

Coupons Not Required: GCs Look for Creative Ways to Save on Legal Costs

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GC Mid-Atlantic
July 06, 2009

It's no secret that money is on the minds of general counsel everywhere.

"The cost pressure on in-house counsel has been fairly steady over the past few years, but in the last nine months, it has just accelerated," Daniel J. DiLucchio, principal at Altman Weil, said.

For most corporate counsel, cost-cutting is the major concern these days. And general counsel are attempting to reach their companies' bottom lines in various ways.

USE OF ALTERNATIVE FEE ARRANGEMENTS

Perhaps the biggest talk of the town at corporate law departments is the use of alternative fee arrangements. Over the last six to nine months, there has been "a tremendous amount of activity in the alternative fee arrangements arena," DiLucchio said, adding that one of the ways he's measuring that activity is through talking with his law firm clients, some of whom are now looking for ways to structure alternative fee arrangements in order to serve existing and prospective corporate clients.

There's certainly a lot of talk about this. In a February article about tying outside legal costs to value, Altman Weil's Pamela Woldow discussed the various ways alternative fee arrangements are manifesting themselves in law department practice. The most common, she wrote, include procuring work through RFPs or tenders that specify acceptable arrangements; imposing billing hour limits and rewarding firms for crafting alternative fee structures; reducing the total number of outside providers or sticking to a preferred outside counsel list; and opting for value-based fees, which are based on the type of work performed and the value it has to the client, rather than a strict hourly measure.

But there's trouble with tracking alternative fee arrangements -- and whether they actually work. For starters, it isn't easy even coming up with a universal definition of what an alternative fee arrangement is, Jon Bellis, who leads the law department consulting practice at Hildebrandt, said.

For instance, do alternative arrangements mean billing alternatives, such as fixed fees as opposed to billable hour rates, or in some cases, do they simply mean ensuring that billing rates are in fair proportion to the work provided? Bellis adds that he isn't seeing alternatives to the billable hour so much as clients concerned with getting bigger discounts and sticking to harder budgets, in order to ensure they are getting a fair deal.

DiLucchio said he has seen some arrangements for a price structure other than an hourly fee, but that isn't all there is to alternative fee arrangements.

"It's not just the fee structure that needs to change; it's how you deliver the work," DiLucchio said.

In other words, don't just think "billing" when it comes to alternative arrangements -- think more in terms of overall "pricing" and "value" to the corporate client.

According to a [recent article](#) in the *Fulton County Daily Report*, a *Legal* affiliate, firms need to think "efficiency" and "predictable budgets" -- not just lower hourly rates.

For example, some general counsel are looking at how firms use technology in the effort to increase efficiency, DiLucchio said. Others are looking at how effectively firms are using associates, paralegals and other staff, and whether there's evidence of efforts by the firm to increase efficiency by delegating work to the right people.

SELECTION AND RETENTION

But there's one cost-cutting measure that everyone seems to agree is taking place among corporate clients: shopping around. Corporate law departments are now routinely reconsidering their processes for selecting and retaining outside counsel, Bellis said.

For example, more GCs are using competitive bidding, and many are converging their work and reducing the number of firms they use. According to the 2008 Chief Legal Officer Survey (the most recent version of the yearly survey conducted by Altman Weil,) 48 percent of responding CLOs reported that they have fired or considered firing at least one of their outside firms -- up from 32 percent surveyed the year before.

In addition, "more law departments are working voluntarily or otherwise with their procurement departments," Bellis said. Using RFPs, sticking to hourly bottom lines, and establishing a preferred provider list are some examples of cost-cutting measures with which procurement departments can assist.

Bellis described it simply as a process in which GCs are paying more attention to what type of work they're outsourcing and then determining to whom the work should be outsourced based on where the work falls.

For example, strategic legal work that advances the company may warrant being sent to more expensive outside counsel providers. Important "hygiene" work that still has to be done right but also needs to be done efficiently may warrant a more flexible fee arrangement or higher discount. Repetitive work may be outsourced to a cheaper firm altogether.

So, at most law departments, there's a conscious effort to categorize the work that needs to be outsourced and ensure that the right type of projects get matched with the right providers.

WHO'S GETTING THE WORK?

There's no shortage of predictions that say smaller firms will benefit from cost-savvy general counsel's decisions to cut big firm billing and send the work elsewhere. Smaller firms not only may offer lower rates, but some suggest they may also be more willing to conduct a dialogue with corporate clients about rates, efforts at efficiency and value -- all positives for cost-conscious general counsel.

But while there may be a lot of talk about legal projects going or expected to go to smaller firms, Bellis said he hasn't seen much movement in this arena yet. Still, any innovative idea seems to be welcome among general counsel feeling cost pressures, Bellis said, adding that there's "always a big gap between the talk and the action." "Don't waste this recession," DiLucchio added. He points out that many smaller firms, regional firms or firms outside of major legal markets could serve as capable, growing, creative providers of legal work to cash-strapped law departments.

General counsel "really have to start with discussions internally with their executive group about what [the company's] goals and interests are" in terms of gauging legal costs and considering different providers, DiLucchio said. "There's some level of risk tolerance that they have to agree upon," in addition to figuring out whether sending work to smaller firms or other cost-cutting measures make the most sense to the company.

There's also the case for hiring more in-house lawyers, although recent studies don't show an increase in law department hiring. Layoffs made big news in 2009 at most companies, and the legal profession hasn't been spared.

For the most part, law departments are definitely hiring less, Bellis said. Still, for some corporate law departments, there is a cost-benefit case for hiring a new in-house attorney in order to save on work being outsourced and the hourly price tag that goes with it.

THE BOTTOM LINE

Change is in the air, even if it may take a while to manifest.

"I see more evidence of under-pressure in-house counsel doing things that have been talked about," Bellis said, such as prioritizing and scrutinizing work that's sent to outside counsel.

The question, he added, is how dramatically law firms themselves are willing to change their structures and their responses, and what impact that will have on law departments' cost-cutting measures. And that, as Bellis noted, is a question yet to be answered.

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