

General Counsel Panel

ALM Law Firm Marketing Leader Forum

November 2014

I've never sat through a boring General Counsel Panel. And this one proved no different. In fact, this might have been the most exciting panel discussion I've witnessed- complete with spunky debates between the audience and the GCs around a variety of topics including AFAs, diversity and client interviews. Many thanks to Molly Miller and ALM for organizing a terrific marketing conference with an outstanding list of speakers and topics.

General Counsel Panel:

Panel Moderator: **Molly Miller**, *Vice President & Publisher, Chief Content Officer, ALM, The Recorder and Law.com*

Panel Participants: **Michelle Fang**, *General Counsel, Stub Hub, Inc.*

MeMe Jacobs Rasmussen, *Chief Privacy Officer, Vice President and Associate General Counsel, Adobe Systems incorporated.*

Mark Tellini, *Senior Vice President and Deputy General Counsel, Charles Schwab & Co., Inc.*

Q: What do you consider the most valuable attributes of your primary outside counsel?

A. They know my business and where it is headed. They maintain personal relationships and are pleasant and congenial. They demonstrate mutual respect with our in house attorneys. This is really important. You'd be surprised how often this doesn't happen. And of course, they have to be brilliant lawyers. But those are the table stakes to work with us.

Partnership. It's all about being good partners. That means they anticipate our needs and challenges. They present solutions that make the most sense economically for us. They are sensitive to the internal dynamics and politics and work well together with our in-house lawyers. They don't take over a matter and go away only to report back when it's resolved. They "co-manage" the matter with us. They work closely with us. If they don't they probably won't be working with us long.

I agree. They have to understand our business and what others are doing in our industry- how others are handling the issues. They have to understand technology, too. They should be creative about their fees. They need to be practical though. We don't want to hear about some outlandish risk that has little chance of materializing. We don't have time for that nor do we want to pay for this type of 'turn-over-every-stone' type of analysis. Just give it to us straight. They need to be knowledgeable about our business. Training outside lawyers is a huge drain on in house counsel. The more you can get up to speed and understand our business, the better.

Q: RFPs have become a way of life in law firms. What are some ways that law firms can stand out and win your business in this process?

A: RFPs are basically a healthy way to keep outside counsel honest and hungry. The ones that shine in the RFP process are the ones that have thought through the strategy of a case, how to respond to publicity, etc. They give free advice. In fact, we approach the process from the standpoint of getting as much free advice as we can about the issues involved. I assure you, it is always well spent resources or bandwidth.

The interviews are the most important part for me. I listen to how people think about an issue. We had one guy who clearly didn't know our business well enough but I really liked the way he thought. I told my people to find a smaller issue we could give him so we could check him out better. But I couldn't go with him on this issue. He just didn't know enough about the issue or our business. We won't bring anyone in for an interview that we wouldn't hire. So if you get invited, go for it. Knock us out with what you know about us and the issues. And present a solution for us. That's what will win the work. Learn about our business 'off the books'. Don't learn it on our dime. But come in informed and knowledgeable. You can always tell who has done their homework.

I agree. Get to know the case before you come in. Review the briefs, talk to local counsel, offer to provide value to us that we may not get elsewhere. Be creative. And always speak well of the other firms. You never know what relationships are in the room and it just makes you look really bad if you denigrate either your competitors or incumbent counsel.

Q: What kinds of things have firms done wrong?

A: I hate memos. I hate paying for memos. I hate seeing research memos on the bill. I hate large blocks of associate time on memos, especially when I haven't asked for a memo. Get the point? And if the associate is doing the memo and it makes it to the bill because the relationship attorney didn't know he was writing the memo and it is not written off before I see the bill, that makes me even more angry.

I get upset with communications to my boss or my boss' boss. Those communications shouldn't come from you. As the GC I need to manage the message to my business folks. You don't know all that's happening in the company so you can do more damage sometimes than good if you don't run it through me. Trust me I'll give you credit. But I need to know about it before it gets to the business folks.

It's incomprehensible to me that an outside lawyer would talk to the business people without the GC knowing. That's a firing offense. We're 'whisperers' in the company putting context around the issues at hand. It's an important part of what we do.

Unreasonable expenses tick me off. Billing out of proportion to the matter at hand. If I have a simple question, I want a simple answer. If the answer is not simple, I want you to explain to me why it is not before you run off and research a lengthy answer.

