

Rise of the Legal COO

Second Edition

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Chapter 10:

The chief operating officer and the use of data in law firm management

By David S. Schaefer, managing director, Calibrate Consulting, Inc.

Maintaining competitive advantage in a digital market

In the business world today, it is axiomatic that data is essential to strategic planning and implementation, as well as making decisions on a whole host of operations. The legal industry is just starting to catch up. Lawyers and law firms have always used data in both the practice of and business of law, but until the last ten to 15 years, the use of data in the business of a law firm has largely been limited to billing and collection, realization of worked and billed time, and some very basic metrics and key performance indicators (KPIs) regarding revenue and profitability. In that sense, the legal industry has been very slow compared to most other industries in using data in support of strategic planning and business operations. However, a number of changes over the last decade and a half have resulted in the necessity of greater use of data to run a competitive and successful law firm.

Arguably, the most significant change during the past decade is the number of business professionals that have entered the legal industry. Relatively recently, law firms have hired chief operating officers (COOs) with experience and expertise gained from outside the legal industry who are, increasingly, receiving a mandate to manage all business operations, to be active participants in the development and implementation of strategy and, in some cases, to leverage best-in-class business concepts to the practice of law.

The other significant change during this period, and continuing, is that law firms are adopting digital technologies to manage data. When data is in a digital format, it becomes easier to track, access, and retrieve. Such availability enables those managing the business of law and the practice of law to identify and analyze the data to gain insights and make better decisions. However, having such availability does not necessarily mean that those managers will know how to use the data to gain the insights and make better decisions based on it. This know-how needs to be learned and there needs to be a reason to want to learn it.

A lot has been written recently about the dichotomy in law firms between the practice of law and the business of law.¹ In this scenario, the COO is primarily responsible for all the overall operations of the firm in support of the practice of law, as well as the firm. The COO also works with firm leadership in developing business planning and budgeting and, in many firms, a strategic plan. Obviously, the lawyers are responsible for the practice of law. However, to the extent the firm has embraced practice management, including strategic and business planning, for their legal practices, the COO generally has little direct involvement and oversight. There are several reasons for this, and change is likely to come slowly.

Most lawyers still believe that the legal industry is fundamentally different to any other industry. Among other reasons for this belief is that, for the most part, the legal industry has thrived over the last 50-60 years with relatively few bumps in the road compared to many other industries which have undergone transformative changes in just the last 20 years. Therefore, the proposition that law firms have to change their approach to managing their business in order to continue to prosper has been slow to gain traction. To better understand how the COO can leverage data and the corresponding analytics today, and where law firms should be going, it would be helpful to trace in broad strokes the evolution of the use of data and data analytics in law firms over the last several decades.

A focus on data in the legal industry essentially began when *The American Lawyer* started ranking the top 100 firms based on revenue, followed by the ranking of the second 100 firms. At this time, strategic planning basically consisted of increasing revenue and realization, while controlling costs, so that profitability would increase. The impact of publishing these rankings is that law firms started to be more introspective about the drivers of increasing revenue and profitability, improving operational efficiency, obtaining a return on investment in marketing and business development, and improving the customer experience. Hence the rise of COOs and other sophisticated talent in areas such as marketing and business development, finance, and technology. In addition, since rankings began publishing annually, the cost of legal advice increased every year and usually by considerably more than the rate of inflation. The increases in legal costs were driven largely by annual increases in billing rates, the globalization of business, and ever-increasing regulations. As a result, clients started to take notice and it became commonplace to hear commentators, as well as clients, declare that law firms are going to have to transform to be more like other businesses.² This tipping point was achieved because lawyers had priced themselves into the market, meaning that, up until that time, legal fees were

a negligible expense for most companies. But this trend of growing costs is only increasing which, in turn, will result in clients scrutinizing bills more carefully and assessing whether they are getting good value from their law firms.

