

Are You Prepared to Kick Butt?

By Pam Woldow, Partner, Edge International



This song goes out to all you General Counsel and senior in-house lawyers, and its title is *"Sometimes You Folks Get Hosed and Don't Do Nothin' About It."*

I could just as easily have directed the song to those law firm lawyers who sometimes are a little, ah, "casual" about the finer points of scoping work, and called it, *"Now You Know Where All the Lawyer Shark Jokes Come From."*

But today I'm jabbing at the in-house people, and in a moment, I will tell you why. First let me relate several true-life (if disguised) anecdotes, all of which were reported to me in the last two weeks:

"Do That To Me One More Time"

1) A Deputy General Counsel received an itemized invoice that included a huge hunk of billing time for work the DGC had not requested. He calls the relationship partner to contest the bill, calmly saying he has no intention of paying for work that was outside the agreed scope of the engagement. Ten days later he receives another invoice, this one for the time the lawyer spent on the phone call contesting the bill. The DGC emails the same lawyer back and says that now he's "really distressed," that he certainly is not going to pay for a phone call relating to his original overbilling complaint, and that he'd better not receive another invoice for reading this email. "Let this be an end to it," he closes.

"You Dropped A Bomb On Me"

2) A large firm has enjoyed a long retainer relationship with a publicly-held client, and the relationship partner also sits on the client's board. Over the years, this account has been churned unmercifully, but payment of the firm's bills has consistently been rubber-stamped. Out of the blue, the GC receives a lengthy memo on a highly-sensitive topic (together with a bill for this "service"). The distressed GC lights up the phone lines to the relationship partner: "Not only did I *not* request this memo, I specifically did not *want* a memo on this topic. You have now created a document that I intentionally did not want. Don't ever do this to me again," he says.

"Take The Money And Run"

3) A major client complains about a huge litigation case that already has produced a 100% cost overrun, now in the millions, with the meter still spinning madly. He notes this firm has a history of significant overruns. He asks the firm to "look into it." The firm dispatches its internal legal project management (LPM) guru to conduct an emergency process audit at the office handling this engagement. The LPM guru finds, among other things, a group of partners sitting around a conference table manually date-sorting documents produced in discovery. Not an associate or paralegal in sight. This is, the LPM guru exclaims with relief, a task that can be done swiftly and efficiently with software the firm already has. The office managing partner orders the guru to leave immediately, saying, "We don't need you. *This* is how we make money!"

"My Own Worst Enemy"

In these situations, the GCs failed – evidently over a period of time – to impose appropriate accountability on outside counsel. And these events warranted more vociferous reactions, clearer measures and sterner sanctions. Situations like this demand more than a mild expression of distress or gentle slap on the wrist.

"New Attitude"

We all know that the Great Financial Crisis has shifted the balance of power in the legal profession. In today's "New Normal," law firms no longer control the rules (and costs) of engagement, as in decades past. Economic circumstances have provided clients with the leverage to demand greater accountability from their outside counsel. In many cases, as in the three anecdotes above, GCs have every reason to know that their outside counsel are playing fast and loose with them, but they often are reluctant to wield their authority.

In our experience, most GC's do not like being put into the role of ethical police or hard-assed enforcers; their conflict aversion is legendary. But these three anecdotes should send a message to GCs, CFOs and CEOs: *Complaints don't fix problems. Consequences fix problems.*

In short, GCs need to learn from their corporate counterparts that in tough times, you gotta be tough enough to kick butt and take names. In the New Normal, accountability absolutely is the name of the game.

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