



LOCATING AND UTILIZING BENCHMARK DATA

Ellen Freedman, CLM
© 2009 Freedman Consulting, Inc.

Not a week goes by without one or more calls to the hot line asking for benchmark information. Most lawyers and law firm leaders know that good strategic information is required to assess many areas of law firm performance. The typical information sought includes, but is not limited to

- § Rates and billing practices
- § Compensation and benefits
- § Staffing ratios
- § Overhead and profit margin

It's not always easy for a firm to obtain relevant data. First, surveys tend to be pricey. Most are hundreds of dollars, some cost a thousand or more. That's because the most significant law affecting professional associations and their members who seek meaningful information is the Sherman Antitrust Act.

In order to obtain information relating to fees, wages and other economic matters, a survey must be prepared and reviewed by qualified antitrust legal counsel before being conducted. Criteria for data collection, analysis and dissemination are stringent.

Care must be taken to insure that the purpose of any survey is to permit each firm to assess its own performance. If a survey is used for the purpose of or *has the effect of* raising or stabilizing fees, wages, disbursements, credit policies and the like, it can create serious antitrust problems. And association antitrust violations can subject *all* association members to criminal and civil liability.

Other factors also influence the high cost and limited availability of surveys. Survey design is more of an art than a science. One must take a lot of considerations into formulation of each survey question. Asking questions which are too hard or too time-consuming to answer will result in incomplete responses or limited numbers of participants; rendering the survey useless. On the other hand,

failing to collect sufficient meaningful information makes the survey valueless to the intended purchaser.

From this perspective, it's relatively easy to understand why surveys are expensive propositions, and why so few are undertaken. Where I find my biggest challenge in working with firms is in locating surveys which provide meaningful comparison data. Sure, if you're a mid-size or large firm in a major metropolitan area, there is a lot of meaningful information to be had. But a problem arises when the firm is small, or located in a relatively small town. Then the available benchmark data becomes much less applicable.

When I get a significant number of requests from the same county, I suggest that the bar association team up with the closest chapter of the Association of Legal Administrators to create and conduct their own survey. While it appears faster, cheaper and easier for the bar association to purchase one expensive survey which can be housed at the association and shared by its members, the members will find that the majority of the data is simply not meaningful. For that reason, putting in the effort to conduct a survey, even if only once every five years, will provide highly valuable and relevant information.

I am constantly on the lookout for good surveys. And I maintain and frequently distribute my resource entitled "*Obtaining Benchmark Data*" which is a fairly comprehensive listing of what is available in the marketplace.

Most recently I reviewed a courtesy copy of "*Fees and Pricing Benchmark Report: Law Firms & Legal Services Industry 2008*" which is published by RainToday.com. I was impressed with this survey. And I have added the publisher to my resource listing. Although the number of participants in the survey is lower than many others on my resource list, and the number of small firms is slightly lower than the demographic representation in PA, the questions asked are particularly useful.

The survey differentiates itself from others — most of which are better known— in that instead of focusing strictly on the numbers which enable a firm to compare itself to others in the industry, it provides meaningful analysis, commentary and recommendations for best practices based on the data.

Firms frequently make common mistakes when utilizing benchmark data. Over the years I have witnessed most. Before discussing some of them, let me preface by saying that every firm should periodically undertake a benchmarking exercise. It's an important reality check which can improve practices and profits.



Knowledge of fee data, pricing practices, staffing ratios, profit margin and so forth, and how they affect the health of a firm, is critically important for a law firm looking to maximize its fees, growth, profit and competitive position.

Common mistake #1: the number is absolute. Many law firm leaders take benchmark numbers as absolute indications of effectiveness and efficiency, rather than recognize them for the relative markers they actually are. At one firm where the managing partner observed that the average number of staff per attorney in the survey was 1.13 compared to his firm's 1.34, he ordered an immediate downsizing. He did not take into account factors which would influence this number one way or another, such as practice area mix, competency level of staff, willingness of partners to share resources, attorney work habits, and so forth.