The COO is the person best positioned to create a data-driven environment in a law firm, but also to develop policies for the creation, use, and dissemination of KPIs and the related reports. The policies are important so that the COO's direct reports can propose to the COO the KPIs and reports that will be meaningful to their respective functions, as well as to the COO and firm leadership. This is not to suggest that the COO should be directly responsible for initially developing the KPIs and the reporting. Rather, the COO should ensure that the direct reports are sufficiently familiar with the firm's strategic plan, if applicable, any business goals of their respective departments, and have access to the relevant data. Ultimately, however, the COO likely is the person ultimately responsible for effective KPIs and reporting so that they can be rolled up and utilized in developing the firm's strategic plan, annual business plan, and budget.

Using KPIs to track progress against strategic or business plans – to improve efficiency in operations and to look for trends – is imperative for today's law firms. Like with most things, too much of a good thing can become bad. The driver for using KPIs is the well-known adage that you can't manage what you don't measure. With so much more data readily available because of the digitization of data, there is a tendency to want to measure everything and create a KPI for it. The theory behind that approach is that once all the KPIs have been developed they will reveal the important take-aways. The better approach is to be intentional and disciplined in your measurement and reporting.

The power of KPIs for law firms

First, KPIs are measuring specific outcomes, not aspirational goals. "Increasing revenue this year" is not a KPI. "Increasing revenue in our transactional practice by ten percent this year" is a specific outcome that is both measurable and manageable.

KPIs can and should cover financial and non-financial aspects of both the business of law and the practice of law. In developing policies for the creation, use, and dissemination of KPIs, the COO should also consider the culture of the firm, the strategy of the firm, the business plans for practice groups, and the type of billing structures used in the firm.

KPIs are useful and arguably essential to preparing the narratives necessary for the recipients to convey how the firm or a department is

performing. KPIs are also useful in conveying the firm's vision and strategies. The audiences can be as varied as the partners, the firm as a whole, prospects for both the business of law and the practice of law, and possibly clients and prospective clients.

The starting point for choosing which performance indicators are key depends on the audience.

- For the senior leadership of the law firm, the KPIs should be those that senior leadership uses to manage the firm, both strategically and tactically (such as its annual business plan or budget).
- For practice group leaders, the KPIs should be those that the leaders use to measure whether the practice group is meeting its annual business plan goals.
- For the heads of the business departments (e.g., HR and marketing), the KPIs should be those that the heads of the department use to achieve operational excellence or otherwise to support the strategic goals of the firm or the individual practice groups.

KPIs must relate to what you are trying to achieve in your business overall. While they may be related to a specific function like HR or marketing, every key performance indicator should tie directly back to the firm's overall business goals.

What makes KPIs effective for law firms that have already started or are just beginning down the path of using data to measure performance against objectives and goals, is adopting sound business practices around the use of data. The most effective KPIs follow the proven SMART formula: Specific, Measurable, Attainable, Realistic, and Time-Bound.³ This means that the goal and the KPI are in sync. Here is an example. A law firm's senior leadership sets a goal to increase annual profits per partner by the annual inflation rate plus ten percent. The related KPI would measure, as of any date (e.g., quarter-end), the profits per partner from the beginning of the year to such date. Additionally, these measurements are most effective when both the stakeholders and the people/functions being held accountable for KPIs work together to determine the best way to measure performance relative to firm/practice/department goals. Top-down KPI development carries a risk of missing important insight on what can drive performance to a particular goal.

Essentially there are two types of KPIs, namely lagging and leading. Generally, it is ideal to have a mix to establish proper relativity.

- Lagging indicators are easy to measure and provide quick answers about whether a goal is being met. C-level executives often use lagging indicators as a baseline for setting ambitious goals. For law firms, the most important lagging indicators are those that relate to revenue and profitability and get published by *The American Lawyer*, such as revenue per attorney, profits per partner, profits per capital or equity partner and leverage ratios such as associates to partners (both capital and income), and associates and income partners to capital partners.
- Leading indicators capture data that has an effect on an outcome, which makes them useful for predicting or anticipating an output. It is critical to the effective use of leading indicators that they be related to the lagging indicators. Lagging indicators tell you what has been done, but they do not tell you what you should change to do better. Leading indicators measure the things that affect your outcomes. When you track and monitor them, you can take action to make improvements.

