Much of the recent literature that has focused on efficient outside counsel management often seems to have an adversarial flavor to it, frequently with an emphasis on cost containment. Cost control is an essential goal, to be sure; however, there are other important objectives that may be best achieved in an environment that promotes mutually beneficial ends.

Accordingly, this brief article proposes a different approach, one of in-house counsel engaging outside counsel as true partners devoted to client success.

Think ‘Trusted Counselors’ as Opposed to ‘Hired Guns’

Over the last 20 years or so the work of in-house counsel has evolved from an often reactive role supervising outside law firms to a more strategic function, frequently involving participation in business decisions. Similarly, in-house counsel should view their outside counsel as valued resources who can assist them in anticipating and solving problems, as opposed to service providers hired to make problems go away.

Communicate with One Another

While this may appear to be axiomatic, it should not be taken for granted. Whether outside counsel needs to be retained quickly in response to an urgent need or already has been engaged for some time to handle routine matters, meaningful and regular contact is essential to any successful partnership between in-house and outside counsel.

Effective communication starts with clear, preferably written, guidelines that convey the expectations of in-house counsel. Another helpful tool is to designate single points of contact (“responsible attorneys” or “relationship managers”) for both in-house and outside counsel.

Pick the Best Lawyers for the Job

Some in-house law departments prefer to use one firm for all their needs; others engage a network of preferred providers, often for specific purposes. Regardless of the approach, it is essential that for each matter, no matter how large or small, unique or routine, the right counsel is selected for the engagement.

While in-house counsel may be able to rely on one general-purpose, midsized or large firm for most needs, specialists
from other firms (boutiques) may be required if circumstances warrant. In other cases regional factors may come into play. In either instance in-house counsel should feel comfortable requesting its general purpose firm to assist in marshaling the appropriate resources.

For those in-house counsel who opt to work with a number of firms on an approved list, they should ensure that each firm appreciates the role that it has been selected to play in serving the needs of the legal department.

Cost is Important but Shouldn’t Be Everything

Over the last several years it has become increasingly common for in-house counsel to request and receive rate reductions and consideration of alternative fee arrangements such as blended rates, fixed fees and task-based billing. This flexibility is a welcome development in outside counsel management, but it is essential to ensure that such arrangements result in true savings; they can unwittingly provide incentives for staffing at levels that can increase overall costs and sometimes lead to less-experienced representation.

Budgeting and staffing concerns obviously are important, even with preferred providers, but the emphasis should be as much about value as monetary expenditure. Truly collaborative partnerships will go beyond fees and invoice processing to issues of performance evaluation, financial reporting and analysis, and a determination of the appropriate balance of in-house and outside resources to achieve optimum cost-effectiveness.

Look for Value-Added Opportunities

A successful partnership between in-house and outside counsel will extend beyond the matters being handled. Outside counsel can serve as valuable educational resources for in-house counsel, helping to keep them informed on the latest developments in the law. Many law firms frequently communicate with clients in the form of “alerts” or “e-briefs,” but firms can also host or otherwise participate in continuing legal education sessions for in-house lawyers; continuing legal education credit may even be available.

Partnership is a two-way street, of course. In-house counsel can help outside counsel improve their services by meeting regularly with firm leadership or by serving as references to other in-house legal departments. Notwithstanding the existence of competitive processes such as requests for qualifications (RFQs) and the like, word of mouth still remains one of the most potent tools in the selection of outside counsel.

The economic challenges of the last several years have led many in-house legal departments to re-examine the ways they procure and pay for outside legal services and have prompted many law firms to reassess traditional ways of doing business. While the imminent death of the billable hour has been greatly exaggerated, the trend toward more creative and cost-conscious ways of paying for legal services is an inexorable one. Just as important, however, both in-house and outside counsel now have opportunities to change the nature of their relationship and generate greater value for both parties by creating real partnerships.

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