspondence and legal briefs and research from earlier matters that could be repurposed for new matters. Gone are the days when lawyers can simply save documents to their computer hard drives or Microsoft OneDrive. Documents should be organized and saved on a server or securely in the cloud in a way that others with appropriate access can easily find, edit, and use them.

A related function to document management is document collaboration. Every lawyer has experienced the confusion and frustration of "version control," with internal or external team members making edits to different versions of a document and then having to blend edits from several sources to create the final draft. Collaboration platforms allow multiple users to work on a document and make edits and comments in the document simultaneously. Not only can these types of platforms solve the version control problem, but they can also save time in document turnaround by eliminating the need to wait for one user to review and edit a document before the next collaborator can do so.

One especially important use for collaboration within a document management platform is the annual update of the FDD. Updating the FDD often involves a combination of numerous businesspeople and groups within the franchisor, in-house counsel, as well as outside counsel. Using a collaboration tool greatly streamlines the process.

Some of these document management and collaboration tools may include a secure sharing feature that can be used to send sensitive documents more securely and can also be used for merger & acquisition data rooms and a variety of other purposes. Separate sharing platforms may also be used.

Document management (and contract lifecycle management) platforms can also be used for compliance monitoring; for example, they may be utilized to store and track required insurance certificates and other important information.

vi. Customer Relationship Management Platforms

Customer relationship management ("CRM") platforms are not widely used by law departments, but lawyers should nonetheless be familiar with them because they may be used by the sales or other teams and could also be relevant for e-discovery, privacy compliance, or other purposes.

In a nutshell, a CRM system:

aggregates customer information in one place to give businesses easy access to data, such as contact data, purchase history and any previous contact with customer service representatives. This data helps employees interact with clients, anticipate customer needs, recognize customer updates and track performance goals when it comes to sales.

CRM software's main purpose is to make interactions more efficient and productive. Automated procedures within a CRM module include sending sales team marketing materials based on a customer's selection of a product or service. Programs also assess a customer's needs to reduce the time it takes to fulfill a request.[2]

vii. Project Management Systems

Part of getting important initiatives or projects over the finish line is project management or having an organized method of getting from start to finish. Project management software can allow multiple individuals, or multiple teams to:

- Plan projects – including an organized overview, with anticipated timing, who "owns" each phase of the project, and who has the authority to approve each step.

- Track projects, including who worked last on each task, finding bottlenecks, and identifying the person who must complete the next task, and when.

- Allow coworkers and other collaborators to check on a project's status and pick up where they left off.

- Provide a platform for participants to communicate and save documents and other relevant information in one place.

- Have reporting features and a dashboard to help track timing, budgeting (and overages), key performance indicators ("KPI") and other important information.

Not all project management platforms have all of these features, and some features may not be necessary because they are already available through the franchisor's other platforms or may conflict with other established protocols and processes. Franchisors may also choose to keep their project management software simple to help with implementation and adoption, as some features of more complexity may be intimidating and require in-depth training for proper use.

viii. Lease Administration Systems

[2] https://www.investopedia.com/terms/c/customer_relation_management.asp (last visited 1/17/22).

Franchisors with multiple company-owned locations or that act as landlord or sublease locations to franchisees will want to consider lease administration systems, and may be able to use some of the other platforms described in this paper for that purpose. These systems can organize lease and related documents, and alert to upcoming expirations, among other functionalities.

ix. Intellectual Property Administration Platforms

Although many franchisors use outside counsel to manage their trademark and other intellectual property portfolios, larger franchisors may handle some of those tasks in-house and will want to consider platforms to organize, track, and calendar IP matters. Alternatively, franchisors may want to ask outside counsel for direct access to the law firms portfolio management system for better visibility and potential decrease in costs relating to inquiries about the franchisor's portfolio and related matters.

x. Due Diligence Platforms

Franchisors vary widely in due diligence performed on vendors, prospective franchisees and master franchisees, and others beyond a rudimentary Office of Foreign Assets Control ("OFAC") check. A variety of services and databases to perform additional due diligence are available for subscription or purchase. Some of these services or databases may be added on to licenses that the franchisor already has, such as common legal research platforms.

xi. Calendaring Systems and Communications/Video Platforms

Because of former work or personal life experiences, a franchisor's employees may have different preferences for calendaring systems (e.g., Google Calendar vs. Outlook) and communications/video platforms (e.g., Zoom vs. Microsoft Teams, vs. GoToMeeting vs. Google Meet). Despite these preferences, franchisors should attempt to have all employees use the franchisor's preferred calendaring and communications/video platforms for work-related matters.

