

Managing your Relationship with External Counsel

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Executive summary

COMPANIES THAT have inside counsel expect those counsel to manage the legal affairs of the company. An important aspect of that responsibility consists of the oversight, monitoring and management of the work undertaken by outside counsel for those companies.

Today's business and economic environment makes efficiency a critical need for business more than ever. Corporate management examines every area of cost in order to identify any possible means of increasing the value that it receives for its expenditures. This budgetary spotlight now shines on the legal function as never before.

The cost of external legal resources typically exceeds that for the internal legal function. Accordingly, inside counsel must ensure that their companies' outside legal resources represent the maximum value for the expenditure. To a large degree, this means assuring the selection of the 'right' counsel for each assignment and an effective means of charging and managing the counsel selected.

What methods will assure that the selection represents the best choice? How can inside counsel work with their outside counterparts so as to secure the best legal work at the least cost feasible for the project?

By approaching the process of identifying, selecting and managing outside counsel holistically, inside counsel will maximise the impact of that selection. An understanding of the links between the various elements of the relationship

between inside and outside counsel will enable inside corporate counsel to identify and deploy the outside legal resources in a manner best calculated to achieve the company's legal goals in the most direct, least costly manner possible. Some of the questions to be answered in this report are the following:

How can inside counsel find the appropriate counsel for each matter? What sources might best serve the company's interest? Which sources are best for each situation?

How can the selection of outside counsel be improved and used to reinforce the relationship between the inside and the outside counsel? Can the method by which outside counsel are selected affect counsel's performance? How can inside counsel achieve the most 'bang for their buck'?

Inside counsel decry the hourly rate that forms the basis for much of the legal fees paid by business to outside law firms. In their view, the hourly rate creates insidious incentives for outside counsel that undermine companies' goals of efficiency and least cost. Can inside counsel move more work from hourly-rate-based fees to alternative fee arrangements? What types of alternative fee arrangements work best?

What benefits does budgeting offer to inside counsel? How can inside counsel apply budgeting concepts to their advantage so as to work more effectively with outside counsel?

Does litigation require different techniques in the selection and management

of outside counsel? What techniques work effectively in that context?

Legal matters have become more and more complex. Multiple investigations by government present challenges different to those that arise in 'typical' litigation or other matters. Multiple litigations can also create management challenges with which inside counsel may be unfamiliar. How can the selection and management of outside counsel be adjusted to the exigencies of that situation? When multiple law firms represent one company simultaneously in one or related matters, how can inside counsel manage those firms most effectively?

Conflicts of interest on the part of outside law firms often create challenges for inside counsel, especially when such conflicts arise or become apparent after a law firm has been selected and been working on a matter for some time. What approaches by inside counsel can make that situation more manageable?

Inside counsel must report to corporate management regularly on the matters entrusted to them. Metrics are the *lingua franca* of business in many other contexts, yet their application in the context of legal service has lagged behind their use by other parts of corporate organisations. What value do they offer to inside counsel in respect of the management of outside counsel? What reporting by outside counsel can alleviate some of the burden that inside counsel face in their responsibilities to corporate management?

This report will approach the entire subject of the relationship between inside and outside counsel in an integrated, coordinated fashion. Through the use of case studies, the inclusion of selected forms and the exploration of successful examples of law department management, it will provide to inside counsel an array of tools

with which they will be able to improve their law departments' performance.

About the author

STEVEN A. Lauer is corporate counsel for Global Compliance Services in Charlotte, North Carolina. Previously, he was director of Integrity Research for Integrity Interactive Corporation, where he conducted research, wrote whitepapers and worked with clients on issues related to corporate ethics and compliance programmes. Previously, he consulted with corporate law departments and law firms on issues related to how in-house and outside counsel work together. Prior to that, he spent over 13 years as an in-house attorney in law departments of a variety of sizes.

Besides his legal counsel work, he has also spent over two years as executive vice president, deputy editor and deputy publisher of *The Metropolitan Corporate Counsel*, a monthly journal for in-house attorneys.

In his past consulting work, Steven conducted benchmarking research for clients, designed evaluation processes for counsel selection, and researched and designed case-evaluation methodology, among other projects. He has consulted on alternative fee arrangements, task-based billing and client expectations. He has worked extensively with law firms to better understand the changing expectations of corporate clients.

Steven has authored numerous articles on compliance, the relations between in-house and outside attorneys, the selection of counsel by corporate clients, the evaluation of legal service, litigation management, and other topics relevant to corporate compliance programmes and corporate legal service. He has spoken at a number of conferences in respect of those subjects.

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Steven Lauer, January 2009