

CORPORATE LEGAL TIMES

Partnering: The "New" Client-Law Firm Relationship

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THERE IS widespread agreement that partnering between corporate law departments and law firms is the most effective means of addressing the legal costs that have become burdensome for companies. What does it mean when a law department tells law firms it wants to partner with them? How will relationships between those firms and that department change on a day-to-day basis?

Literature dealing with legal management issues contains a great deal of discussion on partnering as the wave of the future. However, there is a paucity of detail in many of those discussions. We can fill in that picture by identifying ways in which inside and outside counsel communicate, collaborate, achieve consensus and circulate information between themselves and with the business client.

WHAT DOES A PARTNERSHIP MEAN?

To do so, it is helpful to approach the issue from a macro perspective. First, what does the term partnership mean in other contexts? Essentially, by creating a partnership, parties agree that they will share risks and rewards. The term suggests an interrelationship among them that recognizes they expect to realize mutual benefits from their interdependence and mutual reliance. Keeping that paradigm in mind makes it easier to explore the specifics of the corporate client-law firm relationship as it exists and as it will exist if partnering becomes a reality.

It also is helpful to keep in mind what is *not* meant when using the term partnering in this context. The partnership between a client and a law firm is not the same as one among the partners of a law firm. The relationship between client and firm is clearly targeted toward a very limited purpose: The law firm handles certain legal affairs of the client as that client's advocate and counsel. While certain responsibilities

devolve on the firm by virtue of its representation of the client, the firm does not acquire the authority to bind the client in the way that one member of a general partnership can bind other members of that partnership.

THE COST EFFICIENCY OF PARTNERING

Another important predicate to the analysis is an understanding of the motivation of clients in proposing this new paradigm for their relationship with outside counsel.

Cost concerns have become more intense in recent years for all companies. The cost of legal services is often identified as an area ripe for improvements in that regard, in part because there has been little understanding of its cost structure.

Perhaps even more significant, however, is the sense by legal clients that the traditional method of calculating legal fees (the amount of time devoted to a matter multiplied by some fee for each unit of time) leads to an inherent tension between the interests of counsel and those of client (at least in terms of cost). In other words, the longer an assignment takes, the more the attorneys earn. Efficiency is not rewarded.

Several themes are of great value in this analysis, and can be captured in four alliterative words: communication, collaboration, consensus and circulation. Each of those terms represents one of the critical goals of the work of counsel (both inside and outside) and provides some insight into how the "new" partnering should work.

If outside attorneys have a stronger interest in delivering the legal service in a cost-efficient manner (not simply providing the best counseling without concern for the cost), companies will be better off. The challenge for inside counsel is to achieve that relationship without significantly disadvantaging the firms or damaging the existing relationships that have worked so well. Partnering attempts to introduce into that relationship incentives that

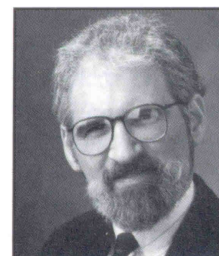
bind the parties together more, and to realign the interest of client and counsel so that cost efficiency attains a more prominent position than before.

The Prudential law department convened a conference to discuss many of these concepts and called it the "Best Practices" Conference. The presentations at that program include many by outside counsel who had participated in the development of the themes. By introducing its expectations in that collaborative way, the law department hoped to create a much more positive environment in which to make those practices real and to foster partnerships with its outside counsel that operate on a higher level.

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DRAWING THE LINE

In discussing the communication between client and counsel, it is important to remember that the “client” in the relationship is an entity composed of many people. The interactions between outside counsel and the client consist of numerous communications and exchanges among several individuals. The details of the partnering relationship must take that fact into account and build on it. If the business executive, the inside counsel and the outside attorneys have distinct functions that are clearly defined and well-understood by each, each will know what the others are doing and who to call with questions or concerns. Time invested in reaching that mutual understanding is well spent. For example, in a transaction, the lines between business and legal issues can be vague. By agreeing in advance where that line is, the attorneys and business client can prevent misunderstandings and delays that occur when one person or another must try to reach the appropriate person.

DON'T FORGET THE BUSINESS CLIENT

A model that relies on a simplistic client-counsel structure (just the inside and outside attorneys) is likely to fail to achieve the benefits needed. The parties also must take into account the involvement of the business client, because he or she has a significant role in the delivery of the legal service. Ultimately, it is the business client who is the consumer of that service and for whom it should be designed, because it is the impact of that legal advice and counseling on the business operation that is most critical.

So we are looking at a tri-party exchange (in reality, a series of multidirectional exchanges) when we examine the legal function in the modern corporation. As we draw the contours of the new partnering arrangement, the significance of the business executive must be taken into account and incorporated into that design.

The multimember group creates complexities for the legal function as well as some potential benefits and strengths. The complexities flow from the larger number of individuals involved in the case or transaction and the web of communications that may be necessary to complete the project. The benefits and strengths arise from the additional talents and capacity available.

