

A Management Imperative . . .

Staffing Flexibility Addresses Client Needs and Delivers Greater Value

In recent years, law departments have initiated dramatic changes in their relationships with law firms, often with little input from the affected law firms. Those changes, which naturally have very significant implications for outside counsel, are defined by several trends.

Many law departments have reduced the number of firms to which they assign most work. Many have introduced requests for proposals and other tools into the counsel-selection process. Law firms are being told to use legal research companies, document management firms, and other vendors as parts of the team that provides legal service. Corporate clients are beginning to evaluate law firms more objectively and with greater discipline. Finally, many in-house counsel embrace “partnering” as the preferred type of relationship between their companies and the firms.

Inside Pressures

Why is it happening? Is there a common thread among these trends?

The trends are driven by two broad intra-corporate currents that create and affect the environment within which law departments must operate. The departments are subject to ever-increasing cost pressure and they must meet elevated expectations of senior management for reports.

The cost pressure manifests itself in the phrase “do more with less.” In-house lawyers are expected to adhere to corporate management budgets governing matter-specific legal

work as well as the entire corporate legal effort. They must stay within those budgets and plan corporate expenditures with greater precision. They cannot over-commit their companies’ fiscal resources easily. The old days of having an unlimited budget and exceeding it with impunity are long gone.

The reporting expectations of corporate management are much more rigorous than they had been. Corporate executives demand a greater number of reports from their in-house lawyers. Those documents must go beyond the mere status of the various matters (transactions, litigation, etc.) for which the lawyers are responsible.

They must also explain how well the lawyers are managing those matters and the companies’ legal affairs. Also, the reports must be in terms and formats with which business executives are familiar; in other words, the lawyers must use metrics.

Outside Pressures

What are the implications for law firms? How should they respond?

First, the reductions by companies in the number of law firms that they plan to use for most of their legal work means that there are fewer “slots” available on the cumulative lists of approved counsel from which in-house attorneys can select for specific assignments.

The clients are also expressing a strong interest in (and in many cases demanding)

alternative fee arrangements. The pressure on law firms to offer or at least acquiesce to caps on their fees likely will increase, as will the pressure to stay within a budget agreed to at the outset of an assignment.

The interest in partnering reflects the law departments' preference for outside counsel who share the companies' interest, not simply in quality legal service, but in quality legal service that is cost-effective. Too often, companies have paid legal fees that seemed excessive for the particular assignment, even while acknowledging that the work was first-rate.

For in-house attorneys, first-rate is not always necessary. Meanwhile, they cannot assume that outside counsel won't let the pursuit of excellence lead to excessive costs. In essence, law departments therefore seek outside counsel who share the same goals as inside counsel, taking into account cost constraints as well as quality.

If such counsel can be identified and retained, inside counsel will more comfortably assign them complete responsibility for completion of the work. The close scrutiny of the performance of outside counsel, as is typical in law departments, will be less necessary. The incentives built into the relationship should provide sufficient assurance that the company's goals are met in a manner consistent with its expectations.

Project Management

How will inside attorneys expect outside attorneys to act in that context? How will the performance of outside law firms differ from what it is now?

The trend lines are now leading clients to expect that their outside lawyers will manage the legal work as well as complete it. They will expect counsel to choreograph the efforts of disparate groups—for example, temporary attorneys from an employment service, researchers working through a legal

research company, and document management teams from another organization—in order to deliver the same high-quality legal service that they have received in the past, but now at a lower cost.

In fact, in-house counsel now provide outside counsel with a vendor list of document management and staffing companies to call upon during particular phases of the litigation process. The ability to budget legal work, and to stay within that budget, will be increasingly valued by corporate law departments.

That budgeting ability represents a significant element of the project management now expected by increased numbers of in-house counsel. Outside counsel who have the relevant capabilities and demonstrate the discipline required will be particularly appreciated. The firms that clearly evince a willingness to accept responsibility for their cost-related performance will be treasured.

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The effort by corporate clients to have their outside firms unbundle the legal service is a benefit for smaller law firms and sole practitioners. They will be able to compete more easily with larger firms because they will be able to handle work using the resources of other lawyers, other companies, and different services that are not parts of their own firms.

Clients have expressed an interest in smaller and virtual firms to service their needs because the inherent flexibility is a perceptible asset. It also allows in-house counsel to realize the greatest value from the company's investment in the team as those teams will be staffed by professionals, often from disparate organizations, who have the

specific expertise and skills that their assignments require.

Best Staffing Practices

The staffing of assignments is a critical element of this new approach, so it deserves particular mention.

Traditionally, law firms staffed matters internally. They hired associates for their anticipated substantive needs. The process of hiring and training associates is a lengthy and expensive one, however. It is not possible to use that traditional approach to meet a sudden, unanticipated demand for a specific expertise.

The ability and willingness to retain contract attorneys to fill unanticipated gaps in a firm's talent base will be appreciated.

Temporary or contract attorneys can provide the flexibility to meet these needs. In this market, it is difficult to justify the burden of, say, a niche commercial real estate attorney, if the organization's or firm's business in that area is waning. However, retaining such an attorney on a contract effectively provides the required expertise without undue pressure on the bottom line.

Corporations are likewise finding it more difficult to gain approval to hire permanent attorneys. As a result, they are, in turn, turning to contract-to-hire attorneys even as they navigate the red tape to gain the appropriate blessings to hire the contract attorney on a full-time basis.

