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INS & OUTS

of Corporate, General and In-House Counsel



CompTIA's Chief Legal Officer Courtney Fong



How in-house and
outside counsel
can work together



BY TEQUIA BURT

SmithAmundsen partner Gary Zhao

More than ever before, corporate legal departments are being viewed as strategic partners by the C-suite. The growth of complex legal and regulatory challenges coupled with increased cyber and data privacy risks have made the counsel from in-house legal teams central to business decisions. No longer considered just cost centers, the operations of the in-house counsel are being aligned with the overall strategic goals of their companies.

Hoping to boost their value and productivity, many in-house legal teams are re-evaluating their relationships with the outside law firms that they hire. According to the Association of Corporate Counsel's Chief Legal Officers 2018 Survey, which polled 1,275 lawyers in September and November of last year, one in three chief legal officers fired outside counsel for failing to meet expectations in 2017.

Moreover, 43 percent definitely plan or are considering terminating an outside provider or firm in 2018, and, among those who let go of a provider or firm last year, one in 10 in-sourced at least part of the work permanently.

So what does that mean for Chicago-area law firms?

At a minimum, in-house counsel at Illinois-based companies expect outside counsel to be excellent attorneys who are experts in their respective areas of practice. To avoid the chopping block, however, law firms should strive to get a deeper understanding of their clients' companies so that they are able to overlay a business context to their legal advice. Providing stronger communication, more billing transparency, as well as offering a roster of gender and racially diverse lawyers, are also important.

BUILD STRONG RELATIONSHIPS

According to the Association of Corporate Counsel's Catherine J. Moynihan, associate legal management services vice president, flexibility is key to maintaining an effective relationship with in-house counsel. "We find that relationships stay positive and yield successful legal outcomes when inside and outside counsel seek innovative ways to address challenges and consider how to best use their collective resources," she said.

Indeed, for CompTIA's Chief Legal Officer Courtney Fong having that flexibility is essential for an effective relationship with his outside counsel.

"Understanding who and where we are as an organization is very important. We are a dynamic, nonprofit organization and we don't fit easily into a box," he said. "So being flexible with us and offering us alternatives are critical. In many cases, we want to come to a non-litigious solution and we appreciate outside counsel that can help us do that."

CompTIA is a leading technology association based in Chicago with more than 2,000 members, 3,000 academic and training partners and tens of thousands of registered users spanning the global information communications and technology industry. Fong said he expects outside counsel to know his organization's core values, its mission, what it does and whom it serves. The nonprofit organizes several educational and networking conferences throughout the year. Fong's outside counsel, Gary Zhao, partner at SmithAmundsen, is planning to attend one of events in the near future.

"Attending these kinds of events allows us to see and meet the people that CompTIA serves," Zhao said.

Zhao has worked with Fong for more than five years, following him to multiple companies.

"Understanding the client's expectations, meeting them and learning the client's industry are all big challenges," Zhao said. "Sometimes it appears simple to figure out — 'just read their website, look at the board members and management team bios — but really, it takes a while to learn these business expectations and to learn how to work well together. Relationship building is

a key component of working well with in-house attorneys. It's not just about doing excellent work but it's also about having a common interest and building a friendship, if possible."

KNOW YOUR CLIENT'S BUSINESS INSIDE AND OUT

Char Dalton, vice president-general counsel at SEKO Logistics, a global provider of transportation, logistics, forwarding and warehousing based in northwest suburban Itasca, said she also believes it's important to build strong personal relationships with the lawyers she hires.

"Outside counsel has to become a trusted person to you over time — whether it's by continuing to meet you for lunch or by picking up the phone to just see how you're doing," she said. "When you've made the effort to connect with me as an individual, you're the person I'm going to think of in two years when I have a hiring opportunity."

SEKO Logistics has more than 120 offices in 40 countries so it's particularly important that outside counsel has a very in-depth understanding of the business.

"We have things in China, we have things in Australia, we have matters that come up on the radar screen all over the world," Dalton said. "The challenge with outside counsel is getting them to understand our risk profile and goals so that they can adequately staff matters."

