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As in-house departments expand, associates find new opportunities

BY THOMAS C. HARDY AND MARTIN J. BISHOP

Thomas C. Hardy is an associate and Martin J. Bishop is a partner in the Litigation Department of Foley & Lardner LLP's Chicago office. Bishop is also the vice chairman of the firm's national consumer financial services litigation practice.

Recent surveys indicate that some basic aspects of in-house practice are changing, with both positive and negative ramifications for law firms and their associates. Associates need to understand that these changes bring with them opportunities to interact with clients and handle complex matters earlier in their careers. We spoke with some in-house counsel who gave us their views of how the legal market is changing and what associates can do to take advantage of it.

In-house branching out

As law firms have laid off lawyers over the last several years, in-house counsel departments have been expanding to handle matters that in past would have been sent to outside counsel. The recently released Association of Corporate Counsel (ACC) 2011 census of 5,800 in-house attorneys showed an 18 percent increase in general counsel department budgets since 2006.

Similarly, a 2011 HBR Consulting survey of 219 in-house legal departments showed that 70 percent of participants increased their internal legal spending from 2009 to 2010, for an average increase of 7 percent.

The growth of in-house departments is expected to continue, given that 37 percent of respondents in the ACC census reported that their companies would continue to add lawyers and other legal staff. In addition, participants in the HBR survey anticipated an additional median increase of 10 percent in spending on in-house attorneys this year.

As clients spend more in-house, their outside counsel budgets are shrinking. The ACC census reports that, from 2006 to 2010, spending on outside litigation counsel dropped 4 percent and the drop in spending on corporate work such as tax issues and mergers and acquisitions has been even more pronounced. The HBR survey reported an overall average drop in spending on outside counsel of 3 percent from 2009 to 2010 alone.

Good and bad news

The reduction in client spending on outside counsel has obvious ramifications for law firms and their associates, some of them negative. For one thing, less outsourced work may mean less need for associates. Firms may also lose certain types of work that is absorbed into general counsel departments, depriving associates of opportunities to work on certain types of matters.

A growing perception that internalizing work creates cost savings may also lead to lower associate salaries down the line. The HBR survey found that the median hourly cost for the average in-house attorney is 46 percent less than the median average hourly rate of his or her company's three top-billing outside law firms. This cost-saving potential drives in-house departments to internalize legal expenses, but also puts firms in the uncomfortable position of pitting their billable rates against those of their clients' in-house counsel. Alternative fee arrangements and lower billed rates are obvious ways for law firms to compete, but firms who offer such deals may be forced to choose between lower profit margins and lower or stagnant associate salaries.

However, not all of the consequences of the shift to in-house are negative. The same cost constraints that lead clients to internalize their legal work also provide an incentive for law firms to push work down to lower-cost associates. As a result, law firms' loss may be an associates' gain.

The view from inside

The financial crisis has had clear benefits for associates, according to an in-house lawyer for a large Chicago-based company (who we will call Ron). Ron noted that the crisis caused many of the firms his company used for outside counsel to "downsize" some of their younger partners. As a result, firms have been "forced to spend more time with their associates to take up the slack" left by these departures.

Another in-house counsel for a large Chicago company (who we will call Chris) agreed that there is now a "missing tier of attorneys" at the junior-partner level, providing associates with an opportunity to do higher-level work.

Ron said that his company will continue to need outside lawyers. Specifically, "litigation is still an area that corporations look to outside counsel," because of the greater familiarity of outside lawyers with local court systems.

According to Ron, associates can bring a lot to the table, because "they have hands-on, day-to-day knowledge." He said in-house attorneys do not expect associates to have partner-level expertise. Rather, "in-house counsel are looking for assistance and also want to be kept in the loop." Because associates are more often around for a quick question or update, Ron relies on them to inform him about procedure and the status of his matters.

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Associates are also more cost-conscious than they used to be. "I'm not seeing unnecessary research or out-of-whack bills," he said. Ron attributes some of this frugality to policies and fee arrangements put in place after the financial crisis hit.

Chris said that associates' "usefulness is directly related to how much guidance the partner gives them." Chris prefers that associates be involved in meetings with the client and strategy sessions. "If they're involved [in a matter], then I prefer that they get the bigger picture — otherwise, they're behind the 8 ball," he said. "The strongest associates are ones who are involved in the case, as opposed to being brought in as a cost-saving mechanism."

Both Ron and Chris emphasized that associates need to understand their roles. "Sometimes associates come in and want to play partner, or want to be mini-rainmakers," Ron said. "That creates problems, because they don't want to admit they don't know something."

As Ron noted, associates "have to walk a fine line." Ron "has to feel comfortable they are proficient enough to do the work or will be properly supervised — we don't have time to rewrite briefs and we can't teach associates how to do their job."

At the same time, associates "shouldn't be intimidated and not ask questions." By learning to toe that line, associates can take advantage of their increasingly important place in the outside counsel equation.