WHY CODES MATTER: A SIMPLE TOOL WITH MANY USES

By Aileen Leventon

Best Practices for Using Uniform Task-Based Management System Codes for Merger & Acquisition Transactions

Practical guidelines for attorneys, legal operations professionals, and e-billing specialists

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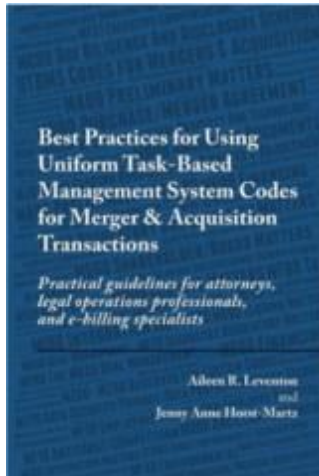
Any serious attempt to ensure efficiency in legal services requires analysis of reliable data. Efficiency is a big, abstract idea, which comes back to addressing the five core questions of legal project management: Why are we handling the matter? What is the legal strategy? When must the work be done? How will the work be done (phases, tasks and sequencing)? Who will do the work?

Data, Timekeeping, and Efficiency

To capture data, one approach is to analyze time entries. But anyone who has attempted to review an invoice for legal services with each lawyer's time narratives will understand that it can be an exercise in mind-reading. The client and matter are clear, and perhaps it is evident that the timekeeper was doing something to reach a goal. Beyond that, however, the narrative will either be too specific or too vague to be illuminating ("Work on Smith documents; analyze options for resolution; meet with opposing counsel—6.4 hours").

Phase codes provide the context for individual time entry narratives within the larger story of the legal matter. When codes are used both to construct a matter budget and to analyze the team's progress, it becomes much easier to determine if the matter is on track, if the scope of the matter is changing, or if assumptions that were made at the outset continue to be valid. The sooner the lawyer in charge of the matter receives this information, the greater the opportunity to manage the matter efficiently in real time, and to report status with confidence to the client. With accurate data on the work completed and outstanding items, the matter team can make adjustments to better manage the matter to meet deadlines, manage work to budget constraints, and minimize surprises.

Codes can also be used to develop information about how to price or evaluate the cost of future similar matters, by comparing the time, billing value, and total cost for specific phases in other matters, and then adjusting for likely variances in the current one. In other words, by maintaining a database using codes, it is possible to build a base case for a matter type and then evaluate drivers of costs and opportunities to improve efficiency.

Many code sets have been created, and they all describe the work involved in handling a matter from a *process perspective* with the progression of work divided into phases (e.g., early case assessment; trial; due diligence; negotiations and documentation), tasks (e.g., issue litigation hold; review real estate leases), and activities (e.g., conference call with opposing counsel).

Fewer codes are better, and it is preferable to start by gathering data only at the phase level. This approach is reflected in the UTBMS Codes for Merger and Acquisition transactions that were developed by the Task Force on Legal Project Management in the Business Law Section of the ABA. The working group that I chaired sought simplicity and completeness in data collection that is aligned with the way practitioners all over the world handle deals. It is broad enough to cover most transactions, regardless of size, complexity or jurisdiction. Over time we expect that well-defined needs for more detail at the task level will

emerge. For example, it may be useful to understand how allocating tasks among different service providers (law firm, law department, accountants) might reduce the cost/ improve the quality of due diligence.

Using only phases is a radical departure from the structure of many other code sets that require granularity without regard to the utility of such information. Although interesting information may emerge, data quality has been sacrificed. Many report that in using various litigation code sets, 80% of the time is entered in any of three catch-all categories and often incorrectly. Quality data through accurate and simple time-recording with fewer codes should offset the interest in collecting data for its own sake.

Consistency, Compliance, and Communication

Codes enable the client and legal service provider to embrace a common vocabulary for describing the work. Discussions may occur among others beyond the law firm and client: legal service providers include inside counsel and legal operations managers. They should have scoping and discussions with the business client to assure best use of corporate resources and appropriate allocation of roles and responsibilities. In addition, conversations should occur between inside counsel and the law firm; and there may be discussions with all three perspectives. Inside counsel has a particular need to evaluate these issues even if timekeeping is not required, since the phase structure provides a communication framework about how a deal may unfold.

Using the common vocabulary provided by codes starts the process of ensuring that the client's goals are reached, that the fee reflects the client's perception of value, and that the matter is profitable for the legal service provider. Like any taxonomy or standard, codes only provide value if everyone uses them the same way. This requires the legal team (comprised of both the legal service provider and the client) to confirm explicitly their understanding of how the codes should be applied, and to consider:

1. What are the phases that are reflected in the code set?
2. Which tasks are contemplated by each phase?
3. What is the appropriate level of detail for capturing information about the work?
4. Should we use the framework to assign roles and responsibilities?
5. If we have experience using a code set, what adjustments should be made? Should more granular information be captured for some or all of the phases?

Codes are fundamentally about communication. And only with effective communication can we get everyone on the same page: clients have visibility into the work that is performed, lawyers have insight into what they are doing in the context of the matter, and both law firms and their clients are better able to manage the business of law.

Note: Portions of this article appear in Leventon & Horst-Martz, *Best Practices for Using Uniform Task-Based Management System Codes for Merger & Acquisition Transactions* (2017), available at amazon.com