Saying Goodbye: When to Terminate Law Firm Relationships

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Consider it an evaluation period.

As law departments — and often right behind them, the company's CFO or procurement officers — continue to demand more quality and value from their outside counsel partners, general counsel look for ways to evaluate their own relationships with outside counsel and to help them determine whom to hire back for various projects — and whom not to engage again.

Measuring Value

The Association of Corporate Counsel recently unveiled a new client satisfaction measuring tool, called the ACC Value Index, which members can use to share evaluations of law firms that they engage. Using a five-point scale, participating ACC members will evaluate outside providers on several points of satisfaction, including understanding objectives and expectations; legal expertise; efficiency and process management; responsiveness and communication; predictable cost and budgeting skills; and results delivered and execution.

According to the ACC, the index will also serve as a valuable instrument to help shape the thinking and dialogue between firms and in-house counsel, and to better understand what in-house lawyers say constitutes "good value" in legal services.

It's clear that when it comes to value in outside counsel services, some general counsel can't get no satisfaction. But the reasons others choose not to rock the boat are myriad, according to some.

Many GCs are reluctant to terminate existing relationships with outside counsel, explains Pamela Woldow, general counsel at Altman Weil. Especially in publicly traded companies, GCs may be reluctant to make waves and potentially create bad blood.

Jonathan Bellis, vice president and chairman of law department consulting at Hildebrandt, agrees, saying some GCs may not think that it's worth it to disrupt certain relationships with outside counsel.

At some other companies, general counsel may be reluctant to have any tough conversations with their outside counsel at all, according to Woldow. Still others — many of whom started their careers at firms — may simply have too much sympathy for firm lawyers to cut ties. Many GCs also recognize that firms are institutions with different players and different roles, Bellis says; up to a point, they may tolerate some roadblocks and don't necessarily expect perfection.

Yet if those tough conversations are not held, then outside counsel may not even realize that they are not performing up to their clients' expectations. There is, unsurprisingly, a disconnect between outside counsel and the challenges faced by their in-house clients. At a recent seminar, Woldow polled about 600 partners in major law firms about whether they knew what their clients' budget cuts were in 2009.

"Only about 15 were able to tell me," Woldow says.

Most outside counsel have had "kind of a hunkering and bunkering approach," Woldow explains, hiding out in their offices instead of proactively discussing how they can best serve their clients in light of these new pressures. "That's just 180 degrees wrong."

When Woldow recently held a massive conference call with many general counsel, she asked what percentage of them have experienced those kinds of proactive phone calls and visits from outside partners. About 2 percent said they had. All said they wanted that kind of proactive approach, Woldow points out.

Woldow adds that this is the first year she has seen economics trump personal relationships.

"General counsel and in-house lawyers' first duty is to the company," she notes.

And with a lack of other options, sometimes you just have to let go — whether as a result of internal pressures or your own observations that one of your outside counsel relationships is no longer cutting it.

So Long, Farewell?

But just how do GCs determine when it's time to say goodbye? Woldow recommends that general counsel consider the following factors for a start:

• Responsiveness: "I know it's a problem if I'm not getting responsiveness," like a lack of timely return on phone calls and e-mails, Woldow says. In fact, she pegs this as the No. 1 indicator that the relationship may be in peril.

• The willingness to keep in-house counsel informed: There should be no surprises during the relationship, says Woldow. This includes the need to share information with in-house partners on everything from the progress of matters to billing practices.

• Meeting deadlines: As Woldow puts it, it's unacceptable for outside counsel not to meet deadlines. This includes not only the deadlines set for specific matters, but also deadlines set internally — say, when in-house counsel need a prompt update on a matter because they must present at an urgent board meeting. As with all other aspects of their relationships, outside counsel "need to understand the business objectives and goals of [the law department]," Woldow says, along with any industry and business challenges, including pressing deadlines, that may arise.

• The ability to project budgets and stick to them: With increasing pressures to cut costs, the failure to project budgets accurately or to stay within budgets appropriately can be a deal breaker.

• Practical advice: "We live in the real world, not a law review article," Woldow says. A memorandum that gives a complete overview of all the law and every case on every nuance may not serve pragmatic corporate counsel who are looking for answers to specific questions. The information GCs receive from outside counsel must be practical, relevant to their needs and responsive to their concerns.

And of course, any egregious behavior — such as unethical or criminal behavior that can put the company and its lawyers at serious risk — deserves termination.

"The best practice for general counsel is getting clear expectations set at the beginning," Woldow says. At the outset, engage in open and honest communication about everything from deadlines to billing expectations to updates. "Clients need to do a better job communicating what their expectations are and giving feedback," agrees Bellis.

Woldow and Bellis both recommend that GCs conduct periodic evaluations of outside providers, perhaps after each significantly priced matter is finished, or at certain time intervals (at minimum annually, Bellis adds). In-house lawyers who work closely with the provider, along with the general counsel, should be on the committee that evaluates the provider. If the provider was selected through a procurement process or through some other involvement from the financial side, GCs may also want to involve them in the process. Bellis recommends that evaluation meetings take place between in-house and outside counsel to ensure everyone is on the same page.

"If you're going to terminate any law firm relationship, you need to have circulated that to the executive team," Woldow says. "Before you terminate, you carefully need to examine the inner workings first."

How Do You Know if You're Next to Go?

At many in-house departments, there is often little indication that a relationship between the law department and one of its outside counsel is about to end — again, because many general counsel are reluctant to discuss unfavorable issues with outside providers even when things are going wrong. Still, outside counsel can look for the following tell-tale signs that the relationship is no longer sailing smoothly:

• Your bills getting exceptional review, Woldow said — or, perhaps the client being slow to pay your bills, Bellis points out.

• Lack of communication or a general deterioration of the relationship, Bellis says.

• The law department not returning your phone calls as promptly as in the past, or being slow to respond to requests for meetings, Woldow points out.

• Not getting new assignments where the client was a steady source of work for you in the past, Woldow said, or assignments going to other providers more frequently.