

"Legal is the Only Industry Where Clients Act Like Sellers and Sellers Act Like Buyers"

A Recap of the General Counsel Panel at the 2012 Legal Marketing Association Annual Conference

Recently legal marketers from all over the world gathered to network, get inspired, and learn from each other during the Legal Marketing Association's 2012 Annual Conference at the Gaylord Resort in Grapevine, Texas. I've had the privilege of attending a few LMA annual conferences over the years, and each time I liken my experience to drinking from a fire hose ... there is a ton of information to take in and a lot of great ideas and conversation. The trick is processing all of the information and sorting out what I can use and share with the firm and my PSMA colleagues.



For my money, the most valuable session of the conference was the General Counsel (GC) Panel, "Success Through Collaboration: GCs and Law Firms Working Together," which featured Ronald K. Barger, SVP and General Counsel for Archon Group, Jeffrey W. Carr, VP, General Counsel & Secretary for FMC Technologies, Janet L. Dhillon, EVP, General Counsel and Secretary for J.C. Penney Company and moderators Tom Duggan and Cathleen Flahardy of *InsideCounsel*.

The issue that everyone kept coming back to and the overarching theme of the panel discussion was that the client is in charge, as they should be. Panelist Jeff Carr really hit it out of the park when he said, "The legal industry is perverse. It's the only industry where buyers act like sellers and sellers act like buyers." Easier said than done, but the lesson of course is if law firms want to survive and thrive, we've got to listen to our clients. Simple, right?

The session kicked off with a bit of fun with poetry ... yes, poetry. Sutherland Asbill & Brennan CMO Felice Wagner cleverly authored this oh-so-true verse and panelist Jeff Carr added a few lines of his own, noted with an asterisk:

A Client's Poem by Felice C. Wagner

If only you'd ask, I'd be happy to say ... I wish you would do things more often my way.

If only you'd ask, I'd be happy to say ... I don't like that new partner that calls every day.

If only you'd ask, I'd be happy to say ... I'd like you to bill me in an alternative way.

If only you'd ask, I'd be happy to say ... We have four new matters that came in just today.

If only you'd ask, I'd be happy to say ... Being responsive to me means you call back the same day.

If only you'd ask, I'd be happy to say ... There are three other law firms we're considering today.

If only you'd ask, I'd be happy to say ... I expect your budget to reflect what I'll pay.

If only you'd ask, I'd be happy to say ... When you go over budget, I see my career slip away.

If only you'd ask, I'd be happy to say ... Demanding advanced waivers makes me say – GOOD DAY !*

If only you'd ask, I'd be happy to say ... Associate Salaries matter NOT to what I'm willing to pay.*

If only you'd ask, I'd be happy to say ... Mergers and Laterals seem to increase what I PAY...*

If only you'd ask, I'd be happy to say ... I wish you would do things more often my way.

General Counsel: Lawyer or Business person?

Again, Jeff Carr very succinctly summed up the lawyer vs. business person conundrum -- "We are not lawyers. We are business people first." As he explained, a general counsel's primary job is to be the strategic advisor for the business team, then to oversee legal affairs by removing obstacles and managing risk, and finally to build and run a high performance team. Because a general counsel's job is to deliver shareholder value every day, they expect outside law firms to understand and appreciate their critical role.

Janet Dhillon agreed with Carr, and noted that her job is about balancing the company's business objectives with their legal requirements. Ron Barger added that firms should try to understand which hats their clients wear, because in most cases, it's not just a legal hat. When firms have that perspective, there are avenues outside of the legal arena where assistance can be provided and value added.

What Keeps You Up at Night?

Barger expects his outside counsel to keep on top of the things he might not know about. The firms who can act as his eyes and ears in the jurisdiction or marketplace and talk to him about potential challenges coming down the road are the most

valuable ones. "Delivery of legal services doesn't keep me awake at night. It's the things I can't see ahead of me that keep me up at night," Barger said.

Dhillon agreed and mentioned that she wants her firms to tell her what she's not anticipating, "What are we missing? What are we not planning for?" If a firm sees a trend that might impact her business, she wants to know about it. She also said that firms shouldn't assume that their clients know about something already - even if they do, they will appreciate that their firms are thinking about them and their business.