Consistency can be important for a variety of reasons, including technological compatibility and enterprise (or administrator) visibility as well as privacy concerns. The franchisor may also invest in training so that employees can use the platforms to their fullest. That investment in training is wasted if employees are using different tools.

xii. E-Discovery

Large franchisors, or those with a large number of disputes, may find it cost-effective to bring some of the initial e-discovery tasks in-house rather than relying on outside counsel or e-discovery vendors. There are a number of companies that specialize in in-house e-discovery tools, some of which may coordinate or be a module of the franchisor's legal billing or document management platform.

IV. WHAT TO CONSIDER WHEN CHOOSING A TOOL?

A. Who is the Client, and What are its Needs?

Franchisors come in all shapes and sizes with a variety of different needs, staffing, and budgets. While a document management and sharing platform with a five-figure minimum annual licensing fee may be a bargain to a large company losing productivity because of document management issues, this kind of expense would hardly be worth it, or even considered, for a start-up franchisor. And maybe document management is not a pressing problem, particularly if the franchisor has relatively few employees or separate departments.

Perhaps the franchisor's biggest stumbling blocks to growth and success are related to delays, inefficiencies, and miscommunication in the franchise sales process. If that is the case, then identifying the steps discussed in Section III.A above where the process gets stuck and focusing on solutions for those would be a much higher priority than traditional document management.

Of course, companies cannot simply run out and buy any tool or solution that would help them function or grow. No franchisor maintains an unlimited budget, so some prioritization will be necessary, and timing of purchases must be considered – including the impacts of any "down time" for implementation or training. Once it has a short list of high priority needs, the franchisor will likely have to do some initial research into cost and other details to help prioritize what type of system or platform to purchase first.

B. Who Decides, and What is the Process?

As mentioned earlier, law school fails to prepare lawyers for using technology other than for legal research purposes. And law school certainly does not prepare lawyers for suddenly being in charge of selecting and implementing technological solutions for the types of problems this paper discusses.

Every week seems to bring a new platform, or buzzword, or trend, that vendors urge law departments to consider, "demo," or buy. The array is dizzying, and confusing. Some companies also seem to go out of their way to obfuscate what a particular product actually does, with their websites touting the benefits but not the mechanics or specifics. Vendor unclarity can waste a lot of the legal team's time with live or virtual sales demonstrations, only to reveal that the product is way out of budget or does not solve the problems the law department is looking to solve. Although there is no one right answer, the suggestions below should help provide a framework to develop the right process for your business while saving time and aggravation in the process.

i. The Role of Legal Operations

As responsible, engaged lawyers, we all attend conferences, seminars, and webinars that at least touch on or mention technology, and we are constantly bombarded with emails, sponsorships, and infomercials touting the best new tool that all modern companies “must have” to avoid being left behind. But even as we become familiar with each new option, new ones spring up, and new concerns (often involving privacy or data security) are raised.

It can be impossible to feel fully up-to-speed when the landscape is constantly changing, particularly since today’s in-house practitioners have law to practice, people to manage, and deadlines to meet. These are some of the reasons for the growth of the legal operations (sometimes called “Legal Ops”) function.

In the last five years or so, much has been written about legal operations. Legal operations has been described as “the business side of the corporate law department or practice of law and is the support structure for managing the corporate law department.”[3]

According to the Corporate Legal Operations Consortium (“CLOC”), legal operations “describes a set of business processes, activities, and the professionals who enable legal departments to serve their clients more effectively by applying business and technical practices to the delivery of legal services. Legal ops provides the strategic planning, financial management, project management, and technology expertise that enables legal professionals to focus on providing legal advice.”[4] Legal operations is “the combination of all the business activities, processes, and people that empower an in-house legal team to serve a company’s legal needs using a strategic business approach.”[5] Legal operations differ from law department administration teams by “support[ing] in-house counsels with skills like planning, financial management, vendor management, technology management, and legal data analytics.”[6]

Legal operations is essentially “the business side of the corporate law department or practice of law and is the support structure for managing the law department. It is devoted to analyzing and running the corporate law department the way business leaders analyze and run their non-law departments. Legal Operations functions can help break down silos, establish and communicate the ‘business case’ for initiatives, prepare and monitor budgets, attend to in-house legal staffing, training, and technology, and help free up lawyer time to address legal matters.”[7]

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[3] Bethany L. Appleby, Kerry R. J. Olson, Sarah A. (Walters) Bush, Shelley Weatherbie, *The Law Department of the Future: Innovation and a New Business Model for In-house Counsel*, 17, ABA 41st Forum on Franchising, Intensive Session (Nashville, TN 2018).

[4] https://cloc.org/what-is-legal-operations/ (last visited 1/22/22).

[5] Nathan Wenzel, *What is Legal Operations?*, SIMPLE LEGAL (Jun. 11, 2021), https://www.simplelegal.com/blog/what-is-legal-operations.