Christina Martini, partner at McDermott Will & Emery and a *Chicago Lawyer* columnist, is one of Dalton's longtime outside counsel. She said realizing that there is a business overlay to legal problems is important for a successful partnership with in-house counsel. This means understanding the organizational structure of your client's company: Who are the decision-makers? What is the relationship that your in-house contact has with those constituents? Who does your contact report to?

"Not only do you need to know who those players are, but you need to understand what their risk tolerance is," Martini said. "Understanding who the players are and what their roles are at the company helps you to determine the overall risk tolerance for the client — how do they assess risk and how do they talk about risk? It also helps you figure out, for any given situation, your client's worst-case scenario."

She added: "The CEO may be willing to take a certain level of risk, but then the CFO and the COO may say 'I'm sorry, I can't agree with you that this is how we should be approaching it.' You need to know when that dynamic is likely to happen because you need your in-house attorney's assistance in helping you navigate that landscape."

Martini also said it is also important to recognize what your client needs and when they need it. For example, she said, sometimes they want more than just standard legal advice.

"Sometimes what your client really needs is for you to be a great, substantive legal technician," Martini said. "But sometimes when a client comes to you, they're not necessarily looking for straight-up legal advice; they're looking for your business judgment."

Martini said that the foundation for this kind of relationship rests in strong communication between all parties. It enables law firms to understand what the expectations are from the engagement, not just substantively, but also from a timeline perspective. What is the client looking to accomplish? How quickly do they want to accomplish it and what is the budget?

"It's important to remember not to run away from the budget conversation," Martini said. "It's a very important conversation to have from the outset, but also during the course of the representation. Clients really need you to be able to take that step and be very proactive to have that conversation and not to run away from it."

NO BILLING SURPRISES

One of the most difficult challenges Chicago-area in-house attorneys face concerns billing. Most general counsel work with a fixed budget and have some idea of what outside legal services should cost. More than anything, they hate receiving a bill they think is unwarranted.

"I do not want to see a bill come back with a senior associate, associate and partner-level review and multiple hours circling the same document. That is just unacceptable," Dalton said.

The key word when it comes to billing is "transparency." Sending clients a bill they don't expect can be disastrous for the relationship, Martini said.

"You can be the best lawyer from a technical standpoint, be amazing, but if you upset a client from a budget perspective or have surprises in that regard, you may really diminish whatever contribution you made when it came to actually getting the project done," Martini said.

At the root of the billing problem lies the traditional billable hour that prioritizes fee origination. To address this dilemma, the use of alternative fee arrangements — which can include fixed or flat fees, contingency fees and fee-shifting — have arisen in recent years. According to the Association of Corporate Counsel's annual survey, 63 percent of legal departments reported using some combination of hourly billing rates and alternative fee arrangements, slightly lower than last year but still a significant jump from the 42 percent who used this combination of rates in 2016. Thirty-three percent said they use hourly rates as their only billing method, while a little more than 3 percent use alternative fee arrangements exclusively.

Despite the movement toward alternate arrangements, Dorothy Capers, executive vice president-global general counsel at far west suburban Lisle-based transportation company National Express, said one of her biggest challenges is making sure outside counsel is cognizant of her budget restraints.

"Firms should be really, really focused on the fact that businesses are still struggling — especially in the legal department," she said. "We are not a cash cow; we're not bringing money in the door, generally. Every year we see our budgets reduced, yet firms don't really move with that change and, many times, we have to have conversations with them when I, for example, get a bill for 20 minutes of simple work. Why would you bill us for that? Let's have a conversation before you send me that bill."

Interoffice fee-origination politics particularly irk Capers.

"I just want my question answered," she said. "I don't want to have to deal with making sure the right person is getting credit. That should be handled on the firm's end. Origination credit is something that should be dead."

One of Capers' most trusted outside counsel helps her eliminate this problem. Riley Safer Holmes & Cancila deploys a no-origination policy to help its clients both control costs and get their legal questions answered in a more streamlined fashion. Essentially, the firm is its own originator and the entire staff gets a fair share of all profits.

