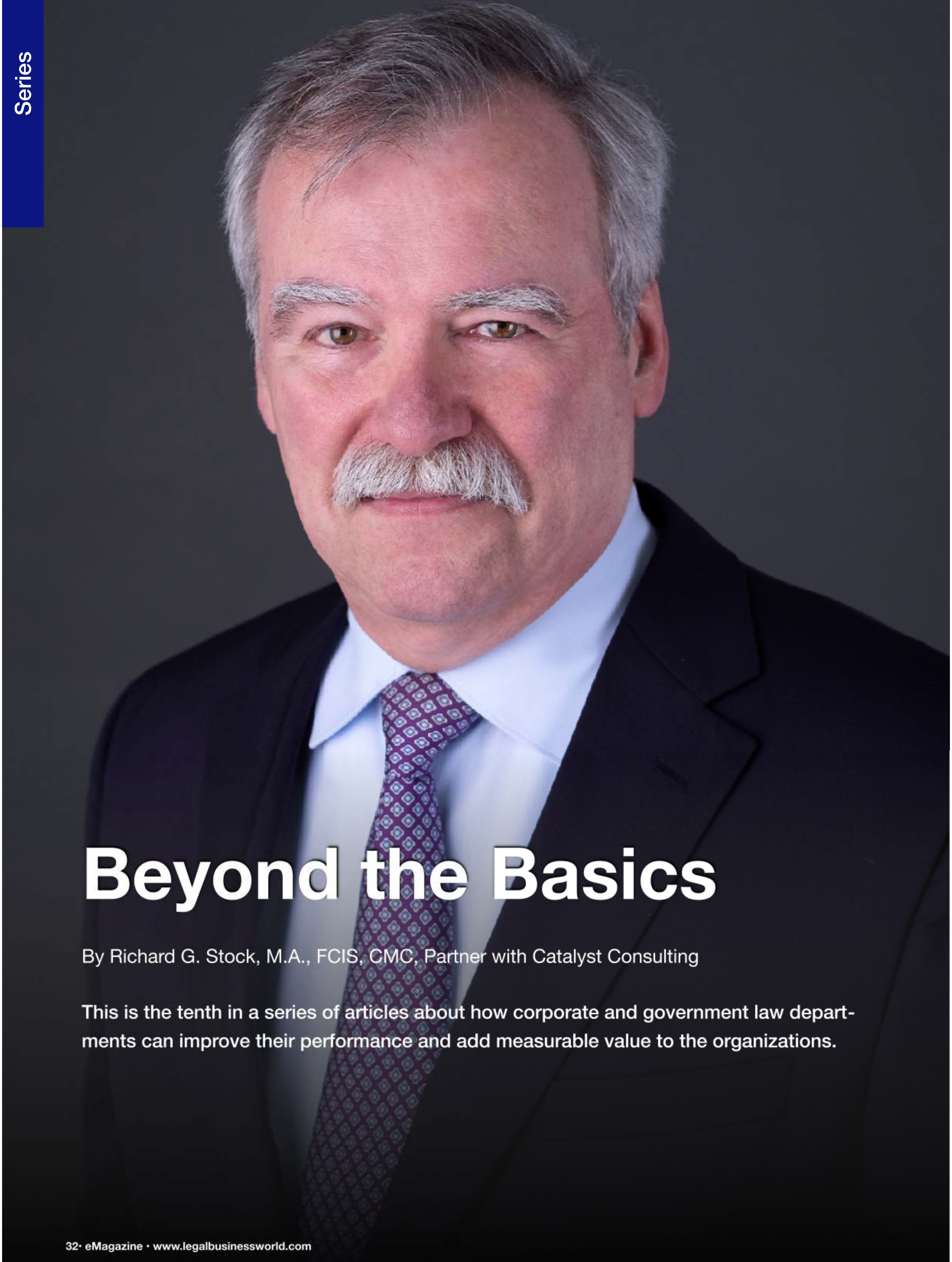

Beyond the Basics

By Richard G. Stock, M.A., FCIS, CMC, Partner with Catalyst Consulting

This is the tenth in a series of articles about how corporate and government law departments can improve their performance and add measurable value to the organizations.