[6] *Id.*

[7] Appleby, Olson, Bush & Weatherbie, supra n. 3, at 17 (citing Law Department Operations: Overview (Thomson Reuters, Practical Law, 2018).

Mary O'Carroll, Head of Legal Operations at Google, explained in a 2017 interview published in the ABA Journal that legal operations functions are growing in popularity,

> [b]ecause of the changing times, the changing role of the general counsel in a legal department, and the need to run that department more like a business. There's a lot more pressure coming in from the top for a general counsel to look at that department as a business, and because he or she is pulled in a lot of other directions, he or she needs to hire someone to handle the management of the financial issues, outside counsel and vendors, the knowledge, the systems and tools in IT, and any internal processes.[8]

In short, the legal operations leader or team can do some of the things law department leaders may not want or have time to do, and perhaps are not equipped to handle.

Not every company has the luxury (or budget) to have a legal operations team or manager. The size and structure of the legal operations function depends on a company's size, resources, and preferences. The role of this group or function continues to evolve with technology and business complexity, and more companies are embracing this function. According to a 2020 Association of Corporate Counsel (ACC) Chief Legal Officer Survey, slightly more than half of the respondents had a legal operations function with at least one dedicated individual, as shown in the chart below.[9]

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[8] Ari Kaplan, *Why are Legal Operations Pros Important to Corporate Law Departments?,* A.B.A. JOURNAL: LEGAL TECH. (Apr. 25, 2017), http://www.abajournal.com/news/article/reinventing_professionals_CLOC_corporate_legal_operations_consortium/.

[9] The chart is on page 12 of the survey. Survey available at https://www.acc.com/sites/default/files/2020-01/ACC_CLOreport20_Final_0.pdf (last visited 1/22/22); see also discussion and summary in Nathan Wenzel, *What is Legal Operations?*, supra, n. 5.

What is the number of legal operations staff employed in your legal department in all locations?

DESCRIPTIVE STATISTIC	NUMBER OF LEGAL OPERATIONS PROFESSIONALS
25th percentile	0.0
Mean	5.9
Median	1.0
75th percentile	2.0

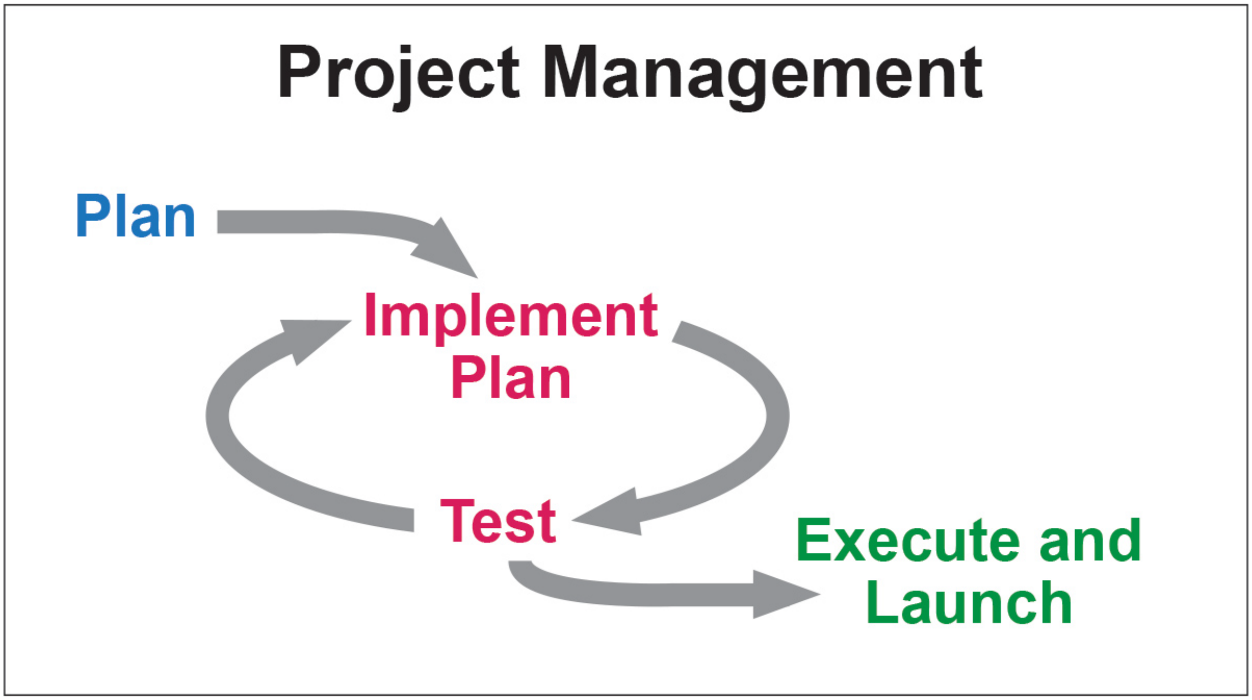
As an added benefit, properly implemented legal operations functions "can help change [the] negative perceptions that exacerbate siloing between the legal and business functions and can improvecommunication between the corporate law department and business teams."[10]

