



Reprinted with permission of Legal Times. © 1997

What Business Can Teach Law

BY STEVEN A. LAUER

As corporate America has increasingly become "leaner and meaner," the role of in-house counsel has been changing in many, if not most, corporate law departments.

Because law departments are expected to manage their costs more effectively and to provide better reports to management, in-house counsel are finding less time to participate in the nitty-gritty of the work and, instead, are often limited merely to managing it. Yet despite that need to step back from the work itself, in-house attorneys are still responsible for the quality and cost of the outside legal services.

To cope with the new reality, corporate law departments must develop new tools with which to select and oversee outside legal services.

One of the best tools is the request for proposal (RFP) to perform legal service. By using the same method businesses have long used for other types of services, the corporate law department can introduce more objectivity and reliability into the selection process, as well as increase efficiency and reduce costs of legal services.

GREAT EXPECTATIONS

The RFP can be used to define a new relationship or improve an existing relationship between inside and outside counsel. A properly designed RFP can make outside firms aware of the expectations that the company has for the relationship. The firms that propose to represent, or to continue representing, the company should be asked to address those expectations. An important part of the process is identifying the firms that you want to submit proposals. You should definitely consider inviting firms you have not previously worked with to participate.

All RFPs, regardless of the type of work involved, should clearly state how the company expects its outside firms to interact with its in-house attorneys and its business managers. Most RFPs focus on fees and costs almost exclusively. The focus instead should be on a collaborative effort to achieve efficiency, which will result in lower costs.

Be as specific and practical as possible. Don't resort to high-minded but vague statements about providing cost-effective service and being responsive to the client's needs. Make your wants and needs clear to the outside counsel, and make the results measurable.

A GRADING SYSTEM

In a recent report, the Greater New York Chapter of the American Corporate Counsel Association recommended, among other things, the use of numerical scales to rate law firms. The idea of rating law firms has been challenged as inadvisable and unfeasible by critics, but the suggestion that companies identify and make more objective the criteria by which they select outside counsel is an excellent one.

One of four monthly columns published in Legal Times on a rotating basis, "In-House Insight" will appear on the fourth Monday of every month. "Management" will run on the first Monday, "Associate Life" on the second Monday, and "Going Solo" on the third Monday.



Carefully written RFPs will not only ensure that the right firm is chosen for the job, but also promote a better client/firm relationship.

As one who has designed and applied such a tool, I believe it is not only feasible, but also effective.

In-house attorneys have typically made selections of outside counsel on the basis of unwritten criteria, often applied inconsistently. In fact, many selections have been made with little regard to quality of work. Rather, they have been based on long-standing relationships that began under circumstances that might have been very different from today's needs.

The first step is to identify your selection criteria. It may be that the geographic breadth of an outside firm may be critical

to your decision because virtually all your matters require simultaneous activity in multiple jurisdictions. Or it may be that your legal work is concentrated in one locality, but requires much more legal firepower, so that the depth of a firm's resources in that one jurisdiction is of utmost importance.

If your company has a large number of repetitive but relatively straightforward disputes with customers—for example, small collection cases where novel legal or factual issues are unlikely—you might value as critical a firm's ability to delegate the primary work to lower-level staff. If

you are selecting counsel to handle a complicated antitrust matter, however, you might be better served to evaluate the candidate firms on the basis of their experience in that field and of their high-level talent.

Once you identify your criteria, you must determine their relative importance to the process. This helps you create a formula for measuring and comparing candidate law firms, a scoring standard that represents your expectations vis-à-vis the legal services provided by the outside counsel.

Just establishing a scoring scale, however, does not achieve the primary goals of objectivity, reliability, and consistency. All it does is provide a common measure for the various criteria. To the extent that different people may be involved with you in making the selection, there is a danger of inconsistency in applying these scores. Some people are "hard" graders, while others are "soft" graders.

Thus, a scoring scale of 1 to 5 (or 1 to 10) must be coupled with guidelines on how to apply the scale. This will promote consistency in the evaluations of candidate firms and provide a rational, defensible basis for the final selection.

Criteria should be weighted according to their relative importance, which may depend on the type of work sought, in calculating the aggregate score for each firm.

MAKING TERMS MEANINGFUL

There is another, larger benefit of preparing scoring guidelines and using them consistently. By familiarizing everyone in the department with the definition of "excellent" or "outstanding," for example, a common parlance can emerge for the slippery concept of quality. It will never replace all the subjective factors in decision making, but it can be of enormous value in an exchange of opinions about outside counsel.

Unless people can be confident that they have in mind the same meaning when they use the same words, they will continue to function like Lewis Carroll's Humpty Dumpty, who said, "When I use a word, it means just what I choose it to mean—neither more nor less."

Only when lawyers use the same terminology about quality, service, and value—and are certain that they are doing so—can they make judgments about those standards. Once in-house counsel are in agreement about the standards to apply, then they can determine which firm meets those standards better than others.

These standards can be applied on a continuing basis by regularly evaluating outside counsel. Periodic "report cards" would either provide assurance that outside counsel are fulfilling expectations, or point to a need for improvement.

Carefully written RFPs, together with a more objective selection process and regular re-evaluations, will not only ensure that the right firm is chosen for the job, but also promote a better client/firm relationship.

Steven A. Lauer, a Maplewood, N.J.-based consultant on strategic cost-control initiatives for legal departments, has more than 13 years of experience as an in-house attorney in several organizations. Previously, he worked in private practice for six years. He can be reached by e-mail at stevelaue@sprintmail.com or by telephone at (973) 763-6340.