The following is an example as to how a lagging KPI is tied to a strategic goal and a leading KPI is related to the lagging KPI. Law Firm Y desires to increase the number of new matters of its top 25 clients by ten percent on a rolling annualized basis. The lagging KPI as of each month end is the number of new matters opened during the immediately preceding 12-month period divided by the number of new matters opened during the 12-month period prior to such period. A related leading KPI could be the number of personal business development interactions (e.g., phone or video calls and in-person meetings) during the immediately preceding 12-month period divided by the number of personal business development interactions during the 12-month period prior to such period. Whenever you have a strong correlation between a select number of leading and lagging KPIs, you can see which leading KPIs will have the biggest impact on your lagging KPIs. But not every lagging or leading indicator should be a KPI. So how can you make the right choices? Start with what you are trying to achieve and work backwards.

What are the right number of KPIs?

Law firms have mounds of data and an increasing variety of tools that enable them to measure almost anything and everything. The chief operating officer, through policy and procedure, needs to avoid analytical

overload by focusing on only the most impactful measures. Providing multiple performance measures without explaining how they are key to managing operations will not result in the better decisions and improved performance for which these tools were designed. The KPIs you select are a function of your audience within the law firm ecosystem and the strategy or business objective sought to be achieved. It is therefore impossible to specify how many KPIs a firm or a business unit or practice group should have. Five or six KPIs are typical. It could be fewer, such as three or four, but generally there should not be more than ten or 12 at play.

Presentation of KPIs – dashboards and scorecards

Having KPIs and getting the most out of them requires that the KPIs and any other performance metrics are presented in way that can be quickly and universally understood. In part, this will be a function of the number of KPIs and metrics, but it also requires the use of an effective presentation style, which includes concise description and graphics. The COO should ensure that the appropriate analytics or business intelligence (BI) tools are available to the intended audience(s) so they can review real-time interactive visualizations, dashboards, and/or scorecards based on the KPIs, allowing those with access to explore and analyze the data behind the KPIs directly within the dashboard itself. Some firms that have developed a data-driven culture have invested in creating their own proprietary BI tools, but this is not necessary as there are a variety of BI tools on the market, many of which are customizable.

Changes in KPIs

In formulating a KPI policy, the COO should bear in mind Helmuth von Moltke's famous quote about planning, "*No battle plan ever survives contact with the enemy*". Your initial (or existing) set of KPIs may not be able to meet a changing market, shifting client demands, or intense competition. The good news is your choice of key performance indicators is not set in stone for all time. KPIs, like everything else in business, are subject to change. Over time, client demands will change. Strategies and business goals will evolve in response to market volatility. The audience(s) for the KPIs may discover that a KPI is not effective in measuring progress or assisting in making good decisions or may result in counterproductive decisions. Therefore, it is best practice to develop a policy and procedure that requires periodic review of the KPIs and their effectiveness.

Follow these steps to keep your KPIs on track as your market, legal and industry practice groups, client mix, and strategy evolve:

- Schedule periodic reviews.
- Ask the right questions:
 - Are there fundamental changes happening?
 - Are there clear lines of accountability for every single KPI?
 - Are your leading and lagging KPIs properly related?
 - Are the personnel responsible for the KPIs keeping them current and accurate?
 - Have any of the strategic or business goals underlying the KPIs changed?
 - Are the KPIs proving to be valuable tools to measure progress?
- Update your KPIs and publicize all revisions:
 - With the information gathered above, revise or reinvent KPIs as appropriate.
 - Establish clear next steps to link KPI insights to action.
 - Inform all stakeholders of all updates.

The need for accurate and clean data

In order to have reliable KPIs and effective BI tools, the data has to be complete and accurate. This is one of the threshold challenges for many law firms. They may have accounting and other software that is not compatible with the latest technologies and BI tools. The fields used to collect data are incomplete or insufficient for purposes of the KPIs being proposed. Alternatively, the data was not historically collected or it was collected with other data that is difficult to parse. Accurately tracking KPIs requires accurate data. A COO will have to use internal or external resources to get the firm's data harmonized from multiple sources across the firm to achieve complete, accurate, and up-to-date information. This can be a time-consuming and expensive process. Careful attention should be paid to make the business case so that an adequate budget can be obtained and timing expectations realistically set and managed.

