

## **In-House Counsel, Firms Turn To Secondments**

By **Jocelyn Allison**

Law360, New York (September 16, 2009) -- When Fenwick & West LLP asked the general counsel at SonicWALL Inc. this summer if he had any projects he might be willing to hand over to one of the firm's summer associates, the attorney had the perfect opportunity in mind.

The San Jose, Calif.-based Internet security provider was working on revamping its board committee charters, so general counsel Frederick Gonzalez agreed to take on the associate as a secondee who remained on the law firm's payroll but worked at the company on the governance project for six weeks.

The arrangement came at just the right time. The legal department at SonicWALL had cut its summer internship program because of budget constraints, and this was a chance to get meaningful work done at no additional charge, Gonzalez said.

"I think it was a much richer experience for the summer associate, and the firm was using it almost as a recruiting device to indicate to the summer associates, 'Here are the clients we typically do business with, here are the type of issues we deal with,' and they made these secondments a significant part of their overall evaluation of whether or not the associates were going to get offers," Gonzalez said.

Law firms in the U.K. have long turned to secondments for the training benefits they provide attorneys and the extra pair of hands they offer in-house legal departments. They've become more common in the U.S. in recent years, and the economic downturn could be playing a role, experts said.

Secondments started to crop up more often over the last two years as corporate legal departments were hit with budget cuts and hiring freezes, said Pamela Woldow, principal and general counsel of legal management consultancy Altman Weil Inc. Now, law firms facing their own financial troubles are seeking them out, she said.

"All of a sudden the law firms had good and well-trained people that they couldn't keep fed with work, and they were affirmatively reaching out to their corporate clients to say, 'Could you support this person, or share the cost of this person with us?'" Woldow said.

"It was a way not to lose good people and put them on the street, and it played into what corporate counsel had already been experiencing, which was frozen head counts and frozen budgets," she said.

Under a traditional secondment, a law firm lends an associate to a favored corporate client for anywhere from a few months to a year or more, and covers most if not all of the salary. Though it varies by arrangement, the corporate client can pay a fixed fee to the law firm, with the firm covering the rest.

“The more typical arrangement that we're seeing now that law firms have such pressure to reduce their own costs is that the law firm pays very little portion of that salary and the law department is picking up a larger portion,” Woldow said.

Secondments often are used to provide corporate clients with extra hands quickly when they have a large project or a staff shortage. Cozen O'Connor, for example, recently sent a junior-level partner to a health care client for a few months while an assistant general counsel was on maternity leave, according to Vincent McGuinness, the firm's administrative managing partner.

In the last year, Cozen O'Connor, which has long sent secondees to its London clients, has for the first time started to get requests from public entities in the U.S. such as prosecutors and public defenders who are looking for creative ways to fill their own budget gaps, McGuinness said.

“We can't do that everywhere and meet everybody's needs, but there are certainly places where we can help for a period of time,” he said.

IKON Office Solutions Inc. has had a formal secondment program with Duane Morris LLP for eight years. It brings in a mid-level litigation associate for one year to help coordinate the company's noncompete enforcement, said Mark Hershey, IKON's senior vice president, general counsel and secretary.

“I can get an associate in my program coordinating all that activity for me on a fixed-fee basis, and they can do all the things that are necessary for litigation but aren't the value-add portion of litigation, like discovery and investigations,” Hershey said.

“You chew up a lot of time doing investigations, interviewing people, reviewing documents, and this way the meter isn't running for me,” he said.

Hershey said he has received calls from many large firms interested in replicating the secondment program in a different line of work for IKON, such as transactions. Firms are looking to solidify their relationship with the company, but they're also looking for creative ways to land business in a time when many law departments are bringing more of their work in-house, Hershey said.

“In that respect, firms are competing with the in-house environment, so offering something like this is preventing me from hiring a full-time position,” he said. “[Law firms will say], 'Don't do this, Mark, it's more efficient this way.’”