Law departments are also leery of firms that claim expertise in every type of law. In-house attorneys are not impressed when firms trumpet some specialty simply because one or two recent laterals happen to have

experience in those areas. Conversely, the ability and willingness to retain contract attorneys to fill unanticipated gaps in a firm's talent base will be appreciated.

Firms enhance their value to corporate law departments by demonstrating an ability to marshal the talents of different individuals who perform efficiently and effectively. With the increasing emphasis by clients on pooling the expertise of independent organizations, this talent is more important for attorneys than it's ever been, particularly when it comes to keeping schedules intact and maximizing the impact that the various specializations have on the final, combined work product.

Temporary or contract attorneys, as well as the various vendor disciplines that comprise the legal team of the near future, cannot be deployed the same way in different assignments. Factors such as the need for speed, or whether the talent required is a commodity talent or a recondite expertise, will affect what type of contract service is appropriate, as well as how it should be incorporated into the mix.

Advance Guidelines

Law firms are well advised to think through these issues long before the moment when they will be required to provide a staffing plan to meet the client's immediate critical task. The goal is to present a thoughtful, logical template that can be adjusted to meet the client's changing needs. Such a demonstration—that the firm has already been strategizing and refining the use of staff from both within and without the firm itself—will have a very positive impact on the client or prospect.

The firm thus should develop guidelines as to how it would involve temporary staff in its legal team in different contexts and for different types of work. How would it manage litigation that involves huge document productions, which large numbers of

temporary attorneys could review with the oversight of one or more lawyers from the firm?

Perhaps a particular assignment would require a specialized expertise late in the process, but the firm does not have that expertise on hand. How can it assure the client that it will have that expertise available, properly and efficiently secure, at the right time and with minimal disruption?

To complete a necessary document review, for example, savvy outside counsel will have already formed trusted relationships with outside vendors in order to provide swift, confident, and cost-effective service. It is likewise important to understand how data processing, document management teams, and counsel work together and how their pricing models work to the client's benefit.

Absent such understanding, it is difficult to provide a cohesive and accurate cost proposal as well as assure a finalized work product.

Outside counsel should also clearly lay-out strategy and define each vendor's role in order to keep everyone, from the data processing and platform vendors to the document production and management team as well as the large review team, on the same page. Each party must understand the end goal, the timeline, the substantive matter of the case, and the protocol by which they are to proceed through the review.

If these objectives and guidelines are clear to the vendors in advance, it will save clean-up time and money in the end. It would be wise for outside counsel to have a trusted staffing firm that can provide attorneys with niche expertise. When need arises for a seasoned specialist, clients expect firms to have the ability to provide one at a reasonable cost. Going to a trusted contracting service can fill quickly any gaps that might exist in a firm's practice areas.

A firm or the law department itself can also save costs by building relationships with

preferred providers and negotiating billing rates in advance of need. Those rates might reflect a tiered structure; in other words, there might be one rate for a single attorney, while hourly or other rates per lawyer for additional resources might be lower.

Again, the earlier the firm acts, the better. By negotiating up front, the firm saves considerable time at the very moment when, at the start of the assignment, time is of the essence. In addition to rates and billing arrangements, essential early tasks include due diligence on the background of the agency that provides the on-demand personnel and how it identifies and vets candidates.

With such proactive measures taken, the law firm or law department needs only place a call to the personnel agency when the need arises.

Such early discussions also enable the firm or client to handle unexpected surges of work more effectively and with minimal fuss. Having established a relationship with a staffing or document management vendor, and with a contract in place, the firm or company will, again, save time when time is in short supply.

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Early vendor planning also prevents the confusion that often occurs when firms farm out staffing needs to several staffing firms simultaneously. It might be a good idea to use several firms when the need is not urgent, and the law firm or law department wants to foster competition among the staffing firms to encourage optimal service. However, when the need is immediate for multiple review attorneys, calling on multiple firms will likely create confusion and possible errors.

Quality Communications

If you identify one or more trusted resources for on-demand personnel, rely on those experts in their chosen fields. For example, reach out to your managed review firm and trust its advice if you need to decide whether to use 20 attorneys for 40 hours per week each or 10 attorneys working on an overtime basis, or if you need assistance designing a quality control process.

Schedule a conversation prior to the review to discuss the specific matter, to raise questions that you might have, and to gain the benefit of their experience and insight. To assure a smooth project, and possibly save many thousands of dollars over the long run, communicate with the managed review and staffing firms on a two-way basis. It's a common mistake among outside counsel to neglect to share important information about a project, such as planned workflow or changes in that workflow and the myriad of other important issues that affect how the work will proceed.

Do not leave the staffing agency professionals who will be managing the on-demand staff in the dark on critical subjects. During conference calls, be mindful to discuss and share the right information with the vendor so that everyone involved walks away with the information that they need to work efficiently. If project managers are handling a review with erroneous assumptions—whether those errors relate to the deadline or to the specifics of the document review or to schedules—work may have to be redone or documents re-reviewed when such waste could have been directly averted.

Such communications should flow downward to the on-demand staff attorneys. You can create an excellent team only when everyone on it knows his or her role clearly and understands the goals for the project fully. Be sure to create clear training materials and review guidelines for the staff. Quickly and concisely impart any changes in the process caused by developments in the case or transaction.

By treating the on-demand staff with respect and professionalism, you impress on them the value that they bring to the matter. It will enhance the likelihood of success in multiple ways.

A firm may develop and implement the project guidelines alone or in collaboration with the temporary staffing agency. What's important is that they *are* developed, as their very existence will send a powerfully differentiating message to the client about your firm and its level of professionalism. ■

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