



Portfolio Media, Inc. | 860 Broadway, 6th Floor | New York, NY 10003 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

How To Woo In-House Counsel In 2011

By **Erin Marie Daly**

Law360, New York (January 1, 2011) -- With the economic climate still dicey and many companies winnowing down the number of outside law firms they hire, there is stiff competition in the fight to win business from corporate counsel. Here, in-house lawyers and legal experts outline the best strategies for making your law firm the most attractive candidate in the post-recession beauty contest.

Put Your Money Where Your Mouth Is on Alternative Fees

A recent shift to a value-added climate demands flexibility in handling the different types of fee structures corporate counsel are now seeking, corporate counsel said. It's all about getting the best services for the best price. In other words: value, value, value.

To that end, Pamela Woldow, general counsel at Edge International, advised offering suggestions to cash-strapped corporate legal departments that will help them broker a partnership with you.

"Make yourself indispensable!" she said. "Get with the new reality of in-house legal budgets and be prepared to talk about how you can help in-house counsel through fee arrangements that give them what they need: predictability and cost containment."

Or, she suggested, offer to handle just one matter using your innovative approach to show how you can help with budget issues.

Peter L. Olson, assistant chief IP counsel and assistant general counsel of legal affairs at 3M Co., advised law firms to be prepared to discuss the specifics of alternative fee arrangements.

"Firms that say 'sure, we would be happy to discuss any proposals you [the potential client] might have' are signaling that they have no relevant experience and that the client is going to have to plow new ground," he said.

Jeffrey W. Carr, senior vice president, general counsel and secretary at FMC Technologies Inc., suggested providing an actual proposal that makes it clear your fees are value- and performance-based.

"Offer to have the client hold back payment on a portion of fees and base any payment of the holdback contingent upon a result, a report card, or some other indicia of satisfaction and value in the eyes of the customer," he said.

Carr also advised against throwing out the oft-used phrase "alternative fees," saying it implies that something other than hourly rates are distasteful or an affront to the natural order of legal fees.

"And don't offer to 'consider' alternative fees unless you are willing to embrace the concepts of budgets that matter as well as shared risk and reward," he warned.

However, said Todd Young, a corporate and finance partner with Hinshaw & Culbertson LLP, sometimes a simple show of genuine empathy ends up being enough.

For example, he said, even with the noise about alternative fee structures, he has found that not very many of his clients are actually demanding or implementing them. And it's not because he hasn't mentioned the issue.

"You have to show a willingness to enter into discussions and engage with them," he said. "There's a certain emotional component: they want to feel like you're not just going to throw a bill at them. If you have a rational conversation with them and show you're flexible and attendant, ultimately lots of times they will be okay with a more standard arrangement."

Partnering With Other Firms

Robert Henderson, a legal consultant at RJH Consulting, said that because the trend today is for corporate counsel to limit the number of outside counsel they deal with, smaller firms are at a competitive disadvantage in winning the beauty contest with corporate counsel.

"My advice to firms that have a limited practice focus — for example, securities litigation or white collar criminal defense — would be to seek to collaborate with larger firms that don't have expertise in their particular practice area," he said. "In addition to their specialized expertise, boutique firms usually can offer more efficiency and lower cost due to their lower overhead."

Another strategy, according to Olson, is to consider working together on a joint training program.

"For example, in the patent area many new patent agents or patent attorneys have never been exposed to litigation, and new law firm associates have never taken a deposition," he said. "Partner with a corporate law department to develop a training session in which the law firm's newer attorneys get to depose the company's newer patent agents or attorneys on a good set of canned materials, and watch the sparks fly."

Bring a Fresh Perspective

Susan Hackett, senior vice president and general counsel of the Association of Corporate Counsel, said creativity was at the top of the wish list for many corporate legal departments — and that law firms trying out new ideas are gaining traction.

For example, she said, firms focusing on how to deploy project and lean process management techniques are making a splash with clients.

"This means looking at breaking down common processes and decisions made during the relationship and rethinking each step: a form of disaggregating work and then examining the component parts for possible improvements based on efficiencies and cost savings," she said.

Firms having this discussion, Hackett said, are seen as trying to think creatively about the best ways to improve the relationship and its value to the client — even if only a few are fully equipped to act on what they discover they could do better.

"There's a window open currently for firms and clients who are interested in experimenting

a bit, and that window may slam shut on firms that still appear clueless in a few years when their competition has a full battery of value-based tactics to deploy while others are coming home late and a dollar short," she said.

Carr suggested employing creativity to show what really and truly makes your firm different from the masses.

"Hint: generally speaking, there isn't anything — so figure out what can and should make you different and initiate a change process in your firm or practice area to make it so," he said. "Quality is not a differentiator — quality is assumed and is the price of admission — so don't talk about quality as if that's the reason to hire your firm."

Lend a Helping Hand

A sure way to get the attention of in-house counsel, according to Olson, is to go out of your way to offer resources.

"Some firms have offered to 'second' an attorney to a client for a period of time, which helps the client get work done and helps the firm and the attorney learn about the client," he said. "It doesn't have to be free, but free is nice. And don't send a brand new person whom we have to train."

Or, Olson advised, simply offer to fix a problem that may be plaguing in-house attorneys. Corporate law departments, he said, may have chronic problems, but no resources or people to fix them — and that's where you come in.

"It could simply be a file room in which no one can find anything anymore, or a batch of agreements that have never been logged into a database, or materials that should be organized as a training manual," he said. "Send the client one of your higher performers to solve the problem in a few days, and they may assume that you can solve several of their legal problems too."

Give In-House Counsel Some TLC

The brutal financial climate has bumped up everybody's stress level, making it all the more important to show in-house counsel that you really care. That doesn't mean faking sympathy, however.

As Hackett puts it, demonstrating this means "leveraging the uncertainty and vulnerability" that many corporate legal departments are feeling these days.

"The path to 'relationship nirvana' is paved with something a bit softer than the hardball tactics of prior years," she said. "Folks are finding a better relationship by sitting down and saying 'this may be a great time for us to talk about what it is that matters — what it is that you value. Then let's think creatively about how we can work together better to assure those results.'"

Carr noted that a good way to show corporate counsel you care is to stop thinking like a lawyer.

"Not every 'interesting legal question' needs to be answered," he said. "The customer wants actionable, practical advice, not erudition. Start thinking like a business person. If you were the client, would you want this type of advice or service and would you pay this amount, on these terms?"

According to Miriam Frank, partner and vice president of the in-house practice group at Major Lindsey & Africa, the law firm partner who makes every client feel that he or she is

their most important client will continue to get business.

A little sensitivity can go a long way, she added. Everyone likes to feel that their needs are being recognized, Frank said, and corporate counsel are no different.

"Show some sensitivity to the pressures faced by in-house counsel," she said. "The outside counsel who understands the dynamics of operating inside of a business — from cost-containment to accountability — and does all that he or she can to be supportive and make the client look good will be remembered and valued."

Young, too, emphasized the importance of empathizing with general counsel, saying lawyers need to show they understand the difficulties faced by corporate legal departments in this economic climate.

"You have to feel their pain, and give them practical solutions that show you're empathizing with them," he said. "In-house counsel are no longer as comfortable with law firms raising their rates or staffing matters with a cast of thousands. It's not just about lowering or freezing rates, but thinking about how to become more cost-effective by changing your operating structure."

All Content © 2003-2010, Portfolio Media, Inc.