ii. The Role of Project Management

As the description in Section III.A.i.(b) above should convey, companies can find it difficult to get projects and initiatives over the finish line because, at least in part, of the "herding cats" aspect of multi-disciplinary processes and initiatives. Project management (with or without the help of specialized software) is essentially deciding, in advance, how a project should proceed and then ensuring that the process is followed and that scheduled timelines are met. The process should also identify who needs to be involved (or provide necessary approvals) for each step and who is responsible for making sure a particular step is completed.

It is important to pay careful attention to steps that are "critical path," meaning that the project will grind to a halt and cannot proceed until that step is done. Other steps or tasks may still be important but can be performed in parallel with other tasks, making deadlines somewhat more flexible so that completing critical path work can be prioritized.

[10] Appleby, Olson, Bush & Weatherbie, supra n. 3, at 18.



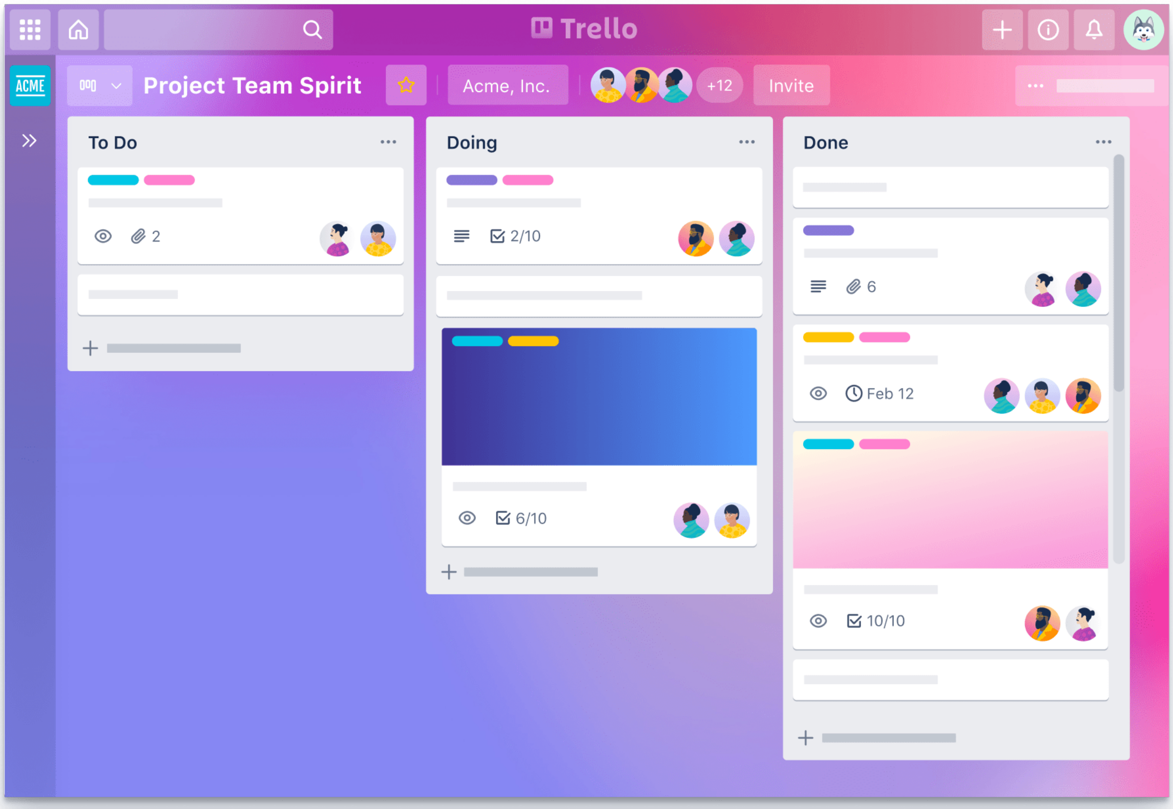
Project management has a flow, which is dictated by the particular project's needs and organizational preference. As shown in the above graphic, however, there is a common flow that always starts with a plan. Investing the time upfront in a proper detailed planning process and flow should save significant time and aggravation.

Just as the legal operations function can essentially serve as the project manager for law department initiatives, a designated project manager for choosing and implementing a new technology tool can be invaluable when the tool will be used cross-functionally.

