

# The Legal Intelligencer

## An Open Letter to General Counsel in Tough Economic Times

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By Pamela H. Woldow

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Dear General Counsel or Chief Legal Officer:

If you feel like you are in a classic double bind these days, you are not alone. I have spoken with dozens of GCs in the last few months, and Altman Weil has surveyed hundreds more, many of whom report themselves on the horns of a risky dilemma.

They say they are inclined to join the cost-saving trend to move "down market" (their term) to midsized and boutique firms that have lower costs bases, but are afraid the move will put them in hot water, no matter what the cost savings. Do these excerpts from a recent conversation with the GC of a major transportation company strike any resonant chords with you?

- "My legal budget has been drastically reduced, and if my legal spend exceeds budget, my management has made it clear that I'm toast."
- "A logical cost-cutting step would be to move my matters to smaller non-New York white shoe firms whose rates are better and whose service seems competent (and which often offer superior responsiveness, too).
- "But if any of these smaller firms messes up an engagement — or even if they actually do a good job but the outcome is disappointing — my management will roast me for not engaging the 'best' firm."
- "The 'best' firm may not have been able to produce a better outcome, but at least their reputation offers me the defense that 'no one could have produced a better result.' And my selection judgment remains unimpugned, even if my budget takes a beating."
- "So all in all, it's safer — at least in the short term — to keep all my matters with high-credibility, high-priced firms. Furthermore, by maintaining the status quo, at least I don't have the logistical hassle of moving my business and setting up new counsel-relations protocols. At the end of the budget year, though, I'm gonna get killed."

If we just heard this concern occasionally, we might dismiss it as the paranoid raving of a change-averse risk-reducer. But this bind has become something of a professionwide shout-out, so I think we have to

address it head-on. Bear with me here, because I'm going to start in left field, but I am going to gallop toward home plate.

First, can we agree that the overarching purpose of law is to help create a more just and well-ordered society, to lend stability to our interactions, and to support the efficient and ethical expression of our urges and actions? Say yes.

The purpose of the legal function in a business enterprise is to define its relationships to various internal and external stakeholders and to create incentives for stable, strategic and proactive longer-term behaviors over reactive short-term ones by skillfully anticipating and managing opportunity and risk. Your primary goal as CLO is not to accommodate law firms' desire for income, control, reputation or professional satisfaction (these may be legitimate goals for them, but are subordinate to the achievement of society's and clients' goals).

So your first priority is to define and prioritize your business goals and the various legal processes by which those goals are to be achieved. Next, you need to define what "quality" really means for each of those goals. This must be done by referring to the company's interests, and not its lawyers' activities; businesses do not exist for the convenience of their lawyers.

After that, you must ask, for each of those business processes, whether any particular high-cred, high-cost firm really offers potentially the highest quality (because of its expertise, prior relationship with the company, familiarity with similar players, etc.), or whether there are areas and matters where another firm might be capable of delivering equal or even higher quality — and why.

This step requires you to perform a risk-reward analysis of the various types of matters you farm out to outside counsel. Although all GCs obviously evaluate their legal matters in terms of stakes and sophistication, distinguishing between bet-the-company matters, unique matters requiring particular expertise and judgment, and repetitive or lower-stakes "commoditized" matters, many GCs don't stop to ponder the distinctly different levels of risk each represents if there should be a misadventure. They simply cave in to the double bind and assign all their matters to their high-priced "safe" firms, not thinking through the extent to which safety really is an issue with a lot of their work. You need to take the time to distinguish matters where risk-reduction is the highest priority from those where cost-reduction can be assigned top importance.

Your next priority is to make sure you enjoy enough political support and trust from your CEO, CFO and any relevant board members to risk a bit of a confrontation with them, saying: "In light of current economic realities, I am working to tighten my legal budget to achieve our goals. The positive news is that the market for legal services is changing in ways that make this more possible for us than ever before: We have more buyers' leverage than ever before."

"I am going to talk to XYZ firm and say: 'We will be tightening up our expenditures whether you like it or not. This new posture can create new opportunities and long-term loyalty from us if you will collaborate actively and creatively with us. This can be win-win. But if you won't or can't accommodate our budgetary constraints, we will take immediate steps to identify alternate firms. Are you OK with this? Will you work with us?' In exerting this pressure, I need the support of top management, because if you don't support me, and a partner at the XYZ firm feels he can do an end-run around me and lobby you to preserve the status quo, then our cost-reduction initiative will surely fail. We will end up with less ability to manage costs in the future."

Can you imagine yourself saying this? Try practicing it at home a few times, in front of your mirror, and then schedule your meeting with your top management.

Once you have their support in hand (and I am confident that you will), you then will have lunch with XYZ partner and say: "We both know these are very tough economic times. I wish I didn't have to do this, but I need to cut my legal budget by x%. I have been reading lots of places about companies like Cisco, DuPont, FMC and others who have found ways to reduce spending and still maintain quality. My goal at the end of this process is for you to gain a higher share of our work, but at a significantly lower overall cost, so that you help us achieve our budget goals. Making our budget (and revenue) goals is the supreme objective of the company at this point. I want to partner with you on this, and I think if we work together it will actually be a great learning experience for both of us. If we don't, I will certainly have to put more and more of our work out for competitive bidding to see if other firms can respond better."

Following this discussion, you can help firm XYZ convert to your religion. One approach may be to use one of the most sophisticated of the new online social networking sites, such as Legal OnRamp, that offer tools you can use to turn skepticism into educated enlightenment and action.

First, you can go on to Legal OnRamp yourself. You'll find a high-level site focusing strongly on the needs and interests of CLOs. Here you'll see how many other GCs are already thinking (and implementing) new approaches to fees, outside counsel relationships and coping with the risks of moving to midsized firms with at least some of their company's legal matters. Here you can ask questions of your counterparts to learn and get comfortable with this most useful site.

Second, you can use some of these sites to seek a competitive bid on a particular piece of work to get a sense of how much opportunity there is out there (no need for the laboriously slow method of mailing RFPs to long lists of firms).

Third, you can invite XYZ firm onto these sites, where it will see how many other firms are ready to respond to bidding and fee proposals in a more modern, efficient way, which presumably will help XYZ get its head on straight.

Finally, you can deploy an extranet as the best platform to collaborate and reduce costs with XYZ firm, as a compelling catalytic event to change the dynamic of the relationship.

The bottom line in law is that quality is quality. Cost is not quality. Risk-reduction is not quality. In every instance the highest quality firm will be the lowest cost, but that means you have to think about quality in terms of outcomes, not inputs — or even likelihood of substandard performance by outside counsel. Once you start focusing on true quality to the client — that's you and your company — you'll see a variety of ways to reduce costs. You'll also find that lots of firms, including, ultimately, your incumbent service providers, will be willing to play ball according to the new rules of the legal game.

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