Create a data-driven culture

Before a COO embarks on introducing the use of KPIs or undertaking a material increase in the use of new KPIs, it is important to do a reality check about how they will be received. Every COO should ask: Will the stakeholders understand what the KPIs mean? How they are to be used? Is the BI software effectively presenting the information? Chances are that the

answer is no – and that’s normal. Boosting data literacy has risen to the top of the priority list for so many COOs as a result. The clearer people are on what the numbers mean, the more empowered – and inspired – they will be to focus on work that makes the biggest impact.

For some chief operating officers there may be cultural issues that may impede the development of a data-driven culture. One common issue surrounds how transparent the firm is with certain information. In many firms, only the most senior leadership has access to data that needs to be used in KPIs that would assist C-suite executives and the heads of practice groups in day-to-day operations and planning. Another cultural issue is compensation and the basis for setting compensation, including bonuses. The use of KPIs may provide insights into profitability and operations that are not consistent with the metrics then being used to determine compensation, both for attorneys, especially the partners, and the business professionals. For example, in many firms, a rainmaking partner’s book of business (i.e., collected fees) is the primary driver for compensation. KPIs can be used to compare the profitability of practice groups, as well as the books of business of rainmaking partners, by considering the costs incurred to obtain that revenue. A firm may not want to alter its compensation policy to take into account those KPIs for a variety of reasons, and limit the use of the insights derived from those KPIs for strategic planning purposes. Nonetheless, the availability of such KPIs, if widely known, could create some discomfort.

How can you boost data literacy to support your KPI strategy?

There are two essential elements to boosting data literacy. The first is to have a program that is used to get commitment and not just buy-in. The second is to have the technology.

The program supporting data literacy has to be comprehensive. Of course, there has to be presentations and policies, but a program involves having a continuous process that explains and reinforces the purpose of collecting the data in the prescribed manner, how and why the KPIs have been created, and how the data, KPIs, and other metrics can positively impact the business. Also, as noted above, the program should include the process whereby KPIs are evaluated. Finally, the program should include training and encourage input at the outset and beyond. When people are involved in the how and why, they are more likely to take pride and ownership and feel valued, as well as adding value by being closest to the data.

Unless the KPIs are properly presented in dashboards and scorecards, their usefulness will be severely limited. That is the reason to have good BI

technology. BI platforms have become much more robust and economical in recent years. It is recommended that a firm invest in a platform that is flexible and expandable as it increases its usage of BI and data analytics to include augmented analytics, statistical analysis and machine learning. A good BI platform should be useful to beginners as well as to advanced users so as to increase data literacy for everyone in the firm.

The future of data analytics in the legal industry

Data analytics is generally divided into four broad categories, namely:

1. *“Descriptive analytics, which provides an objective, fact-based description of what has happened in the past, i.e. ‘A’ occurred.*
2. *Diagnostic analytics, which not only focuses on what happened in the past but aims to understand why, i.e. ‘A’ occurred because ‘B’.*
3. *Predictive analytics, which uses past data to forecast trends, i.e., because ‘A’ occurred, we predict that ‘C’ will occur in the future.*
4. *Prescriptive analytics, which aims to provide actionable steps towards a chosen goal, i.e., to achieve goal X, we must take action Y.”⁴*

The above has largely been about the first two of the four types of data analytics. Many industries are well on their way to using the last two types of data analytics to improve their business. The future use of data in law firms will involve the use of artificial intelligence and machine learning in the practice of law. Examples of such uses may be to determine:

- Which issues in contracts are most important and should be included and which are not worth the time to negotiate and perhaps should be excluded;
- Which types of claims and defenses are most likely to lead to success and therefore to focus on those and not bother spending legal costs on the others;
- How to price legal services for a client, particularly when there are portfolios of transactions or cases to handle; and
- Trends in types of clients and the types of matters and how to recruit to staff for them in the future (e.g., the mix of partners, associates, legal assistants, their respective areas of expertise, and where located).