Project managers are usually mid-level employees, who may struggle to manage up without the right support. Having a particular project plan "blessed" by upper management can help imbue the project manager with the authority to hold more senior employees accountable. Those more senior employees become obligated to the plan, and the project manager is simply doing their job implementing the plan, making them more comfortable when following up on tardy tasks. The potential awkwardness of follow-up can also be alleviated using project management tools that include automated reminders from the system (rather than the project manager personally). The knowledge that supervisors may have visibility into a project management system to see a project's status (and whose "desk" it may be stuck on) may also help keep the project on track.

Below is a marketing graphic[11] from the website of a popular simple project management tool showing the type of "dashboard" information such tools can provide to those with appropriate access.

[11] https://trello.com/



Although much more sophisticated project management software is available, for many organizations, such perfection can be the enemy of the good because employees will be intimidated by Gantt charts or complicated spreadsheets and interfaces and will seek every reason not to learn or use the tool. Companies also may not want to spend the time and money providing specialized project management training to a broad group of employees who might be involved in company projects, opting rather to use a simpler platform that may be more intuitive to use.

iii. Assembling the Necessary Team(s)

When selecting a tool, it is important to determine who needs to be involved in narrowing the consideration set for further discussion and potentially wider involvement. Anyone who has been involved in the process of tool selection knows how time consuming seemingly endless product demonstrations and salesperson follow-ups can be, not to mention all the time spent on background reading and analysis and comparing competing capabilities and specifications. It is important to decide whom to include, when, and for what purpose.

(a) The Initial Team

A small team is generally best, at least to start. Ideally, each team or stakeholder that will use the solution should have one representative. The goal here would be to generate a short list of requirements for further discussion and approval. If the law department is fortunate enough to have a legal operations designated individual or leader, that person is likely the best choice to represent the law department at this stage. If, for example, a franchise sales and compliance tool is under consideration, a manager/director level member of the franchise sales team may be appropriate.

The initial team members can weed out solutions that are not appropriate, due to cost, functionality, or other factors. They can also perform some initial inquiries and reviews of existing processes and systems to cross options off the list that may not integrate well with them.

(b) Final Decision-makers

Although it is nice to envision a world where the initial team could present its findings and recommendation to a handful of final decisionmakers at once for swift, final approval, that is not likely how it will work in the real world.

Ideally, the project management plan will include the order of various required approvals. For example, the appropriate information technology individual or team will have to review the tool to make sure that it complies with the company's privacy and data security requirements and can be supported properly post-implementation. It may also be necessary for the team function leaders to request budget approval. Using our example of a franchise sales platform, the initial team could make a presentation to the Chief Legal Officer or General Counsel and the Chief Development Officer or Vice-President of Franchise Sales. Those team leaders could then participate in a demonstration of one or two of the tools recommended by the initial team, ask questions, and hopefully agree on one of them. Assuming IT has approved the tool, one of those leaders could then approach the Chief Financial Officer or other appropriate individual to present the business case for budgetary approval.

C. Other Considerations when Selecting a Tool

Whatever process is followed, many factors will need to be considered when deciding on a particular solution. Some of those considerations include the franchisor's existing systems, individual vs. enterprise licenses, whether to build or buy, privacy and data security, scaling, vendor due diligence and risk allocation, and making the business case for budget approval.

i. Existing Systems

Some types of technology simply do not work well with others. Most companies are not working from a blank slate. They may have database or other systems they have had for years. Those systems may be outdated or use a technology that is not compatible with some of the options under consideration. Or perhaps a specialized Application Programming Interface ("API") or programming would be necessary for the new tool to function effectively with existing technology. If this additional work would be time-consuming or expensive, or need to be maintained, perhaps different appropriate tools should be considered.

The nature of existing systems can also be relevant for implementation and training. If employees are already familiar with a particular type of interface, or "look and feel," then it could be helpful to select a platform that will feel familiar to them when considering available options.

ii. Individual vs. Enterprise Licenses

A review of individual department budgets may reveal that some employees have not waited for the formal tool selection process and have simply purchased tools individually "under the radar." Some simple examples include inexpensive cloud sharing and storage or portable document format ("PDF") platforms. Although each individual license may not be costly, the total amounts large companies may unknowingly pay for these licenses could be significant. They could also be completely unnecessary, particularly when the company already has an enterprise license for a tool that can serve the same purpose.

An "enterprise license" is a software license that allows company employees to use a platform under a single company license agreement. For example, a company with Microsoft 365 will typically have an agreement with Microsoft that allows all company employees to use the platform that the company administers and controls. Enterprise licenses can be unlimited or restricted (such as to a limited number of users or types of users) for cost or security reasons. In the authors' experience, enterprise licenses are generally preferable for business use unless a tool is going to be used by only a handful of employees.

