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Law Department Management

When Intervention Goes Too Far

Law department involvement in law firm operations ranges from reasonable to problematic.

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LAW DEPARTMENTS intervene all the time in their law firms' internal operations. If a department retains a firm, the firm assigns staff, communicates, sends bills, and does other things. That much is obvious. But law departments over the past decades have increasingly pushed their law firms to do more than those basic steps any service provider takes. Lately, some of the interventions have caused consternation among law firms. What is far from obvious is where to draw the line.

This article divides the range of managerial interventions in law firm operations into three categories. Discussed first are services law departments should receive from all their firms in the normal course of dealings. The second category consists of the services a law department has the right to insist on from their primary law firms, the firms that it uses regularly and extensively. The third category covers the problematic, controversial demands: those services law departments should not expect from their law firms because they are overreaching. Thus, the article moves upwards from modest and acceptable expectations to undeserved impositions that significantly impinge on the management prerogatives of law-firm partners.

Normal-course interventions in how law firms run themselves go beyond fundamentals such as prompt invoices with appropriate information, avoidance of conflicts of interest, best efforts, and other customary behavior of legal professionals. Many of these standard expectations are enshrined in outside counsel guidelines. I take them for granted so here I want to outline a half-dozen interventions that still make sense as obligations of all law firms. I could probably double or triple the list.

- Delivering work product electronically.
- Presenting invoices electronically.
- Not billing for too many meetings among the lawyers of the firm or with too many people at the meetings.
- Maintaining files and records of the client after the matter closes.
- Notifying the law department of billing-rate increases.
- Inviting inside counsel to attend firm CLE events.

The interventions by law departments in law-firm operations discussed above are well founded and reasonable. Beyond what seems fair for law departments to ask of all their firms, it is right to consider requirements by law departments that seem to me fair for them to impose only on law firms that consistently handle significant amounts of work for them.

As with the previous list, the following compilation could be much longer.

1. Providing training beyond firm-standard CLE events.
2. Sending partners to attend collective gatherings of firms.
3. Keeping track of developments in the business of the client.
4. Appointing a client relationship partner who devotes non-trivial amounts of non-billable time to overseeing the relationship.
5. Absorbing costs of training associates who are new to a matter.
6. Assigning and keeping a core group of lawyers on their matters.
7. Using only litigation-support software chosen by the client.
8. Hosting extranets for the client.
9. Making regulatory and other filings electronically.
10. Disclosing metrics on cost, timing and staffing about closed matters of the client.
11. Billing in tenths of an hour.
12. Preparing budgets in the form the client wants on major matters.
13. Giving serious consideration to alternative billing methods.
14. Charging in agreed-to ways for travel time.
15. Expecting client-service teams at their firms that go beyond a core team of assigned lawyers.

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16. Holding firm billing rate changes in line with cost-of-living indexes, the percentage of revenue change of the company, or the company's change in profitability for the year.

Pushing the Frontier

When is it unfair for law departments to force changes on the operations of law firms they retain? Can there be any generally accepted level of buyer's control and therefore some region that is felt to be overreaching?

If a law department demands too much from a law firm, the firm can decline to represent it. Over time, the marketplace will sort out what's asked for that is beyond the pale. But most law firms are very reluctant to fire clients. On the other side, general counsel are often loath to provoke their trusted firms with what the general counsel perceive as niggling or unjustified demands. So the market moderates the escalation of interventions.

Even so, law departments keep pushing the frontier of intervention in law firm operations further and further. Some of the impositions, I feel, have gone too far. My own catalogue of instances where law departments ask too much includes the following dozen plus.

The first set describes instances when the law department imposes on the staffing decisions of the partner who is responsible for the matter.

1. Evaluating the performance and influencing the promotion of individual law-firm lawyers. Law departments want good lawyers working on their matters, but the decision to promote or award bonuses to lawyers at law firms should be an internal matter.

2. Restricting in a heavy-handed way the addition to core teams of extra lawyers. On any sizeable matter, firms sometimes need to bring in a specialist or some additional people, an occurrence that shouldn't be hobbled or made quite difficult by a client.

3. Forcing work into imposed staffing models. In the real world, you can't expect a quarter of the hours to be by the partner, 40 percent by an associate of three to six years experience, and the remaining 35 percent by a more junior associate. That model looks great on paper, but reality doesn't accommodate such rigidity.

4. Insisting that only associates with more than a certain number of years of experience work on matters. Unfortunately, this practice can lead to more expensive associates doing lower-level work.

5. Seeking disclosure of total billable hours of lawyers who work on their matters. Unless fraud is suspected, such as that a lawyer has billed 3,000 total hours, this intrusion goes too far.

6. Demanding non-billable project managers on major cases or matters. Project managers make sense on huge cases, acquisitions and other gargantuan matters, but because they make sense the firm ought to be able to bill their time.

Another cluster of over-the-top demands concerns billing and other data.

1. Demanding most-favored-nation billing terms. Law departments pride themselves on getting the best rates a firm gives any client, but it is never true that any two clients or matters are alike.

2. Freezing billing rate for years. A freeze ought to be a relatively short-term measure, such as for the life of a single matter, or maybe for a year.

3. Seeking real-time billing information. Law firms don't operate that quickly with either submission of time or review by partners. Besides, law department managers are kidding themselves that they will look at the raw time, let alone do much about it.

4. Requesting metrics on other companies' matters, even if the data were redacted. To gather benchmark data from one's law firm sounds good, but a department goes too far when it seeks data about matters that were not its own.

5. Swallowing too many internal costs. Actually, it may be best for law firms to include in their billing rates as many costs as possible. When a firm does not, however, it is not right for a law department to eliminate some of the out-of-pocket costs of their firms.

6. Requiring disclosure of conflicts of interest that are potential or related to business issues. Firms, and especially large law firms, have a hard enough time with actual substantive conflicts. To ask them to foresee where a client might be going and sidestep potential conflicts or to anticipate the positions a large corporate client might take on difficult issues is asking too much.

The final group has to do with law departments imposing values on law firms.

• **Asking firms to have more diversity among the lawyers who work on the client's matters than the client has in its own law department**. Do as I do, not as I say should be the watchword.

• **Forcing firms to accept or turn down pro bono undertakings of certain kinds**. As the recent controversy over law firms' work in assisting Guantánamo Bay prisoners illustrated, pro bono decisions are the sole province of law firm management.

• **Imposing environmentally friendly actions such as recycling, power management or any other steps**. This goes beyond the commercial relationship between firms and departments and is controversial in its effectiveness.

Conclusion

Everyone who reads this article will understand, at least theoretically, that aggressive law departments might encroach too far on their firm's economic autonomy. Hardly anyone, however, will agree on where to draw the line, in part because companies and law firms vary enormously in their circumstances. My hope with this article is to stimulate discussion on some norms.