

Law Firms Face Competition For Doc Review Work

By Jocelyn Allison

Law360, New York (July 23, 2009) -- Every time Ericsson Inc.'s associate general counsel for litigation thinks he's found the perfect vendor for document production and review, someone else comes along who promises to do it faster, cheaper and better.

After years of turning over control to outside legal counsel, Frank Vecella has been on the lookout for a vendor that can cull documents more efficiently and more cost-effectively in a time when the pool of electronically stored information keeps getting larger.

"If you've got a little lawsuit with five employees who know anything about it, this is a very easy, simple process," Vecella said. "But when you have a company like ours with 75,000 employees in 170 countries, and you're not really sure which employees in which business units might have been involved, it becomes a nightmare."

In today's marketplace, a growing number of legal service providers are willing to take that nightmare off the hands of corporate counsel at a fraction of what law firms have charged. The smartest law firms are the ones who work with corporate counsel to offer them an option that competes, legal consultants say.

"The law firms have been slow. They didn't figure out that they had competitors," said Pam Woldow, principal and general counsel for legal consulting firm Altman Weil Inc. "There's been sort of a mindset among law firms that, 'We do the legal work,' and it's unfortunate. I think they got taken by surprise, because corporate counsel are saying, 'We have a lot of choices, and you're only one of our vendors.'"

The rise of e-discovery over the last decade has provided law firms with fertile ground for racking up hours on document review, but it has also made the traditional method of having associates conduct the work under the guidance of a partner far too expensive for corporations intent on tightening their belts.

Meanwhile, vendors that had focused on the systems end of document production have expanded their services, offering corporate law departments specialized staff to review the documents at a one-stop price, which can often be pushed even lower by using employees in places like India.

"Legal departments are gradually putting their toe in the water of having offshore people review documents either in litigation or investigations," said Reese

Morrison, president of Reese Morrison Associates, which provides consulting services to law departments. "But it's gradual. It's not a hockey stick jump."

The bulk of document review still takes place at law firms, consultants said, but law firms can expect corporate counsel to continue to experiment with more cost-effective options, including conducting a competition for a nationwide document vendor or requiring law firms to use contract labor on a given matter.

With the rise of companies offering legal process outsourcing, either in the U.S. or offshore, some law firms have tried to stay ahead of the curve, using document vendors and contract attorneys to conduct certain work or creating side businesses to take over the process.

The option can be appealing for corporate counsel who feel more comfortable keeping document review in the hands of their trusted firms.

"There are a tremendous amount of documents that have to be redacted, and they don't want lower-level clerks or paralegals doing that," said Kathi Lemons, global director of client services for legal auditing company Legalbill Inc. "They need attorneys who understand the language, so they want attorneys doing that. I think the law firms are also realizing that this can't be a high-level rate for this type of work."

"The other concern to corporate law departments is that they don't want to alienate their law firm," Lemons said. "They do a good job for them; they don't want to take everything away, and since they are in the process, they know the matters. I think it works differently depending on the matter and the work that needs to be done."

But for companies that have relationships with multiple law firms in more than one region, allowing each firm to collect and review documents in its own way and then starting all over again with the next law firm on the next piece of litigation can be a recipe for inefficiency.

"We sort of start from scratch with every new case," Vecella from Ericsson said. "So I think that's very inefficient. It's very expensive. It's very much an arbitrary situation where in the past we have left it up to the discretion and judgment of outside counsel, who may not be as focused as we would like them to be on the cost component or building in efficiencies that may bring dividends for us over time."

Vecella is looking for a single document vendor that he can tell all Ericsson's outside counsel to use in future litigation. And while he is looking for the most efficient system possible to cull the documents, he says he's not quite ready to relinquish the role of outside counsel in making sure they're responsive and adequately reviewed for confidentiality.

“How it's going to get done really depends on who the client decides will play God on the project,” Vecella said. “For the time being, I'm uncomfortable just letting the document vendor be the quarterback on this and run the whole thing. I'm going to expect the law firm to be responsible for making sure this gets done in a way that's defensible to the court and hopefully as cost-effective as possible.”

“But I'm also going to be needing to look over their shoulder to make sure they're approaching it as cost-effectively as they can,” he said. “They're much more worried about making sure it gets done letter perfect, and they're not focused on how much it's going to cost, because they're not the ones writing the check.”

Despite serious cost concerns, corporate counsel need to weigh the bottom line against the risk of failing to meet their discovery obligations, Vecella said. The fear of getting hit with sanctions because the system they used to produce documents was subpar is a serious concern, and highlights the need for human oversight in the process.

But there's also such a thing as human error, and vendors have created specialized systems that focus on document review. Woldow cited one test in which corporate counsel sent documents out to LPOs and to law firms, and the product that came back from the LPOs was superior.

“[The LPOs] have come up with amazing systems and protocols for focusing on document review. It's remarkable,” Woldow said. “The law firms still have the mindset that you put associates in a room and bill their hours, and they haven't come up with the systems and the efficiencies, and frankly, why should they? Because if you want to make money, you have to have people spend time, whereas an LPO works on a fee.”

Law firms worried about losing work to legal outsourcing companies can offer corporate counsel a set fee for document review or another billing arrangement that will allow them to keep costs for a given matter predictable and manageable.

“I think all law firms need to look at their overall way that they're billing their client,” Lemons said. “Corporations don't want to take money from the law firm, but they want to pay a reasonable and fair rate for quality work, so a law firm that is going to look at their invoices or have them monitored and give their clients good value is going to be fine in the long run.”