There are some special considerations if the franchisor wants its franchisees, master franchisees, purchasing cooperatives, consultants, or others to use a tool. If that is the case, it will be important to review the enterprise license carefully to see how it defines licensed users and, if necessary, negotiate an expansion to address the unique aspects of franchise systems.

iii. The "Build vs. Buy" Conundrum

Executives often have strong preferences as to whether the company should "build or buy" a particular tool. Buying an "out of the box" tool means that the franchisor selects a tool essentially off-the-shelf from the vendor. This can hold a lot of appeal for smaller franchisors without a large budget or IT department. With an off-the-shelf product, there may be no time required for designing, programming, or debugging the tool. It may already be configured to work, and communicate, with other commonly-used software. The expense of maintenance and upgrades may also be reduced because the vendor may routinely provide updates and improvements as part of the software license.

Others are strong proponents of the "build" option. This is where the franchisor, using internal teams or consultants, creates its own proprietary tool. Advantages of this option include almost limitless customization and potentially seamless integration with existing systems because the tool is built to order. Franchisors also like proprietary solutions because, depending on the nature of the solution, they can provide a competitive edge not available to competing brands. However, building a solution, even with experienced (and expensive) consultants has a lot of unknowns and can result in delay, confusion, and substantial budget over-runs.

These problems can continue after initial implementation, particularly if the company has not fully budgeted for ongoing maintenance and upgrades, which may not be included in the software build agreement. If a build option is chosen, then management must commit to budget for amounts necessary to maintain the system. These costs can be “lumpy,” i.e., not predictable and level monthly or annual amounts, while “buy” license costs will generally be more regular and predictable and may also include upgrades, maintenance, and at least basic support. Accordingly, a build option could require the business teams to repeatedly justify additional spend. It is not uncommon for businesses to put off maintaining or upgrading build systems in lean years, or if no one on the business teams wants to spend political capital on making the budgetary request. Unfortunately, the farther out-of-date the tool becomes, the more expensive it will be to upgrade. Aging also increases the likelihood that the tool will become less compatible with the other platforms the franchisor may be using. Eventually, the franchisor could find itself using the software equivalent of duct tape to keep its systems running at all, resulting in lost productivity and frustration, and the individuals who recommended the build option in the first place could find themselves blamed for the situation.

iv. Privacy and Data Security

It is important when selecting a tool to make sure that it complies with any applicable laws and industry best-in-class guidelines. For example, is it Payment Card Industry (“PCI”) compliant if it needs to be? Does it comply with the Americans with Disabilities Act and adhere to the appropriate version of Web Content Accessibility Guidelines (“WCAG”)? Are appropriate Secure Socket Layer (“SSL”) protocols used? Particularly in international markets, is the tool configured to enable companies to comply with any “right to be forgotten” privacy laws? Is it flexible enough to be modified or updated as those laws expand and change in the United States and elsewhere?

The appropriate individuals will also need to confirm that the tool will work with the company’s document retention policies and e-discovery and litigation hold obligations and be configured in a way to protect legal privilege when necessary.

v. Scaling

A franchisor may be small now, but hopefully it will grow. It therefore may want to consider the extent to which a particular tool can be “scaled” as the franchisor grows and its needs change. Doing so could prevent the franchisor from having to scrap the tool and go through the selection process all over again when it outgrows the solution. Scalability considerations also come into play when reviewing tools from vendors that offer compatible add-on modules providing enhanced or even completely different functionality. For example, legal billing platforms may offer document and matter management modules, as well as e-discovery and contract drafting and management tools that a growing franchisor might need in the future.

vi. Vendor Due Diligence and Risk Allocation

When selecting a tool, the tool itself is not the only consideration. Who stands behind that tool? Perhaps using a due diligence platform (see Section III.B.x) or otherwise, a franchisor can research the proposed vendor's history, background, and financial stability. Ask for references and check them. Where possible, check with references who have been using the vendor for a while. How does the vendor respond when problems or questions arise?

Depending on the type of solution, the vendor's financial stability and insurance coverage could be crucial. Risk allocation in technology agreements often depends on indemnification provisions and insurance requirements. But air-tight indemnification provisions can still result in default judgments suitable only for framing. And not all companies ever bother to check vendor insurance certificates or have processes to make sure their vendors maintain required coverage.

The level of due diligence may vary depending on the type of software and the type of data the vendor will use or have access to. For example, special care should be taken with respect to selecting vendors for tools that will house or use customer, employee, financial, health, or other sensitive information.

vii. Making the Business Case for a Particular Solution

A tool's value may be obvious to the General Counsel and other business team leaders, but some number crunching will likely be necessary for budget approval, and a business case will need to be prepared and presented. The more mathematical and clear the business case, the more likely the funding will be approved. It is often not sufficient to explain that a tool will save labor, prevent delay, and the like. It is best to quantify, for example:

- How many hours of labor (per week/month/year) will be saved, at what average rate of pay?
- The value of using the tool to close business deals. For example, if the tool would allow your teams to process five additional transactions per month, what is the value of those transactions?
- If the tool can help with compliance or otherwise reduce mistakes or legal risk, what is the approximate value of risk avoided? Make sure to include, for example, the possibility of punitive damages, outside counsel fees, and public relations and brand damage risk.

