

Managing the Risks when Sacking Your Law Firm

In today's difficult economic climate, with corporate margins under pressure, clients (and in-house counsel in particular) must be more and more performance and value-driven. If corporations do not believe they are getting the best value in terms of advice and service from their law firms, then they might consider terminating their law firms.

Client/law firm relationships end for all kinds of reasons. The arrival of a new in-house counsel may be the trigger; a new broom sweeps clean! The client may just have outgrown the firm, which isn't particularly unusual. The law firm may have fouled up a job, which, in turn, is an indicator of wider quality-assurance issues undermining the relationship. Or, there simply may be a clash of personalities.

Indeed, there can be any number of causes, but once the relationship has been damaged in the eyes of the client, the only issue is how best to drop the firm. Unlike Paul Simon's song about the 50 ways to leave your love, disengaging from a law firm is not always as straightforward as may be imagined, particularly if you are a large client with many ongoing complex matters in the hands of the firm.

Managing potentially crucial risks when making the break should be the client's number one priority. Unless in-house counsel takes prudent steps to build risk management into corporate plans, serious damage may result. Above all, your reputation and that of your organization are too valuable to risk. As recent events have shown, it is so easy for shining global reputations to crumble almost overnight, particularly if matters are not handled well.

"Do as you would be done by" is a good mantra to follow, so put yourself in the shoes of the law firm and ask yourself how you would wish to be dealt with if the roles were reversed. Often, the manner in which you deal with the matter will be more important than what you do. Being courteous and polite costs nothing.

A New Competition

If you have a panel of law firms and the firm under your spotlight is on that panel, then start by reviewing the panel. Ask your law firms to renegotiate the

relationship. This will benefit the law firms in any event (no matter how exasperated they are beneath their smiles) and should sharpen their selling skills at the very least.

An important benefit of this approach is that, by reviewing the whole panel in a manner that is clearly fair and objective, you don't give the ousted firm an opening to complain that you have not given it a chance. Better still, out of the process you may end up with a slimmer panel more capable of servicing your needs. (Du Pont's convergence strategy is, by now, efficaciously time-tested.)

You should not, however, lose sight of the amount of time and effort that reshaping a panel may take. Be careful to not be seen as toying with the affections of the law firms on the panel. Some firms might, for whatever reason, refuse to compete. You could end up with a worse panel than before.

Crucial Transition

Once the firm has been informed of the decision, ensuring a smooth handover of work must be planned and handled carefully, and you will require the continuing goodwill of the firm to minimize problems. Treat the outgoing firm decently because you may well need its help in the future if unresolved problems crawl out of the woodwork.

Inevitably, any handover of work could result in your incurring additional fees to the outgoing firm for its extra work on the handover, as well as to the new firm that has to read the files (unless you are able to get the new firm to agree not to charge for the work).

Not all clients have a panel of law firms to play with, yet, even with only one firm handling all your work, it can prove very worthwhile to invite the firm to interview, with others, for all or part of your work. The ousted firm may at least then feel that it has been given the opportunity to retain your business, which may help smooth a few feathers and assist the transition. At the very least, you will have put down a marker to incoming firms as to the value-added service that you absolutely require for the future.

A Less Painful Approach

If you really do not like messy goodbyes, then you can, of course, take the easy way out and do what many clients do, which is to just slide out of the relationship by slowly sending all new matters or matters of a certain nature or size to a new firm.

This approach has its advantages. It may give the outgoing firm time to think how it is going to replace your work, which may result in better relations in the future. It could even inspire the outgoing firm to take steps to really get its act together, enough so that you'll think twice before sacking it.

On the other hand, while going about things in this way may be less emotionally painful and carry less risk for you in some ways, it will also take time. You may feel you do not have that luxury because circumstances dictate that the parting happens quickly.

Take the not-infrequent situation in which the responsible partner at the firm, or on the team that services your company, departs for another firm. Do you follow that lawyer or stay put? You may in reality have no choice if the rest of the firm is not able to adequately handle your work.

I have known firms that (in the absence of any restrictive covenants) informed multinational corporate clients, which were following a departing partner, that all their matters would have to be billed to the date of leaving. Fair enough, but they added the proviso that no files would be handed over until all bills were paid, and "paid" meant checks being cleared! Suffice it to say that the clients paid the bills, collected the files, and never went near those firms again, and these were clients to die for!

Such confrontational occurrences are increasingly common and show how high emotions can run. Unfortunately, emotions can adversely affect sound business judgments. Forward planning is the key. If there is a risk of your lawyers not fully cooperating in a handover of files (they may have a lien over the files, for example), you will have wisely taken steps beforehand to ensure that, come the day of parting, you have what you need to carry on your business.

Court of Public Opinion

Whatever the circumstances, the process of disengagement carries risks, and one of the greatest risks

to your business may be the loss of your reputation. Management of your reputation should be paramount. Whenever you, as a client, have a high profile and are changing law firms, warning bells should ring, all the more so if the law firm itself has a high profile and reputation, which it may consider is being damaged by being dropped by you.

Hell hath no fury like a managing partner scorned. When ending a relationship with a law firm amid re-primations over its competence, or for whatever other reason, make sure you have your facts correct. Have a good PR adviser on hand. Law firms have been known to bite back! They hire PR firms too.

Moreover, if you are seen to have acted in a less-than-fair or more-than-clumsy fashion when ending the relationship, the perception could work against you in the media, within your own company, in the wider business community, and especially in your relationships with other professionals. Memories can be long.

As sacking your law firm may stir up a hornets' nest for you or your company, carefully think through every step you propose to take. Above all, make sure there are no skeletons in the cupboard. If the ousted firm decides to bombard you with lavish corporate hospitality to retain your business, make sure you obey to the letter your company's rules on what can and what cannot be accepted. If not, you may find you are the one being sacked!

Ultimately, no parting of the ways between a client and its law firm, especially after a relationship stretching back perhaps many years, is going to be easy to manage. As a client, you need to do whatever in your judgment is right for the business, but with one eye always on making sure you manage the risks inherent in the situation. You should not forget that a little courtesy can go a long way and may well stand you in good stead in the future if your paths meet again, as paths so often do.

—Peter Scott

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