Most legal software companies and specialty consulting firms populating the legal services universe will release white papers from time to time to raise their profiles and to announce new products and services. Quovant (formerly Legal Bill) is a Nashville-based company offering software solutions, data analytics and advisory services to both law firms and corporate law departments.

Their most recent white paper, entitled “Legal Spend and Matter Management” is worth downloading from their website. Authors Christopher Seezen, Alicia Hunter, and Emily Rhode sum up the paper as “four practical tips to avoid confusion and expensive surprises when managing outside counsel legal spend.” Like the authors, I consider the four “ideas” to be part of the basics. Some help reduce spend, while others provide greater visibility and data. There are a number of additional measures that move beyond the basics which a company and every law department should master.

The first idea consists of timekeeper authorizations to build greater accountability into the company’s relationships with its law firms. However, some surveys reveal that clients have no appetite or time to develop relationships with their law firm timekeepers. It is simply too time-consuming and impractical in a fast-paced business world. That is not to say that law firm relationship partners should not be professional and business-like in their dealings with clients. But imagine the number of relationships needed for 1 000 legal matters in six legal specializations supported by 15 law firms in 9 countries.

Quovant’s approach to timekeeper authorizations seems tilted toward hiring individual lawyers and, with some exceptions, trying to control their individual hourly rates and hours – “rates should be set individually or by position.” I find the authors’ third question to be the most thought provoking: “how much control will you have over staffing?” Advice to keep the process of timekeeper approvals simple does not help to manage or reduce external legal spend. Most progressive and effective law firms now have professional staff on board that are certified in legal project planning and budgeting. Clients should require legal project budgets with planning assumptions and probability estimate by phase and task for all matters likely to consume more than 50 hours. Some set the threshold for budget plans as low as 25 hours. Such plans should be specific about the staffing distributions for the matter. It is a choice between proper planning with clear up-front communications or conducting autopsies on invoices. I have seen too many companies commit to formal protocols for legal project planning and budgeting, and then default within a few months to more informal e-mail exchanges and phone calls. Inhouse counsel should themselves be trained in matter budgeting and legal economics if they are expected to meet targets for reducing or managing external legal spend.

Quovant’s second idea concerns the use of billing guidelines. Most companies have had guidelines in place for 40 years. Basic reference is made to communication standards, billing formats, and the non-admissibility of administrative tasks for billing. Moving beyond the basics of billing guidelines to more comprehensive terms of engagement requires that companies and firms agree on a system of Records of Instruction (ROIs) whereby uniform technology-enabled requests for legal services become the norm regardless of the scope of the matter. Terms of engagement should also require detailed matter plans and budgets together with provisions for change orders. Together, ROIs and matter plans introduce predictability and shared accountability for legal spend.

I found Quovant's third "idea" – the one dealing with alternative fee arrangements – to be the one with the greatest potential for controlling external legal spend. The advantages of AFAs over hourly rates are well laid out in the white paper. Yet Quovant's response to the question "when should you use AFAs?" is tentative in that the conditions proposed for use are quite limited. My position is quite different because I believe that some variation of non-hourly fees can and should always be used provided ROIs and a legal project plan and budget are in place. Popular hybrid AFAs combine capped or fixed fees by phase with a component for performance, success or innovation. Law firms are far less risk-averse to AFAs than are their clients. Companies need to up their game.

Quovant's last idea is for objective and subjective reviews of invoices. Few clients want to spend time on forensic work. Moreover, they find that asking for adjustments to billings to be distasteful and a waste of time. Better instead to use the ROIs and legal project management and budgets as preventive measures. Let the law firms ask for change orders and exceptions before the work is done, shifting the administrative burden to the firm.

Working with firms that have the tools, the professionals and the experience to use them is essential for companies that want to move beyond the basics of managing external legal spend.

About the Author

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