If the cost of the tool compares favorably to these costs, there is a substantial increase in the likelihood of budget approval. If cash flow is a concern, make sure to consider how the program may be financed so that the expense is spread over multiple budget cycles and include illustrations of those options in your business case proposal.

In the planning process and developing the business case, consider other ways to leverage the tool. Although a tool may have been selected to solve a particular problem, are there other problems it could solve if it were already available? Could other teams use the tool for other purposes? If so, make sure to include the value of these additional uses in the request for budget approval.

V. AFTER SELECTION AND APPROVAL

Now that a tool has been selected and purchased, congratulations! But the mission is not yet accomplished. Change can be hard, and the implementation process should also be carefully planned and executed. Hopefully, the project management plan includes these post-commitment steps, such as socialization, implementation, and training.

A. Socialization

"Socializing" a new tool before implementation can greatly increase its prospects for success. Most humans have a natural tendency to resist change and prefer the familiar. This "devil you know" attitude can create headwinds for new tool adoption and prevent the franchisor from realizing its full value.

The franchisor can purchase the best tool in the world, but it is worthless if no one uses it. It can be important to build excitement and positivity about the tool and to emphasize its benefits for the users themselves, rather than just the company. It can also help to identify "cheerleaders" in the company to talk up the product. Care should also be taken to introduce and demystify the tool. Simple department, team, or company live demonstrations can also help reduce the intimidation factor, especially for those employees who are not tech-savvy.

B. Implementation

The franchisor should make sure that it knows how the tool will be implemented. For example, will there be an extended transition period, or downtime, while the new tool is integrated with existing systems or data is migrated from one platform to another? The franchisor should communicate to affected employees, in advance, potential disruptions to workflow or platform availability and should create a plan to minimize the impact to the employees, the company, and other stakeholders.

Successful implementation also requires designating the responsibility of administering the day-to-day operations of the software. It may be best to assign one person who will have primary responsibility for this role and triaging necessary tasks. Tasks will include everything from establishing new law firms in the billing system to providing and continuously updating appropriate access to the various matters.

C. Training

User training is crucial to ensure that a franchisor gets the full benefit of its investment. During the selection process and license negotiations, the franchisor should make sure it understands who is responsible for training, what it will cost (if anything), the level of training required for successful implementation, and how and where training will occur. Any training that is not part of the license agreement services will also need to be included in the franchisor's budgeting.

Different teams, and different levels of employees, may be trained in different ways. Training is increasingly done through webinar and online self-study, but these methods do not work for everyone, and in-person training may be appropriate for certain segments of the workforce. Companies can also leverage a "train the trainer" approach, where significant time is spent training one (or a handful) of individuals from each team that will use the tool. Those individuals can then do hands-on training and keep an eye out for team members who appear to be struggling with the transition.

The franchisor should also make sure that employees have a clear method of getting answers to specific questions or problems as they arise after the initial training. The franchisor will need to decide whether those inquiries will be handled in-house, through the vendor, or in another way. It should also make sure to budget for any additional costs it might incur for this ongoing support.

D. Planning for the Future

Things change, and the technology selection process is far from "set it and forget it." Because of evolving needs and developing technology, it is important for the franchisor to stay current on developments and monitor the effectiveness of implemented solutions. Actively soliciting feedback from users can help identify future possible improvements and solutions.

VI. OTHER PROCESSES – TIPS AND TRICKS

Although technology has been the focus of this paper, not all effective process improvements need involve, or rely on, technology. Many companies find themselves wasting time and resources because of inefficient processes, power vacuums, lack of clarity concerning decision-making authority, and for many other reasons too numerous to name.

A. The Magic of Policies, Protocols, and Standardization

It is remarkable how many "decisions" can be made by lower-level employees if they are given clear, concise, written guidelines and protocols for common situations. A franchisor can reduce the number of escalations and delays by developing written guidelines and protocols for making exceptions, granting waivers, approving locations, and other situations so that they can be handled administratively by an administrative assistant, paralegal, or manager, without further escalation. Doing this may also give lower-level employees the tools they need to clear special requests off their desks promptly and with confidence, improving job satisfaction.

The time spent thinking through and creating protocols is well-worth it and can serve a dual purpose. Actually walking through common issues and deciding what a policy or protocol *should be* can help the franchisor identify what is not currently working and provides the opportunity to change it.

There are too many types of processes that can be standardized, and too many approaches for doing so, to cover here. Generally, franchisors should avoid the need to reinvent the wheel as much as possible. Standardizing processes with written documentation and specification of technology to be used can save a substantial amount of time and money and can also help increase consistency throughout the system.