Changing staff ratios based on numbers alone seldom directly improves performance. Real gains are achieved by studying and redesigning workflow. Sometimes it may be worthwhile to benchmark the attorney/secretary staffing ratio; but it is usually more productive to benchmark how those secretaries perform. What type of work do they do? How fast, accurately, or economically do they do it?

Benchmarking your ratios compared to others can help identify possible performance inefficiencies. Benchmarking the workflow process, on the other hand, gets you closer to your improvement goals.

Common mistake #2: the number you come up with is the number someone else would come up with when looking at your firm. At one firm a managing partner was concerned that his IT department was disproportionately large. He took the initiative of seeking information directly from a small number of competing firms on the staffing ratios of attorneys to computer support people.

Seeking information directly can be a very effective method of gathering meaningful information; just be careful what information you gather, so that you don't violate the anti-trust guidelines.

Don't assume that your competitors will be unwilling to share their "best practices." In most cases they will be flattered when you ask them. And don't assume that you need to average data from large numbers of firms to obtain valuable information. Highly relevant data from a small number of firms will often be far more valuable.

When the managing partner shared one particular firm's ratio with me, —his "proof" that his firm was overstaffed— I knew it was not possible.



The competing firm was known for their technology utilization from the lowest clerk to the highest level partners, and everywhere in between. They were utilizing many leading edge software applications. That takes a lot of IT talent and support.

Because I knew that firm's director of IT, I placed a call. He was flattered that I was interested in confirming the rumors I had heard about his firm's leading-edge use of technology. During our lengthy conversation I discovered that he employed dozens of "outside contractors" on a long-term regular basis to handle the various specialized IT needs of the firm.

I then had the managing partner call his colleague with this simple question: did their attorney/IT staff ratio take all those outside contractors into account? You already know the answer, don't you? Not only were they *not* taken into account, but the managing partner didn't even know they were not included in their staffing and payroll figures. (They were included in operating expense "Temporary Services" on the firm's profit and loss.) Once that managing partner received revised numbers which moved those numbers to payroll, his bragging came to an end. His actual ratio, on an apples-to-apples basis, was far higher than that of the inquiring managing partner, who then felt more assured of his firm being "right-sized" in that area.

Common mistake #3: the numbers don't apply to us. Yes, every firm is unique. But trust me, you're not *that* unique. So while you cannot look at a number as absolute without taking differentiating factors at your firm into consideration, you also cannot dismiss unfavorable numbers out of hand with a wave of the "not applicable" wand. What you want to do is examine thoroughly what factors may influence the numbers one way or another. Don't let your natural skepticism short-circuit this introspective exercise. That's the whole purpose, after all, of examining and comparing yourself to the numbers.

Common mistake #4: we're on par with others and need no improvement. What is it about lawyers that makes them instinctively want to blend in instead of stand out? Marketing concepts such as differentiation and branding have only recently gained any real foothold and acceptance in the legal industry. Remember that the purpose of benchmarking is to generate real improvement; not just make sure your firm falls within a safe range of numbers. Confirming that your firm's numbers place you squarely in the middle of the pack does nothing to help your firm improve workflow, profits, or identify any competitive edge.



I can say with certainty that if your firm effectively performs a benchmarking exercise, you will find some practices or procedures to tweak. You will stand a better chance of determining whether your rates are appropriate, knowing whether you should discount, charge a premium, or consider alternative billing methodologies. You'll find out what factors are most closely linked to profit improvement. No, it isn't hourly rate, if that's what you're thinking. Other factors are heavier influencers. And most importantly, you'll start to identify best practices which you can adopt at your firm to improve its health.

© 2009 Freedman Consulting, Inc. The contents of this article are protected by U.S. copyright.. Visitors may print and download one copy of this article solely for personal and noncommercial use, provided that all hard copies contain all copyright and other applicable notices contained in the article. You may not modify, distribute, copy, broadcast, transmit, publish, transfer or otherwise use any article or material obtained from this site in any other manner except with written permission of the author. The article is for informational use only, and does not constitute legal advice or endorsement of any particular product or vendor.

