



PREPARE NOW FOR INCREASED COMPETITION AHEAD

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May's issue of *Counsel to Counsel* had two articles which caused me to pause and contemplate the underlying implications for law firms. The first article, entitled "A Railroad's Environmental Legacy," was about Union Pacific Railroad Company. Their general solicitor and national environmental counsel, David P. Young, took over the railroad's environmental affairs in 2000. One of the first things he noticed was that UP had a lot of law firms handling its work. He immediately started a consolidation effort to narrow the field down.

The consolidation process started with letters to approximately 80 law firms doing environmental work for UP, asking them to assess their own value and the capabilities they could provide. According to the article, some firms didn't respond at all, and others responded so badly that their firms were easily eliminated. The rest were invited for interviews. Those interviews are what industry consultants glibly refer to as "beauty contests."

The article goes on to focus on the successful relationship forged between Patton Boggs and UP. Patton Boggs was one of just 25 firms remaining after the interviewing phase ended. For those of you who need help to "do the math" let me point out that only 31% of the original law firms remained on the roster after the consolidation effort concluded. For 55 law firms this was not great news.

What's even more disconcerting is that Young intends to further narrow the field during the coming year to just 15 or 10 firms. That will not be great news for the 10 – 15 firms which do not make the second cut.

The second article, entitled "Moving Beyond the Billable Hour," was about NEC Corporation's working relationship with Duane Morris. Gerald P. "Gerry" Kenney, senior vice president, general counsel and corporate secretary of NEC, was interested in developing a "preferred-provider model that he refers to as 'DuPont Lite.'" Utilizing a similar process, NEC narrowed its list of law firms from 130 to five. That's a cut of just under 96%, leaving only 4% of outside law firms remaining to share the work. Again, great news for that 4%, but not so great for the other 125 law firms left in the dust.

Interestingly, Duane had just gotten its foot in the door when the consolidation process began. But their ability to demonstrate that they could deliver value — as defined by the client — resulted in their walking away with a huge piece of the pie.

Duane Morris and Patton Boggs are two firms that “get it” about delivering value to clients. Their respective relationship partners were able to identify the unique value “sweet spot” of their clients, and focus their abilities so as to deliver it in a consistent fashion.

What are some of the differentiators for the big winners?

- ◆ A breadth of capability which enables clients to consolidate as much work with one firm as possible.
- ◆ An understanding of the economic realities of corporate counsel and their need to control outside counsel costs. This must be coupled with a willingness to work on a fixed fee or other basis besides hourly billing. NEC’s Kenny noted that in one situation he had to ask a Duane Morris attorney why she charged him on an hourly basis, instead of the agreed-upon fixed rate. The attorney’s response was that the hourly rate was less expensive, so that was what she billed. The answer greatly impressed Kenny.
- ◆ A high level of trust and communication.
- ◆ An ability to demonstrate an intimate familiarity and responsiveness with the client’s businesspeople at all levels of the organization – not just those at the top.
- ◆ A demonstrated knowledge of the many factors impacting the client’s business, coupled with an ability to help the client succeed. Industry consultants refer to this as counsel who become known as “deal makers” instead of “deal breakers.”
- ◆ The ability to function effectively as a team with other firms when the client feels that a highly complex matter requires the capabilities of several firms. Many firms feel threatened in this type of situation. Their “CYA” and “testosterone-pumping one-upmanship” behavior can prove both exhausting and costly for general counsel.



- ◆ A relationship partner who resists the urge to micro-manage, but who ensures that any attorney who first becomes involved in a matter for the client is properly educated about the best ways to communicate with the client, in order to save time and money.
- ◆ Presenting information to the client in the ways they like to have their information presented.
- ◆ A constant eye toward active representation and additional quality-added services. What can your firm do to take more routine matters off the client's hands so they can concentrate on their core business more effectively? What changes in the economy or legal environment may be impacting the client downstream, and what can your firm do today or tomorrow to help mitigate the possible consequences?
- ◆ A willingness to "take one for the team." Sometimes outside counsel's role is to take the heat so that the client can maintain good working relationships with state, federal and local regulators, or other key vendors or employees.
- ◆ Effective internal quality management practices to ensure that the firm can deliver good value. Young is quoted as saying, "Rates are an issue that everybody is concerned about, but ultimately you don't pay the hourly rate; you pay whatever the total cost is over the life cycle of the matter. We want firms that deliver efficient resolution on matters on a consistent basis."

I started this article with a title which is foreboding. Why? For most firms, business clients represent the most desirable stable client base. They are the bread and butter which covers the monthly nut. So what happens to the firms which are being eliminated from the roster of approved firms? They must look elsewhere. That means that they will be fishing in smaller ponds than before. And the firms which are in turn displaced will move on to even smaller ponds. Sooner or later, you will feel the presence of others fishing from your favorite pier.

It has to happen. As the firms are eliminated by the top business clients, the greater the number of smaller clients they will need to generate the same level of revenue. And their infrastructure will drive their need to maintain revenues, make no mistake about that. It would be a rare firm indeed that just resigns itself to earn less. And so as they reach further down through the ranks of available business



clients for all types of work, they will displace smaller or less capable firms. And those firms will in turn seek to replace the work. Depending on where your firm ranks in size and depth, you will eventually see the competition in your own back yard.

Don't be lulled into complacency by thinking that your small town and/or bread and butter clients will be of no consequence or desire to those big or bigger out of town firms. They are already reaching out into communities large and small by aggressively acquiring solo and small practices. They will be able to provide a combination brand-name one-stop shop presence with the friendly familiar "local" face which may quickly eclipse your long-term client relationships.

Oh my! What can you do now to prepare? Well first, don't go down without a fight. Be prepared to define and communicate your value proposition effectively. And while you can wait to be asked, you will be better off communicating it regularly with your clients before the competition comes knocking at their door.

Now of course this presupposes that you actually *have* a value proposition. If you don't, then it's time to do some serious self-assessment and strategic planning to develop it. Chances are that if you've been complacent by being satisfied delivering good technical skills and client service at a reasonable price, you have not made the types of changes which will be necessary to successfully differentiate you from the competition in ways which are meaningful to clients.

I've seen it all. One hot line caller is frustrated because an important business client is threatening to leave if the firm does not begin using Word to generate its documents. The partner doing the work refuses to switch to Word from WordPerfect because his secretary doesn't want to. Hello? Can you say the tail is wagging the dog? At another firm a frustrated managing partner keeps reminding a senior associate that the client prefers email, but the associate keeps sending everything via snail mail, so that he can "document" the transmission with a more formal letter. Hello? Whose comfort level is more important here, the client's or the attorney's? I have no doubt this answer will become painfully self-evident to the firm sooner or later.

And of course there are the majority of firms which strive to do good work at a reasonable price. But they have not found out what their differentiating factor(s) is, nor have they actively looked for ways to innovate or improve value. And most of the time, they have not sought out the client's feedback to help them define value from the client's perspective instead of their own.



Make no mistake about it, increased competition is on the horizon. It has already impacted a lot of solo and small firms across the state. Never before have I been contacted by so many attorneys from firms of varying size from solo to mid-size, who are unable to maintain a decent income level. And even while the largest of firms are realizing the greatest increases in profits per partner than ever before —some would assert to a shameful level — that is the exception, not the rule. And that information only further steels the determination of in-house counsel to control outside counsel expense.

Prepare now, or you may become the next casualty. Not sure where to start? I'm here to help. Call or email me to schedule a time to talk about it.

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