ROLE PLAYING

A well-understood partnership between client and firm will realize those benefits by taking advantage of the talents of the players. Consider the delivery of legal counseling like

a pass play in football. The business executive is hoping to receive the advice like a pass receiver looks for the ball to arrive in the end zone. The inside counsel is in the role of the quarterback, launching that advice on its trajectory, but only after receiving it from the outside counsel. The play will work only if each member of the team understands his or her respective role as well as the roles of the other members of the team, and each executes his or her role properly.

When the participants do not have a clear picture of each one's role and the limits of participation, overlapping activity is more likely.

Efficiencies can be gained by eliminating duplicative efforts. For that to occur, however, everyone must understand fully each other's role in serving the needs of the business client for legal service. This will happen only if we identify in advance their respective roles and tasks in providing those services as well as the business executive's role as the target recipient of that counseling.

An additional benefit from addressing these issues early is that the participants are assured that all necessary elements of the work are clear in the minds of all of them and that no steps are left unaddressed. It is very inefficient to discover near the closing of a transaction that nobody ordered needed certificates from a government official because the inside and outside attorneys each thought the other had taken responsibility for that item, perhaps based on the outside attorney's past history with that client (albeit with another inside attorney) or the inside attorney's experience with another of the company's outside firms.

The identification of each party's responsibilities should be accomplished only after first examining the relative strategic strengths and core competencies of the inside and outside attorneys in performing the elements of the overall service.

By assigning tasks in accordance with those strengths and competencies, we know that the legal service is performed and delivered as cost effectively as possible.

COMMUNICATION

Of the four themes, communication is the most vital element in achieving the benefits partnering offers. If the parties do not exchange information, they cannot be certain that their expectations are consistent. That communication must be frequent, candid and as full as appropriate.

Client and counsel must establish more consistent communication channels among the

inside attorneys, outside attorneys and business clients. While regularly scheduled phone calls and status reports are valuable, spontaneous communications are often needed, since issues can arise unexpectedly. Any of the team members must feel empowered to initiate such calls as needed.

The communication must commence early in each assignment and continue throughout the matter. Each member of the team must be able and willing to raise any issues of interest or concern in respect to the work, with the expectation that other members of the team will be receptive to any such items, whether positive or negative.

The teams should front-load the process by devoting more effort to early planning. Failure to do so can allow misunderstandings to develop and persist. An early meeting to plan the staffing for a case or transaction, with each member of the team represented, is an advisable step that can prevent such misunderstandings. Among the issues that should be addressed early are:

- The risk profile of the assignment compared to other projects – Does it present the possibility of greater risk to the client than other similar transactions or cases?;

- The staffing appropriate to its proper completion – The riskier the case, the more the client might prefer to have more senior members of a firm involved throughout its life – if the possible damages or loss to the client justifies that resource allocation, and;

- How the project will be managed – Will frequent, face-to-face meetings be necessary? Should periodic status reports be prepared and, if so, by whom?

All of these issues are interrelated, so they should be discussed in one session if at all possible.

To achieve meaningful efficiency gains, we must maximize the contributions of each member of the triad. It requires that they be in a position to leverage off the communication and reach a consensus as to what has to be done, who is responsible for which elements of the overall project and the order in which the subordinate tasks must be completed so as to reach the final result most effectively.

At a minimum, we must devote time and effort to identifying the parties' respective roles and tasks in each discrete assignment. While there are some general expectations as to what tasks inside counsel will perform and which will be undertaken by outside counsel, each matter might present facts that justify different expectations. As a general rule, inside and outside counsel should explore the partic-

ular circumstances of each assignment and determine whether some adjustment is in order.

Partnering envisions more than just greater use of e-mail, more frequent meetings and development of a common understanding of each partner's tasks. It means that the firm and the client have identical goals, which are those of the client's hoped-for outcome. The new paradigm elevates the client's concerns to a higher level than they may have occupied previously. Moreover, those concerns should be viewed in broader terms than just those covered by the specific assignment. The firm should achieve an identity of interest with its client that transcends what it might have had previously.

In the restructured relationship, the law firm is expected by the client to shoulder full responsibility for the completion of each assignment, including the assignment's consistency with the cost constraints discussed initially. Counsel should not bear the burden of cost facts that are truly can't be anticipated, but such factors should not be frequent, or at least should become less frequent as firms and clients become more accurate in budget forecasting.

On the client's side, the restructured relationship demands a heightened understanding of the position of its outside counsel and a greater appreciation of their needs to make that relationship work. When a client decides to undertake initiatives that involve or will impact its outside counsel, it must be sensitive to the impact on its counsel.

A significant example of how the relationship must evolve lies in the sharing of information. Historically, the client may have provided outside counsel with basic information that was necessary for the counsel to complete the specific legal assignment.

