Voice of the Client

The Evolution Between Outside And Inside Counsel

An Interview with Michael Chartock

By Beth Marie Cuzzone

In this column, we bring the views and opinions from the client's perspective into focus on issues involving pricing, service, marketing, strategy, differentiation and more. This month, we reached out to Michael Chartock, who has a multi-dimensional lens on these issues. Chartock has been a practicing lawyer in a law firm, a business executive and an in-house lawyer. Today, he is a Senior Managing Director and the General Counsel of Gordon Brothers Group, an advisory, lending and investment firm headquartered in Boston. The company helps growing, mature and distressed businesses manage through strategic change — the same phenomena we are experiencing as global shifts move in our economy as well as our industry, legal services.

There is no denying that the relationship between in-house and outside counsel has drastically changed over the last seven years. As the economy slowly recovers, purchasers of legal services have new a perspective about pricing and delivery of legal advice. More and more clients are engaging in fixed-fee arrangements, off-the-clock services, and task-based billing. Outside counsel guidelines have become more rigid about what is billable, matter management and billing structures. This has caused many lawyers to believe that there is a strain or level of distrust moving into the relationship between outside counsel and in-house lawyers.

Beth Marie Cuzzone, a member of this newsletter's Board of Editors, is the Director of Business Development and Client Service at Goulston & Storrs.

The Interview

When we posed some key questions to Michael Chartock, we found that just because clients are interested in paying less in legal fees to have a matter resolved or a deal signed, it doesn't mean that they don't have full appreciation for the talent and skill sets of outside counsel. Chartock spent some time with us demystifying some of the conflict many law firms are experiencing with clients.

Q. As we slowly pull out of the down economy, do you think the recent downturn caused clients to buy legal services differently for the long term?

A. Chartock believes it depends on the legal issues and if they are strategic or tactical in nature. "In some respects no and in some respects yes. With respect to business-critical and strategic transactions and situations, I believe that clients will remain focused on quality of judgment, quality of work, and results, without any changes to a general sensitivity to costs." He cautions that all matters and legal issues will NOT be treated equally: "With respect to more routine matters and/or matters that require less judgment, I believe that executives and general counsel will look to dramatically save on expenses by bringing more legal work in-house." Chartock also suggests that law firms will see increased pressure on relationship partners within the firm to triage the work they do and to absorb perceived unnecessary costs. The last trend he envisions will be an uptick in hiring smaller and boutique law firms — "companies will cast a wider net to seek out smaller/boutique firms with substantially reduced billing rates."

Q. How may law firms truly add value to their clients?

A. There was no mention of the flashy things law firms do for clients that we hear so much about in Chartock's answer. He did not mention sport tickets, wining and dining, big destination client conferences and the like. Instead, his response was two-fold: judgment and relationship. He thinks that, like so many other decision-makers in the marketplace, law firms can truly add value by "providing spot-on judgment with respect to the handful of essential questions/issues and very close calls that arise in a particular case, situation, or transaction — and by having mutually respectful and long-term relationships with other lawyers and professionals involved in a particular case, situation or transaction to facilitate constructive and honest resolution of the more sensitive or sticky issues involving the parties, particularly those that are unanticipated or laden with emotion."

When we asked him about the "death of the billable hour," however, he had a different perspective then some of the industry consultants' view …

Q. So many law firms believe every client just wants more for less. Are there alternative fee arrangements you would like the legal industry to adopt, as "standard" billing practices?

A. "No. I believe that the business model of lawyers and law firms is too deeply rooted in an hourly based perspective," Chartock responded. He notes that alternative fee arrangements, in many instances, quickly devolve into a zero-sum game, with the lawyer or client (as the case may be) believing that the other side got the "better deal." That, he says "can turn into a situation where lawyers throttle back the work once they know their fees will be capped."

