

Revealed: how top clients select their litigation lawyers

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***Ben Rigby* reports from an IBA litigation conference in Washington DC, where in-house counsel discuss their criteria and methods when selecting law firms for dispute resolution work.**

It's a familiar problem for litigation partners: how do you persuade corporate counsel that you have the right team to handle their dispute?

It was also the opening subject of the IBA's Managing Complex Litigation conference, held recently in Washington DC, where counsel from companies including GE, 3M and Ernst & Young exchanged notes on how they choose external representation.

Foot in the door

The legal industry has traditionally relied heavily on handshakes and networking. But technology and globalisation mean personal contact is becoming harder to establish.

So how can law firms market to corporate counsel where they don't have a relationship with that counsel in place?

"There is a right way and a wrong way," says Alex Dimitrief, GE's senior litigation counsel.

Cold calls into his organisation meet with little success, he says. Any such approach must be substantive and well researched.

But Pamela Woldow, general counsel of Altman Weil, is less forgiving. "Surely you don't start any kind of relationship that way," says Woldow, adding: "Most law firms tell you what they want to tell you, not what you want to hear."

Thomas Riesenberg, deputy general counsel of Ernst & Young, agrees law firms must have some link to the counsel they are approaching. Mutual contacts are an excellent start.

"Saying to me 'I know X or Y' - people who I know - makes me interested, especially if I have no connection, because otherwise I don't know how interested I am about you."

Partners talking about skills and knowledge that their law firm might have in relation to a matter is an effective approach, especially if they handle a lot of very large litigation.

Beyond the champagne reception

Schmoozing is a classic business development technique, but approach with caution: John Hull of Covington & Burling points out there are often rules prohibiting employees from accepting gifts or freebies.

There are more sober opportunities to engage with corporate counsel, such as continuous legal education.

Riesenberg prefers presentations to be targeted and specifically relevant to his interests. A well delivered lunchtime presentation can be most effective, he says.

Dimitrief agrees. "They tend to stick in the mind, and I return to them where they raise timely issues, such as enforcement trends."

The most useful format is law firms explaining the impact of a judgement on a company, rather than on the law generally. Presentations should be short, to-the-point, and tailored to a sophisticated audience, rather than generic, according to the conference panel.

Catherine Muldoon, vice-chair of the IBA Corporate Counsel Forum, seeks practical advice tailored to her company, applicable to her role, focused on risk management.

Discrimination in marketing to corporate clients is also important. Hull advises law firms to be selective about what material they sent to clients, and to attach a personal note explaining each communication's relevance.

Too many law firm messages feel as if "one size fits all", says Woldow. Firms should make sure all information is both bespoke and attention-grabbing.

But not too much: a glossy, slick presentation is no substitute for real substance. The same goes for brochures.

Dimitrief says if nothing about a brochure is uniquely positioned for his company, the money is better spent on a website delivering the same information.

Tom Boardman of 3M agrees: "Save your money on glossy brochures; they don't contain anything insightful... they just go in the trash."

The importance of diversity

Many general counsel judge law firms on diversity issues.

For GE, law firms have to reflect the balance of race and gender in the company, says Dimitrief. This is an essential prerequisite for working with GE.

The idea that a pitch to corporate counsel could only be "run by six white guys" is outdated and unacceptable, he says.

The question of diversity also extends to age. Dimitrief says he understands why law firms feel they must get their senior staff to a pitch because of their track record.

But it is appropriate to include younger partners, he feels. This way they gain experience and credit is assigned properly to those involved with the work.

"It says a lot to me about a firm if a senior partner is prepared to do this," says Dimitrief.

Due diligence also features heavily in the selection strategy of many in-house counsel.

Riesenberg says he relies on the recommendations of other corporate counsel when he doesn't know a law firm. This is followed by extensive due diligence, even to the extent of assessing lawyers' individual performance by observing them in court.

Dimitrief adds that extra due diligence is used when instructing a new firm in a new jurisdiction. And a brand is not sufficient: even if a firm is reputable at home, the panel members say they do not assume its coverage across a region is uniform.

When a pitch is real - and when not

Where a company wishes to initiate contact with law firms it often issues a request for proposals (RFP).

However, such requests are not only used to choose representation. Often they are issued to satisfy governance requirements, or simply to assess whether there are any law firms with capabilities one didn't know before.

Where the RFP is issued to find representation on bet-the-company litigation, newer or smaller firms "have a difficult time competing at the same time as national or international law firms", says Woldow.

Then there are those RFPs which call for representation in a suite of cases, or a type of litigation involving different responsibilities, and potentially different risk tranches.

Here a company might look at a non-standard law firm on the basis of price, level of service, and expanding the breadth of expertise of its legal panel.

Dimitrief says smaller firms should seize this opportunity to "communicate the excellence of their lawyering". They can also be nimbler in dealing with matters than larger rivals, which can be a strong benefit in some cases.

Some in-house lawyers avoid appointing smaller law firms because they fear being blamed if things go wrong, says Dimitrief. This fear is unfounded, he says - in fact such lawyers should be "fired within five minutes".

There are also instances where an RFP is used to shake up litigation budgets and pitches to generate ideas which could be adopted by clients.

An example is sharing pre-litigation work to enable more cost-effective litigation or achieve early resolution.

Getting there, staying there

Winning a place on a company's legal panel is one challenge; retaining it is quite another.

One delegate says firms can lose their spot when a company reshuffles its legal department, especially if the previous general counsel has not managed legal risk effectively.

Constant dialogue and improvement is therefore crucial. Dimitrief points to the importance of client satisfaction surveys. The fact that very few firms do this leaves him flabbergasted.

"You should always welcome that conversation because if you don't hear it from us how will you know if you are doing a good job?" he asks.

He says law firms should learn to emulate Ed Koch, who served three terms as mayor of New York City. Koch would often approach the city's (famously voluble) citizens and ask: "How am I doing?"

One thought resonates with all the delegates: law firm partners who boast in the legal press about their earnings, or the revenues of their firm, are a total turn-off.

As one corporate counsel says: "I have paid for that prior work product, and it makes me think about the type of service I have received to pay for it."