Patricia Brown Holmes, a former Cook County judge and managing partner at Riley Safer Holmes & Cancila, said this allows the lawyers at her firm to be more efficient. It also allows them "to get back to the good, old-fashioned practice of law rather than the business of the law," by allowing the firm to offer what is essentially an apprenticeship to young lawyers.

"Since we don't have minimum billing numbers for our associates, they don't have to worry about billing a thousand hours — they just need to worry about getting the job done," Holmes said. "It also allows us to train them. They get to follow us around so that they can get in there and get really involved. They don't have to be in one group; they can be on as many teams as they have time for."

REPRESENTATION MATTERS

In yet another area, prioritizing racial and gender equity can help law firms stand out to potential new clients and strengthen partnerships with old ones. More and more, in-house counsel are demanding that the firms they hire prioritize diversity. In fact, according to the Association of Corporate Counsel, members are being more assertive about diversity demands and are "a lot more interested in using the ultimate penalty if firms don't deliver."

Jacquelyne Belcastro, vice president-general counsel at northwest suburban Rosemont-based Hydro Extrusion North America, made diversity demands in a recent request for proposals. Though it made everyone in the room uncomfortable, she said a little discomfort is OK if the end result is more equality.



*Merili Seale,
Riley Safer Holmes & Cancila*



*Patricia Brown Holmes, Riley
Safer Holmes & Cancila
managing partner*



*Erica Kirkwood,
GMA Construction*



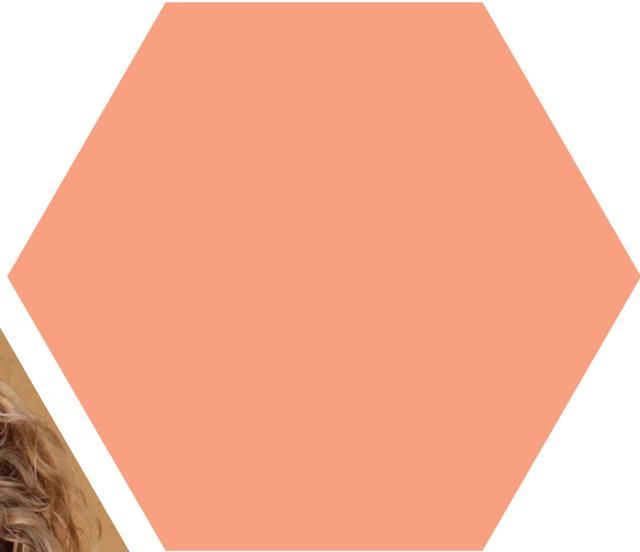
*Char Dalton, SEKO Logistics
vice president general counsel*



*Dorothy Capers,
National Express*



*Jacquelyne Belcastro, Hydro
Extrusion North America*



*Christina Martini,
McDermott Will & Emery*



“The best way to operate in this new world is to move forward, to make changes and champion gender and racial diversity.”

“As in-house counsel, we are the consumers and unless we start asking for our service providers to really focus on diversity, they’re not going to do it,” Belcastro said.

Diversity is also important for Erica Kirkwood, vice president-general counsel at Chicago-based GMA Construction.

“My company is both minority-owned and veteran-owned so employing a diverse law firm is really important to us. We want to see people who look like us and our clients doing our work,” Kirkwood said. “This will give us counsel that understands us and the community we serve better.”

Kirkwood also uses Riley Safer Holmes & Cancila. Within Riley Safer’s attorney ranks, 52 percent are female and 29 percent are minorities. Almost half — 41 percent — of the firm’s partnership is made up of women, while 32 percent of partners are minorities, exceeding averages at most firms.

Merili Seale, partner at Riley Safer, said it’s important the firm understands the demographics of GMA Construction and its customer base.

“It matters that GMA is a minority-owned, veteran-owned business,” Seale said. “If they’re expanding to certain areas, what does that look like for them and what does that mean as far as challenges that they might be facing?”

She added: “[Law firms] need to look around and realize that the landscape is changing and it’s changing quickly. The best way to operate in this new world is to move forward, to make changes and champion gender and racial diversity.” CL

tequiaburt@gmail.com

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