Interestingly, many respondents to a recent ALM Quick Pulse Survey agreed with Chartock. The survey, commissioned by Goulston

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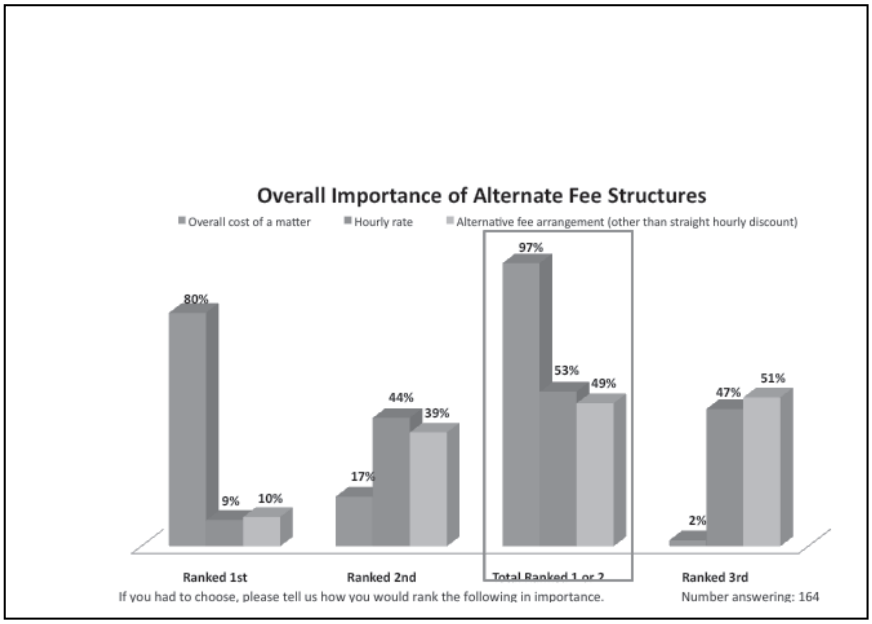
& Storrs, asked in-house counsel about closing the working relationship gap between in-house and outside counsel teams. The respondents, in-house counsel, are more concerned with overall matter cost than a specific billing scheme. More than three-quarters of respondents, 80%, ranked overall cost as the most important factor in selecting counsel, while only 9% ranked hourly billing rates, and 10% listed alternative fee arrangements as the most important factor. (*See* the chart above.)



This goes against the grain of what many in the legal community have been saying about the growing importance of AFAs. They are not, in fact, the driver of relationships between clients and firms, but rather the means to an end.

Q. What's around the corner for in-house counsel and their law firms?

A. Chartock believes much depends on the nature of the legal issues. Are they strategic or tactical in nature? "With respect to business-critical and strategic transactions and situations, I believe that clients will remain focused on quality of judgment, quality of work, and results, without any changes to a general sensitivity to costs." Chartock cautions that all matters and legal issues will NOT be treated equally: "with respect to more routine matters and/or matters that require less judgment, I believe that executives and general counsel will look to dramatically save on expenses by bringing more legal work in-house." He also suggests law firms will see increased pressure on relationship partners at law firms to triage the work they do and to absorb perceived unnecessary costs. The last trend he envisions will be an uptick in hiring smaller and boutique law firms "companies will cast a wider net to seek out smaller/boutique firms with substantially reduced billing rates."

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The ALM Quick Pulse Report also supported Chartock's views and suggested that in-house counsel need to work with their law firms to redefine the "value add," and provide more direction on what law departments actually need.

He advises that redefining priorities and goals should include:

- Involving outside counsel with process improvements and increasing efficiencies, so lawyers can work more seamlessly as a team.
- Focusing on the speed of resolution. One approach can involve mapping out the time it takes to complete recurring matters or tasks, such as acquisitions, dispositions or intellectual property matters. Rather than approach work as a classical tennis match, where law firms lob something over to the client and then don't think about it until it comes back, firms and clients can work together to iron out speed bumps in order to improve overall speed.
- Helping demonstrate value to business units. As in-house counsel are increasingly called upon to become partners with the business units, they should seek out more practical help from their law firms. Many law firms regularly offer CLE, "lunch and learn" sessions and onsite seminars, which are designed to make in-house counsel better attorneys through increased legal education. Law firms should be encouraged or specifically asked to convey information that directly addresses the practical areas on which law departments are being evaluated.

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