Not only can standardized processes help existing employees be more productive, but they can dramatically reduce the time it takes to train new employees and decrease the lost productivity that employee turnover can cause.

Franchisors should be mindful, however, that standard processes can become stale and outdated. They should be regularly reviewed and updated to make sure that they continue to meet the franchisor's needs, work with the franchisor's current technology, and are as fool-proof as possible.

B. Standing Meetings

"Meeting" has become almost a dirty word in some modern management theory approaches. It is certainly true that many meetings waste valuable time, distract employees, and accomplish little. Meeting scheduling itself can also waste a lot of time, particularly if company employees rely on the inefficient process of multiple emails asking about availability rather than using software solutions with calendar visibility or other scheduling tools.

Standing meetings (live or virtual) for particular purposes, however, can be an exception and can dramatically increase productivity. Examples could include management or finance committee meetings to address issues like site approval, fee or territory adjustment requests, franchisee/master franchisee candidate approvals, and other matters.

Such standing meetings should have the minimum number of participants with the requisite expertise and authority to make immediate decisions on relevant matters, so that the meeting ends with clear approvals, disapprovals, or identification of specific additional information needed to be gathered in time for the next standing meeting.

Standing meetings that occur at the same time every week, month, or other appropriate interval should be electronically calendared as recurring meetings to reduce the likelihood that participants will schedule conflicting commitments. Individuals with standing meetings should identify a trusted “deputy” to attend when they are unavailable for vacation or important business reasons. However, regular attendees should feel obligated to attend personally whenever reasonably possible.

It is also important to have a person with project management-type skills to run the meeting to keep it on track and to make sure that all necessary information is gathered before each meeting and that any meeting follow-up is promptly done.

When key decision-makers can focus on a single topic and run efficiently through a stack of similar requests in a meeting, it can increase efficiency and reduce delay. It also helps reduce frustration and provides more timing certainty and predictable decision dates. For example, if a franchise candidate is told that their special request will be discussed at a particular time, and a scheduled standing meeting is held, then a decision will likely be made within a reasonable time that also meets the candidate’s expectations.

Standing meetings work best in conjunction with the policies and protocols for lower-level employee decision-making discussed in Section VI.A above to reduce the number of matters or requests that must be considered in the standing meetings.

VII. CONCLUSION

Being a lawyer is hard. Being both a lawyer and a manager is harder. Some of the tools discussed in this paper may be able to help with both tasks. Choosing the right tools and developing the right processes can be daunting. However, it is absolutely worth the effort if done properly and can increase the law department’s value to the company and improve its reputation with business teams.

About the Authors

Bethany L. Appleby is a founding member of Appleby & Corcoran, LLC, a boutique franchise law firm in Connecticut. She represents franchisors, master franchisees, and multi-unit franchise owners in both transactional and litigation matters. She is on the American Arbitration Association's Commercial Panel of Arbitrators and a trained mediator, an adjunct professor at Quinnipiac University Law School, and former Chief Legal Officer for Subway Restaurants. She received her bachelor's degree from Yale University, magna cum laude, and graduated with highest honors from the University of Connecticut School of Law.

Brian Balconi is Chief Legal Officer of Authority Brands and its affiliates, which includes the franchisors of twelve home service brands. Mr. Balconi oversees all legal issues of these companies including franchising, intellectual property, corporate law, mergers and acquisitions, and dispute resolution. A franchise industry veteran, he has previously served as Vice President and General Counsel of Little Caesars and as Legal Counsel at Dunkin' Brands. He is active in industry associations, including the International Franchise Association and the American Bar Association Forum on Franchising, in which he served as Director of the Corporate Counsel Division. Additionally, Mr. Balconi has franchisor business experience, including as President of growth and turnaround companies. He received his Bachelor of Business Administration from the University of Notre Dame and his J.D. from the University of San Diego School of Law. When not reading FDDs just for kicks, he enjoys mountain biking and meeting interesting people through pick-up basketball games.

Kathleen Rae Panek is the General Counsel for U.S. Business Holdings, Inc. and its U.S. subsidiaries, including Alphagraphics, Inc. and PostNet International Franchise Corporation. Her role includes oversight of regulatory, corporate, litigation, and transactional matters, and contribution to strategic initiatives including those with legal and technology or operations overlap. Kathleen has served as in-house counsel in several regulated industries, including mortgages, financial services, and franchising. Immediately prior to her current role, Kathleen led the legal function in the sale of her prior company to a competitor, as part of a team of executives, restructuring and financial advisors, and outside law firms. She began her career in private practice in Northern California, representing clients in business, real estate and litigation matters. Kathleen's passions include leadership and leadership development, entertaining, and spending time with her family and friends.