

Looking for Lawyers

By Michael C. Ross

How do in-house counsel go about selecting new outside lawyers? And what factors help outside firms either hold onto or lose corporate client business? These questions were the focus of a recent *Recorder* Roundtable discussion in San Francisco in which I, along with four current in-house attorneys, participated. What follows is a summary of the major points made by the Roundtable members.

What Works — What Doesn't

There are a number of common approaches used by in-house attorneys when it comes to looking for new outside counsel.

The reputation of a law firm and its attorneys is certainly important, but probably not enough in and of itself to obtain new work from a company that is not already a client. When in-house counsel is interested in looking beyond existing law firm relationships, they will frequently seek several referrals. Common sources include attorneys at firms where the client already has good relationships and counterparts at other companies in the client's industry or in the geographic area where the matter will be managed. I call this "triangulation" (harking back to my experience navigating ships in the Navy) because in-house counsel like to find a candidate's name on more than one list — and perhaps as many as three — from referral sources. Although some referral sources carry more weight than others, strong recommendations, with specifics about results, quality and efficiency, are very valuable in deciding what firms and attorneys will be considered.

Achieving Efficiencies Does

Many legal departments are still using beauty contests for particular matters or a series of related matters. The process forces competing firms to decide which attorneys will handle the matter and what strategies they will use. Roundtable panelists agreed that successful competitors often were the firms who focus

their presentations on the client, its business and its issues rather than on the firm and its credentials. In-house attorneys are favorably impressed by firms who show that they have done their homework and who describe in detail their plans for achieving successful results. Firms that have credible means for achieving efficiencies through staffing, technology or expertise have better odds than those who do not.

Splashy Marketing Doesn't

There seems to be a general consensus, meanwhile, that other sorts of methods for attracting new business are not very effective. These include law firm advertising, splashy marketing brochures, newsletters and client alerts.

Much of the advertising these days seems influenced by the consumer product arena. Law firm ads feature everything from colorful pictures of people sailing, racing, playing musical instruments or climbing mountains to, incredibly enough, elephants flying on kites. Presumably, the intent is to instill a favorable image of the firm and its attorneys — something that marketing professionals describe as branding. But in-house lawyers seem doubtful that such ads gain increased name recognition for the firms, much less a greater shot at new corporate business. These kinds of advertising campaigns are also viewed critically by existing clients, who cite the ads as part of the reason behind the rising costs of outside legal services.

This is not to say that law firm advertising can never be useful. In some situations, it is important to communicate pertinent information to clients and prospective clients, such as the opening of a new office or the addition of new practice areas. Some ads occasionally include specifics about a firm's clients and its successes on major matters for them. That sort of information is relevant to in-house counsel and, if seen at the right time, might get the firm some consideration.

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Marketing brochures don't appear to warrant much more attention from in-house counsel than full-page newspaper ads. Glossy, photo-filled promotions of a firm's areas of expertise and pedigree are simply not interesting. Nor do law firms apparently appreciate the demands on in-house counsel's time. Of all the paper that crosses the desk of a general counsel or other senior in-house lawyer, marketing pieces from law firms are about the least likely to get any serious attention.

Newsletters and client alerts fare better than promotional materials but can still quickly find their way into the trash. In-house lawyers view the "shotgun" approach — firmwide, all-client newsletters that do little, if anything, to distinguish one firm from another — as the least successful. More successful are the newsletters and alerts that are tailored to a specific industry or client. A personal note accompanying the newsletter, calling the in-house counsel's attention to something of interest, is also likely to gain some points.

Communication Works

When it comes to existing relationships with law firms, a pivotal factor for in-house counsel is effective communication with outside attorneys. Clear, concise and timely communications are important before, during and after any particular matter.

At the outset, it is critical that in-house and outside counsel share a clear understanding about the scope of the matter, the client's priorities and desired results, strategies to achieve them, outside counsel's role and a reasonable budget. Too often a matter is undertaken, work is performed and bills are submitted without complete agreement on these points. Like most people, in-house lawyers do not like unpleasant surprises. In particular, they do not want to hear about important developments in pending legal

matters from the general counsel or other members of senior management. This applies to interim and final results and costs. Instead, outside counsel should promptly communicate assessments and recommendations to in-house counsel as developments in pending matters occur.

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Few outside counsel engage in debriefings after a matter is completed. Whether or not the results are favorable, this can be a very valuable exercise. It permits in-house counsel to learn from mistakes as well as successes. Debriefings send a positive message to in-house counsel about the importance that outside counsel attaches to the client relationship. Of course, in-house lawyers would prefer that they not be billed for the time spent on these debriefings.

Another element of successful relationships between in-house lawyers and existing outside counsel has to do with respect. In short, in-house counsel expect to be treated with the respect appropriately due to anyone who is making decisions and paying the bills. They want to be made to look good — that is, to be given credit where credit is due — and not blamed for outside counsel's mistakes. They are offended when outside counsel goes around them or, worse, over their heads. They expect a certain amount of deference to the

business judgments made by people inside the company.

No discussion of the relationship between inside and outside counsel would be complete without mention of costs. In-house attorneys are under constant pressure to manage and reduce costs. They often feel that outside attorneys do not appreciate these pressures, much less help deal with them. Inside attorneys know that costs involve much more than hourly rates charged by outside firms. Although discounted rates can be important, they are only one of the factors that contribute to the total cost of outside legal expenses. In-house counsel are looking for efficient use of expertise and technology, along with appropriate staffing by outside firms, to keep costs under control.

Finally, Roundtable panelists shared the view that the combination of increasing hourly rates in major metropolitan areas and large law firms' inefficiencies are increasingly prompting in-house lawyers to rethink existing relationships. They are now more frequently looking for qualified smaller firms as well as firms located in less expensive parts of the country, such as the Midwest.

Many of the issues that confront in-house lawyers in developing and maintaining high-quality relationships with outside counsel have not changed much in recent years. There are, however, signs that inside attorneys are increasing their expectations about how outside counsel should achieve high-quality results at lower costs. ♦

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Michael C. Ross is the former Senior Vice President and General Counsel of Safeway Inc. He has an associate relationship with Altman Weil, Inc. and can be reached at info@altmanweil.com.