Q: How should law firms approach you for more business?

A: Well, nagging for business won't work. It is irritating. You do good work and you'll get more work. Just because you happen to be in town doesn't mean I have to meet with you. Give me a way to decline gracefully. If you want to meet with me, bring me something of value. Tell me something I need to know or should be watching out for. Don't ask to meet to introduce your tax counsel, for instance, just because you're in the neighborhood. Especially when you know perfectly well we're happy with our current tax counsel. Ask if we're interested in meeting him or her and tell us why we should want to meet them. Now, if your guy handles tax issues for others in our industry and has a way for us to change how we're doing something that's useful, then yes, I'll make time to meet.

Q: We saw research indicating more work is moving in house. How do you decide which work to take in house?

A: Basically, when the cost benefit tilts in favor of taking it in-house. But there are other factors. We want to be able to scale up and down quickly or be flexible in handling our case load, so there's more to it than that. But essentially there's a point at which it's simply cheaper to do the work in house.

You can tell the firms that are customer service oriented. Some firms are really arrogant. Cost structure is a 'gating' issue for us. The New York firms have much higher costs, so where we can, we take that in house. But experience is the first consideration. If the expertise is with outside counsel, we keep the work there.

Q: How important is diversity to you in the selection of outside counsel?

A: To be honest, the quality and value of the work is most important. I've had situations in which I was assigned an attorney because the firm thought we prioritized diverse attorneys on our work. We ended up with a bad fit for the matter and that caused more damage. The attorney simply was not well versed enough in the issue. It was a mistake on the firm's part to put them forward. I want the best you can offer me and secondly I look for diverse candidates for the work.

Q: AFAs have been discussed for some time now and most firms have a handle on fixed budget or project fees. But what has been your experience in shared risk fees? And if you have had success, how were they structured?

A: We haven't had much experience in shared risk fees. One reason is that I got bit by one that my predecessor negotiated and now I am hesitant to negotiate them. The AFA I am referring to included a \$1.5 million success fee on a case that was a bet the company case. The problem was that that success fee was not budgeted and pulling \$1.5 million from some other place in the budget was really a challenge. I'd rather just pay as I go.

We went through a convergence process and included AFAs as a requirement of the RFP. We saw a few firms drop out as a result but also saw some rather interesting arrangements. One of which was a collared fee arrangement but we haven't tried it yet.

Q: We are seeing the rise of pricing professionals. should these people be in the room at a pitch to you?

A: The relationship attorney and the subject matter expert should be there. I really don't see the need for a pricing person to be there or the CIO or whomever. But whomever is there, they need to be able to speak intelligently about our business and the matter at hand.

Q: How do you feel about client alerts and other information sent to you by law firms?

A: These can be a real irritant. I moved from patent law to another area of the law but I still get patent alerts. I wish firms would regularly clean up their distributions lists so I get the info I requested. One firm I work with sends me an e-mail to check which publications I want to continue to receive or whatever. That's fine. It's actually helpful to me.

Some firms just regurgitate information and push it out to us. There's usually not much more in the client alert than what I read in the papers. That can be a real problem. Firms need to get better at intuiting what is important to us and the company. Show us what you know and how it addresses what we need. If you do this, you'll stand out. Believe me!

Q: what about the privacy issues related to these client alerts- like being able to see that you opened the alert, sent it to others, etc. How do you feel about that?

A: Well, privacy is pretty important to our business so I may be a bit partisan on the subject. If you know how things work on the Internet, privacy is really not an issue. I know it creeps some people out to visit a website and then see an ad for that product teed up on your Facebook profile but to be honest, it's really how things are going to be and people should just get used to it. The fact of the matter is, I value my time above my privacy.

Q: What about client interviews? How do you feel about law firms hiring third parties to conduct client satisfaction interviews?

A: Why doesn't the lawyer just ask how they are doing?

Q: I think the idea is that they will get more objective feedback if you are interviewed by someone outside of the firm.

A: I prefer to hear from the lawyer. I guess I understand the rationale but maybe I'm unique, I tell it like it is.

Q: When was the last time a lawyer, off the clock, asked to sit down and find out how they are doing? See? That's the problem. We'd all like to have the open, frank conversations but they just don't happen.

A: You may be right. I guess it makes sense to me for the firms that are marginal or not doing so well. But if they are performing well, they will know it. I keep giving them work.