Carr added that he doesn't want to hear an attorney say "You've got a big problem on the horizon and I can help you!" Raising up a boogeyman or presenting an overt sales pitch are not tactics that he wants to see ... he just wants to know what the problem is, and how he can deal with it.

How Much?

One of the hot button issues that gets everyone's attention these days is the discussion of fees and alternative fee arrangements. Dhillon said that clients aren't looking to short change their attorneys, but they do have an expectation that their fees be reasonable. She also said that when there's trust on both sides and they're appropriately structured, alternative fee arrangements can really work. If you really understand a business, you will understand the level of importance of an individual matter and plan accordingly - but make sure to gauge your approach according to the importance of the matter to the client.

Barger commented that when participating on a similar panel five years ago, he predicted the billable hour would be gone in ten years. "Since we're already halfway there," he told the audience, "you guys have to work on that." He also agreed with Dhillon, saying that there is a misconception that clients are trying to push down fees in order to grow revenues. Ultimately they just want to spend their money wisely; it comes down to aligning on the ultimate goal, understanding the deliverables, and being thoughtful about pricing.

Companies look at legal costs, and costs per matter, so they're irritated when their outside counsel don't analyze the data in the same way. Barger said that as a whole, outside counsel are lagging behind inside counsel on competitive intelligence. GCs are looking at metrics and costs, and while law firms should be, they're not. Carr added, "The traditional law firm model is dying. Get over it and understand what the new world is going to be. There will be new business models that come into place. We'll build them if you won't. We don't need YOU to survive. We need the industry to survive."

In terms of managing costs, Carr said that he has banned the word "alternative" - "there is nothing 'alternative' about 'alternative fees.'" Instead, he wants to talk about value and performance-based fees.

Dhillon said that as a GC, she has the cost data at her fingertips for matters that have been handled for them in the past. Firms would have even more data if they chose to capture it, but they're just not doing it. Firms should be able to figure out with every matter on average how much it will cost them. For example, she knows what it costs to litigate a certain type of employment matter in California. But if there are firms out there who know these costs, she hasn't found them yet. She's baffled when she shows her data to firms and gets blank stares because they don't know their own costs. "Mine your data," Dhillon said. "Know what it costs, build in a reasonable profit and have a frank discussion with your clients about what does 'winning' mean in this transaction/case? Push us to better articulate our expectations," she added.

Dhillon also mentioned that pricing goes back to why understanding a company's culture is so important. For J.C. Penney, their consumer model is "fair and square pricing." Of course, they expect their law firms to be consistent with that, or it's a cultural mismatch. She said that they'll walk away from firms if they think they don't share their values - it's not "win at all costs."

Carr added, "As firms have gotten bigger, they have failed to leverage their knowledge to drive effectiveness."

Client Service Do's and Don'ts (Marketers, are you paying attention?)

The panelists shared a few best practices (and not so best practices) from the outside firms they work with most frequently. Marketing folks, listen up:

- We love firms who come to us without asking us asking for value or performance-based fee structures.
- One of our outside firms offered (without us asking) a strong, mid-level associate at a fair price to fill-in while two of our in-house counsel were out on maternity and extended medical leave during a very busy time for the company. The associate did a great job and went back to her firm and shared valuable information about our culture and what the firm could do to further assist us in future dealings.
- A firm came to us and said that we can't win a case as originally filed; however, if we tried it in a different way, it will take more time but we'll get a better result.

- Offer in-house CLE over lunch.
- Be pleasant to everyone!! Say hello to my assistant and everyone on my team. Don't save your best behavior for me.
- Don't pitch me; I don't have time for PowerPoints, bios, websites, brochures, etc. If you send me a brochure, I throw it out. Get rid of them.
- Don't talk to me about quality ... quality is the price of admission, not a differentiator.
- I'd like a firm to come in and say "I know you have other outside law firms, and lots of good choices, but I'm convinced that we can bring you value, and here's how we can do it."
- Solve a problem for us!

My lasting impression from this session (and a few others) is that year after year, we're hearing the same feedback and advice from general counsel. What is the big take-away, then? Their valuable insights are falling on deaf ears ... law firms STILL aren't listening to what their clients really want. It's time to tune in and help your lawyers make some real changes to law firm status quo.

-- Contributed by Kate Cromie, Eckert Seamans (with a big thank you to the many conference bloggers and tweeters who took much better notes than I did!)