

No Pain, No Gain for Law Firms as Client Demands Get More Extreme

Clients have more leverage than ever in law firm bidding wars, and they're not afraid to use it.

By Miriam Rozen | November 14, 2017

It's the nature of the market for legal work—especially during so-called beauty contests to select outside law firms—that clients are in control. But with demand still slack and competition among top firms fiercer than ever, corporate clients are finding new ways to exploit their advantage.

More companies have begun expecting law-firm bidders to offer once unthinkable commitments that go beyond the scope of traditional legal work. These can include:

- Access to law firms' work product gleaned from other client matters, in the form of "de-identified" data related to litigation or transactional activity.
- Associates on loan or "seconded" to clients' law departments—with the outside firm bearing the expense.
- Push-the-envelope alternative fee arrangements, including, sometimes, giveaway legal work.
- Deep-dive figures on the firms' diversity, including questions related to credit and compensation allocated to women and minorities.
- "Hotlines" for free, instant answers to client questions.

Lauren Goldman, an appellate group leader at Mayer Brown who is on the firm's management committee, said that when it comes to requests from prospective clients during bidding competitions: "We don't reject anything outright."

"In the ever-shifting leverage dynamic, it is increasingly becoming a clients' market," said Brad Karp, chairman of Paul, Weiss, Rifkind, Wharton & Garrison.

Like 'Monopoly Money'

Companies' expectations have changed for firms responding to requests for proposals, making pitches for individual assignments or hoping to sit on a bench of preferred outside firms. The race to offer "value adds"—services beyond the traditional scope of legal work—is part of that, with the overarching recognition by both sides that clients have the upper hand.

"These law firms have no choice. It's now completely a buyers' market," said Mark Smolik, DHL Supply Chain Americas general counsel.

Law firms “are feeling more downward pressure than they have ever felt,” said Kent Zimmermann, a legal consultant at the Zeughauser Group, who also called the state of affairs a “buyers’ market.”

In such a market, it’s only natural that clients are looking for more ways to maximize the services their outside firms deliver.

“GCs speak to each other, and share best practices, with much greater frequency than they did in the past,” Karp said.

According to Karp, Zimmermann, and Sharis Pozen, a senior GE lawyer who oversees its regular outside counsel roster, law firm associate secondments are one of the most frequently proposed “value adds” by clients.

“Secondment requests have become increasingly common among both large and more modest-sized clients. We try to accommodate our clients’ requests, to the extent practicable, and view our relationships as collaborative, long-term partnerships,” Karp said.

The practice of paying young lawyers to work for someone else can offer benefits to the firms, though not necessarily to their bottom lines—at least directly.

“The reason to do it is not for the financial benefit of the firm,” Zimmermann said. Besides ingratiating themselves with a client, firms may see it as a way to cope with a temporary or chronic oversupply of litigators.

Secondments offer the firms a chance to make a client happy and to keep an associate—or two—Zimmermann said. “It’s almost like monopoly money,” he said.

Beyond Discounts

Dennis Tracey III, a partner and head of litigation for Hogan Lovells, said he has embraced some new forms of alternative fee arrangements that clients have requested during RFP bidding from his firm.

“I love them. I think they really drive performance in lawyers,” Tracey said of alternative billing structures, which can include flat fees, success fees, or portfolio pricing for multiple matters.

Sometimes the requests go further. One prospective client, for example, proposed that Hogan Lovells absorb the entire cost of a motion to dismiss—effectively litigating for free. Tracey agreed, with the understanding that the client would pay for the work plus a 25 percent premium if the motion were successful.

As it happened, the client learned its insurer would cover the costs of the litigation. And the insurer picked another firm, not Hogan Lovells, for the paid assignment. But Tracey said the

would-be client told him other firms have agreed to file motions to dismiss as freebies if they lose.

Hogan Lovells and other firms have also agreed to give prospective clients work product developed previously for other clients. In one instance, Hogan Lovells landed on the regular outside counsel roster for “a major global client” after agreeing to provide training sessions to the company’s in-house legal staff members. Those sessions included distributing vendor-and seller-side contracts used previously for other clients, but with those clients’ names stripped from the documents.

“We took those other clients’ names out of the contracts and gave them our best templates,” Tracey said.

Tracey recognized that the training, and the templates, made it easier for the company’s law department to complete tasks on its own that it previously paid its outside lawyers to do. But these days outside law firms must adapt their business strategies to accommodate clients’ demands even when those demands shift work away from the firms.

“We have to continually rise to the next level of innovations,” Tracey said.

‘Free Work and Free Help’

GE’s Pozen acts as an “ambassador” to the company’s lineup of outside firms and oversees its GE Select preferred counsel program. She said her team regularly seeks “bells and whistles” from firms that go beyond discounted rates. (Last August the company hired Chris Ende, who had previously been a managing director focused on pricing at Goodwin Procter, as its law firm pricing, solutions, and panel management leader.)

Pozen described how one law firm, seeking to work for GE, offered to take a fixed fee of \$300,000 for an appeal that would cost the firm \$600,000. The firm would seek the other half of its costs, as a success fee, only if its lawyers prevailed. “We went back to another firm and got a better arrangement,” Pozen said. “We asked them, would you beat this or meet this?”

She acknowledged that companies may be getting “free work and free help” from their firms in some cases, citing exclusive legal advice hotlines and associate secondments. But she said the arrangements, particularly seconded lawyers, represent “win-wins” for her company and the outside firms. Those associates, for example, ultimately return to their firms better informed about the needs of GE, she said.

“We are not trying to press a firm to go below cost without any margin built in,” Pozen said. “They have every right to earn a living. We are looking for a sustainable model.”