

A Lawyer's Lawyer: Now that a handful of law firms are the size of mid-cap corporations, they are finding they need a dedicated general counsel.

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1. Over the last ten years our firm has grown from a relatively small regional player into a large firm with lawyers and clients spread across the country. More than a third of our partners are laterals, and that percentage is increasing quickly. We vet laterals carefully, but our management is increasingly unaware of what client work the lawyers in the trenches are actually doing and what day-to-day risks they are taking. Surely we are not alone in this predicament. What are other firms doing to manage the risks that seem to multiply with growth?

One of the least-discussed trends in law firm management over the last five years has been the emergence of a full-time general counsel position at major firms. Now that revenues at the largest law firms rival those of mid-cap companies, firms are finding that they have many of the same sorts of legal problems that mid-caps do, and they have followed the paths of their clients by creating general counsel positions.

The job has evolved over time, often starting with a partner being given responsibility for managing conflicts of interest, liability insurance renewals, claims management, loss prevention, or some combination of the four. It is typically filled by an equity partner, although some firms also staff their office of general counsel with an associate general counsel who is roughly the equivalent of an income, or nonequity, partner.

The general counsel's office in large firms typically has a range of preventive law responsibilities. At the core is the handling of all claims, including client fee disputes, malpractice claims, third party claims, and the development of reporting requirements and procedures for these areas.

Some firms, have expanded to include developing and enforcing new-matter client and matter-intake policies; developing conflict of interest procedures (including investing in clients and allowing partners to act as directors or officer of clients); vetting laterals; and developing and enforcing policies against racial,

sexual, ethnic, and religious harassment. A small number of firms have expanded the role even more to include responsibility for professional education, attorney supervision, evaluation and peer reviews for partners, and supervision and control of branch offices.

All of this makes good sense. Many smart lawyers recommend to their growing clients they bring a general counsel aboard. This is an instance in which taking a bit of one's own advice is a good idea.

2. Our firm is getting ready to renew our professional liability coverage. What can we expect the market to be like? Are firms doing anything innovative to keep their costs down?

Brace yourself. Today's market for professional liability insurance is probably the worst in history. Generally, you can expect higher premiums and less favorable coverage. With a number of insurer's and underwriters pulling out of the market, you may find yourself searching for a carrier. The carriers that remain in that market are tightening up their policies. Premiums have continued to rise and many firms are finding them to be almost three times what they were three or four years ago. (The increases vary greatly according to practice area and claims history.) If you had a multiyear contract, don't count on getting another one; most underwriters are limiting their policies to one-year terms. Don't expect one carrier to write most of your coverage; today, most write only half (or even less) of the coverage they wrote a few years ago. And you might find yourself forced to take less coverage altogether.

Although not very creative, the most common method of reducing coverage costs is to take a higher deductible. (Again, deductibles vary greatly from firm to firm.) The cost of low deductibles has essentially become uneconomical. Some firms have coinsured at their first level of coverage as another way of cutting costs.

Part of the change in the insurance environment is caused by the general concern among underwriters that the sorts of megaclaims that have become common in the accounting industry will hit the legal profession. But it also is a response by insurers to the new animals that law firms have become. Having grown through mergers and practice-group acquisitions over a number of years, many firms now find half of their partners to be laterals. Underwriters used to be comfortable with law firms because the firms had strong professional training and mentoring programs that developed homegrown partners who were steeped in the firm's high standards. But in today's biggest firms, partners hardly know one another, much less the associates in far-flung offices. Multinational, cross-border practices were relatively rare a generation ago. Today, even modestly sized regional firms have followed their clients overseas.

All of this is causing underwriters to look hard at a firm's management infrastructure and practices. You can expect some scrutiny in this area and may find that your insurer will want more of both before it agrees to issue a policy at an acceptable cost.

3. In the past two years, The American Lawyer has come out with two new rankings - the A-List [September 2003] and the Litigation Department of the Year [which began in January 2002 and returns in this issue]. Our litigation practice is small but preeminent, and although my partners and I believe we should have been on both lists, we aren't. What can we do to compete against the bigger firms that often claim the honors on such lists?

There's no question that these designations have marketing value. Being singled out as the best in the eyes of a credible independent source can make a firm become a safe choice on important matters. But clients also know that big firms are mixed bags. Firms generally don't grow to super-size unless they have best of breed stars, but there will always be weaker performers, too, and that produces a bell curve when it comes to service, quality, and results. Sophisticated clients know that when it comes to choosing a firm for a given matter, they must handpick the lawyers who will lead and staff the matter.

The path for firms that don't make best-of lists isn't complicated. Begin by understanding who cares about these lists and why. There are four constituencies for these lists—clients, potential clients, lawyers in your firm whom you would like to retain and lawyers you would like to attract to your firm. The lists are important to them because there are few other benchmarks against which they can measure the relative attractiveness of firms and practices. The lists become a value proposition of sorts. Firms that aren't on these lists can compete against them by developing their own value propositions. (By "value proposition," I mean something about your firm or practice that is attractive and, hopefully, unique. "Tastes great, less filling" was a value proposition that Miller Lite tapped to compete against Budweiser.)

Client interviews are among the best tools for creating powerful value propositions. Few firms have systematically gone about learning why their clients hire them instead of their competitors. If you can find out why your clients turn to you for go-to litigation, and those reasons go beyond the anecdotal evidence self-interested lawyers in your firm might articulate, you can create a message that will resonate with clients and create a culture of service, quality and expertise.