Annex: list of possible KPIs and metrics

Human resources and talent acquisition

- Lawyer attrition – attorneys who have left since the start of the period to number of attorneys.
 - Can be categorized by class (e.g., partners and associates), department or location.
 - Can be categorized by status when joined the firm (e.g., summer associate, lateral associate, lateral partner).
- Staff attrition – staff who have left since the start of the period.
 - Can be categorized by level (e.g., managers, directors), department or location.
- DE&I distribution for new hires.
- Hiring targets based on new market/client initiatives.
- New hire SWAG YTD spend to budget.

Marketing

- Client growth rate: new clients over a period to number of active clients.
- Average fee per new client.
- Average fee per new matter.
- Marketing budget ratio – marketing spend to total fees billed.
- Business development ratio – ratio of business development spend to total fees billed.
- Customer Acquisition Cost – total marketing and business development to total clients billed.
- Client retention – percentage of active long-lived clients to all active clients (by number and by billings).
- Growth in billings of top X clients.
- Dormant client percentage.

Business development

- Total number of clients contacted by phone or video to total active clients.
- Participation in virtual meetings.

- Proposal win rate – top X clients.
- Proposal win rate – new clients.
- Percent of clients that have opened new business with other practices (cross-selling).

Productivity (firm-wide and by department or practice group)

- Leverage – associates to all partners and associates plus income partners to capital partners.
- Percentage of partners hours to total hours.
- Billable hours per FTE per timekeeper category.
- Billings per FTE per timekeeper category.
- Average worked rate per timekeeper category – total gross time divided by total hours.
- Average billed to average worked rate – per timekeeper category.
- Staffing (total and by department) to number of timekeepers.
- Number of lawyers per client.
- Hours billed versus hours worked per timekeeper category.
- Hours worked versus available hours per timekeeper category.
- Number of matters opened compared to prior period.
- Average fees billed per active clients.
- Average fees billed per matter.

Financial (firm-wide and by department or practice group)

- Cost recovery revenue per matter – total amount of internal costs billed to clients divided by total number of matters billed.
- Revenue per square foot.
- Revenue per active clients.
- Revenue per top X active clients.
- Revenue per matter.
- Revenue per employee – ratio of all fees billed by FTEs other than capital partners.
- Charge off percentage – write-offs versus time billed and write-offs versus time worked.

- Net income ratio – net income prior to distribution to capital partners divided by all fee billings.
- Average net overhead – net expenses divided by FTE capital partners.
- Cash collected per period.
- Average days of time worked to billed.
- Average days of time billed to collected.

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- 4 <https://careerfoundry.com/en/blog/data-analytics/business-intelligence-vs-data-analytics/>

In the five years since the first edition of this book published, there has been an accelerated rise in the number and influence of COO roles in the legal sphere. No longer the preserve of the largest national and international firms, mid-tier firms and even New Law and alternative legal service providers are considering a COO as a potential – perhaps even essential – component of law firm management, to achieve increased efficiency, productivity, and meet the demands of a highly competitive market.

With contributions from a number of current law firm COOs, alongside some of the most respected and sought-after consultants working in this space, this second edition of *Rise of the Legal COO* examines the scope and variety of the legal COO role, and how the challenges and demands of the position have altered as law firms have evolved. It contains updated chapters from the first edition, and several brand new chapters covering topics such as: How the COO can enable innovation and digital transformation in their firm; The COO's role in managing profitability and client engagement; The use of data in law firm management; and The New Law COO.

There are also all-new, exclusive interviews with legal COOs from a variety of national and international firms, covering topics ranging from the importance of relationships and adapting to the new hybrid, post-COVID world, to encouraging innovation in firms and strategies to recruit and retain talent.

There is no doubt that a good COO is an invaluable part of a firm's management team, and the opportunities for talented individuals with broad operational management skills will continue to grow. Heavily backed up by the first-hand experience of the contributors, this title provides essential guidance to the current and future legal COO on the skills and strategies they need to succeed, and to law firms on how to recruit, integrate, and develop a COO who will be a good match for their culture and help them achieve their ambitions.



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