The client should be alert to additional benefits that it and the outside firm might realize if the client provides the firm with more information than is strictly required for that purpose. If more information would enable the firm to understand more completely its role and fulfill that role better, then it is in the client's interests to provide it.

The client and counsel's relationship will also benefit from the increased information flow. Many people hoard information because "information is power." By sharing information, however, you demonstrate a willingness to rely on the other party and to empower them.

Prudential has embarked on a program of sharing information with its law firms. The

recently concluded "Best Practices" Conference was a success, in large part because of the intimate involvement of representatives of many of the company's outside firms in the development of the themes for the program. All five planning teams included members of at least three of the company's firms. Further, many of the practices discussed during the conference will lead to greater participation of outside lawyers in initiatives of the law department. The improved practices that are being implemented will lead to a greater sharing of information and greater teamwork between inside and outside attorneys.

Client and counsel must engage in a more searching dialogue with each other. They cannot afford to violate unstated expectations or assumptions; rather, they each must be willing and able to provide each other with their respective goals and aspirations so that these can be measured for congruity.

TECHNOLOGY CAN HELP

There are now tools that were not available just a few years ago to help us accomplish this. Though technology does not define the new partnership, it does offer means to cement that relationship more fully. For example, by using e-mail as much as possible, client and counsel can achieve a higher degree of interaction than they could by means of telephone calls, faxed materials or (dinosaur of dinosaurs!) the mail.

Prudential has adopted an ambitious schedule with its outside firms to roll out electronic communication, fee-review software, Lotus Notes applications and its law firm evaluation software. Through the greater use of such tools, the company expects to save time and money. The work will be re-engineered as inside and outside attorneys are better enabled to work together as a seamless legal team serving their common clients.

What should corporate clients expect of outside law firms in this new environment? Beyond the obvious answer that the firms must provide the specific legal service called for by each assignment, a client should demand that the firms be alert for issues that could impact the client and bring those to the client's attention. I am not speaking about sending a bulletin about a judicial decision that presents an alarming precedent and generating concern within the client's organization, but taking a more proactive stance—perhaps even offering some unsolicited (and unbilled!) advice as to how the client might ameliorate the impact of that precedent.

In addition, clients must tell the firms to be

on the lookout for potential benefits that the client might realize by adopting new practices or initiatives. Even if a particular suggestion would introduce efficiencies that could mean lower billings for the firm in the short term, the firm should recognize that the long-term success of its relationship with a client would be improved by introducing that innovation.

A WORD ABOUT BILLING

An area that has generated considerable discussion in recent years is that of expenses passed through by law firms. Without trivializing the amounts of money that may have been involved in such situations, of greater concern to the clients than just the out-of-pocket cost was the attitude that law firms demonstrated when they incurred expenses on behalf of clients and then marked those expenses up with an administrative charge. The firms demonstrated that they had little concern for their clients' fiscal interests. Clients must make it clear to the firms that they will not tolerate such disregard.

Prudential has developed and is implementing a powerful invoice-review software. The billing data will be transmitted electronically directly from the law firm to the in-house attorney's personal computer. The software will enable the in-house attorney to analyze data in various ways that are almost impossible by hand. Those analyses permit a more thorough understanding of the information than is feasible otherwise.

CUTTING COSTS BY UNBUNDLING

Clients should push law firms to unbundle their services.

Just as some tasks are more efficiently performed in-house than in a law firm (or vice versa), some services that law firms have traditionally performed could be undertaken more efficiently and effectively by others.

Prudential has entered into strategic alliances with a number of legal service vendors. The company has communicated to its law firms its expectations: Use the vendors' services as appropriate in performing our legal work. This method holds the promise of significant cost savings for Prudential while maintaining quality of performance.

Temporary staffing for assignments is another idea that clients should ask their outside firms to consider. When use of contract attorneys or legal assistants might lead to cost savings without quality concerns, clients can expect outside counsel to apply such strategies, even though it might lead to lower billings for the firm.

Corporate clients must be sure that outside counsel understand the basis and purpose for the legal budgeting that the clients now expect. In-house and outside counsel must address that concern and provide the information the client needs and demands. There is and always will be some imprecision in preparing a budget for litigation or, to a lesser degree, for a transaction. Only by developing a consistent and reliable methodology for that

exercise will counsel be in a position to satisfy the business clients' expectations.

In general terms, we are looking to enhance the level of teamwork that inside and outside counsel employ in representing their common client. The inside attorneys, the outside attorneys and the business clients must work as cohesive teams to complete the transactions and manage the disputes in which the clients are involved.

The legal profession is undergoing significant change. The cost pressures that have been buffeting corporate America for many years have hit the legal industry full force. Outside firms must address those pressures. They can do so most effectively in partnerships with their corporate clients. Those that do so wholeheartedly will prosper, while those that resist will not.

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