The most challenging part of a secondment can be determining the proper fee arrangement. In that situation, Hershey said, it's important to take the long view.

"A good, healthy secondment, in my view, is going to be able to withstand the peaks and valleys," he said. "There are times when it's a better deal for the firm and there are times where it's better for me, but over the long haul it's a partnership, and we both benefit."

While the typical secondment involves lending an attorney to a corporate client for a set period of time, arrangements can be structured in a variety of ways. Duane Morris, for example, has been sending special counsel Bruce Rome to Bayer HealthCare's Berkeley, Calif., office for a few days a week since May 2006.

The engagement started out at three days a week but has since been modified so that Rome spends one day at Bayer and completes the equivalent of another day's work throughout the week. He handles contracts for Bayer and keeps up his litigation work at the firm the rest of the time.

"It's a challenge to switch gears like that at times, but it's also something that I'm fortunate to have," he said. "I have a unique, big-law-firm experience of litigation and doing some in-house corporate work. I'm not sure many people have that workweek like I do, and 99 percent of the time it's a great combination."

Rome said his role offered Bayer an avenue to other resources at Duane Morris and had helped him develop a better appreciation for what clients need from their lawyers.

"I know when I go over there they don't want an eight-page document just confirming that I've looked at every issue," Rome said.

"They want a recommendation and an answer to a situation or a problem," he said. "They don't want the ivory tower legal treatise of events; they just want a practical solution. I think sometimes if you're sitting in a law office, people can tend to forget that."

Secondments, while intended to be temporary, also can lead to permanent positions. Clay Mingus accepted the position of general counsel at Hooters of America Inc. in 2007 while on secondment from Elarbee Thompson Sapp & Wilson LLP, a labor and employment firm in Atlanta.

He already knew Hooters well from handling various matters for the company and had intended to stay only two to three months while it found a replacement for an in-house attorney who had resigned, he said. But he found he liked the job so much, he accepted the GC position when it was offered.

Mingus, who runs a small department with two other staff members, said he would consider seeking a secondment from his former firm or another firm should the need arise, but so far has been able to manage the company's legal affairs with its existing head count.

"It certainly would make sense to me in this economy, where there is a risk involved in hiring a temporary employee from a staffing agency or a risk involved in going through an interview process yourself and hiring someone to come in, even if you anticipate that it's going to be a temporary hire," Mingus said.

"It just seems that that risk is decreased if you can go to a firm with whom you have a relationship or in whom you have the confidence that they have your best interests at heart and that they will send someone who would be a good fit," he said.

Despite the mutual benefits, secondments can end up damaging a law firm's relationships with its other clients if the firm is not careful about finding a replacement for an associate it has decided to send out, according to Gonzalez of SonicWALL.

"The issue with that, of course, is that if you have someone working on your matter that you have confidence in, and the law firm says, 'Oh, by the way, we're going to second this person to another client,' that's a very difficult thing to do," said Gonzalez, who had an associate taken off of one of his litigation matters because of a secondment.

"It tells the original client — in this case, us — that maybe we're not at the same priority level of the other clients, and it provides some level of uncertainty as to whether your matter is going to be handled in the same way it was being handled," he said.

In Gonzalez's situation, the firm already had another associate ready who had worked on SonicWALL litigation in the past, so the transition was smooth, he said. But the potential for alienation is there if law firms don't think carefully about how the other clients will be affected, he said.

As a type of alternative-fee arrangement, the secondment could become more common as law firms and their clients look for ways to become more efficient moving forward. But for the arrangement to be successful, it's important to make sure the firm sends the right secondee, experts said.

"We scrutinize who should go, what the client's needs are, and the compatibility of both to make sure that the fit is right, and I think [the clients] appreciate that as well," said McGuinness from Cozen O'Connor.

“I almost wish I would see more companies doing it,” he added, “because more law firms today, particularly in this economy and particularly those that have excess lawyers, I think would be eager to have their lawyers help out.”