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FOCUS | Law

Litigating costs

Local law firms pursue efficiency
in changing marketplace

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This summer, Kean Miller litigator Greg Anding led his asbestos and toxic tort defense group through an exercise in efficiency that is saving clients money and preparing the firm for a changing legal marketplace.

Examining a typical asbestos case, the group's partners, associates, paralegals and clerks gathered for a mini retreat to break down and map all the steps -- administrative and legal -- involved in taking a case from inception to completion.

The point of the day-long brainstorming session, Anding said, was to make sure "there is communication, there is no duplication of effort and that the lowest-cost person capable of providing the best service is actually the one providing it."

Among the questions they asked: Is a piece of legal work assigned to the appropriate partner or associate? Are clerks, paralegals and secretaries doing tasks the same way? Are attorneys using all the information available to them at the firm?

"Without this process, I may not know that my partner, Jay, deposed a doctor a month ago," Anding said. "Now I have a deposition coming up in my case -- does it really make sense for me to prepare a guy that Jay already took a month ago?"

"It's much more efficient for me to say, 'Hey, Jay, here are facts in my case. You know his opinion, you know what he is going to say, you've got all the background on him.' And Jay can prepare for it in half the time that it might have taken me," he said.

A respected mid-sized firm of 150 attorneys with a presence across the state, Kean Miller is not the only local law firm embarking on what process improvement practitioners call "continuous improvement" to identify better, more efficient ways to deliver legal services.

Across the country and abroad, law firms large and small are engaged in business process improvement training and adoption -- pushed by corporate clients seeking value and a reality that long gone are the days when business and commercial law

firms can simply expect to bill clients by the hours required for the job.

Clients are increasingly asking their legal representatives to put a price on services and requiring that the outside counsel they hire agree to more predictable fee arrangements.

"Some clients have required that we engage in this process. In other instances, they have not required it, but we find that it is to our advantage to engage in process improvement and project management," said Victor Gregorie, chair of Kean Miller's process improvement committee and an environmental litigator.

"It's something that most of our clients have engaged in for years."

The firm's defense group was putting into practice what it had trained for about a month earlier. In June, about 50 Kean Miller attorneys earned a "white belt" in Lean Sigma principles, one of the leading forms of business process improvement.

Catherine MacDonagh, a former corporate counsel and law firm executive who founded the Legal Lean Sigma Institute that Kean Miller turned to for training, said law firms and in-house law departments that closely assess their processes are often surprised.

"No one has ever seen the entire process from end to end," MacDonagh said.

Anding said the process has been eye-opening.

"It's forced us to step back and really look at how we are doing things instead of staying on autopilot and doing what we've known and done for my 20-plus years of practice," he said. "One of the main things that this program focuses around is the transition of forcing the outside law firms to make us think more like business people."

MacDonagh said there is no single approach to process improvement. Some firms and law departments start with education and skill development to gain certification. Others begin by getting a handle on how their processes are currently performing. Still others take a long-term, strategic approach to develop an overarching program and

start with organizational development.

"You don't have to come in and upset someone's whole apple cart. Work with what you already have, and that's different for every firm because they all have different strengths," MacDonagh said.

Legal market observers say it was only a matter of time before in-house law departments began adopting value-based, continuous improvement principles that have long been in use by other departments within their companies -- and are now expecting the same of their outside counsel.

"The law departments that are our clients are under tremendous pressure as well," MacDonagh said.

Amar Sarwal, chief legal officer at the Washington, D.C.-based Association of Corporate Counsel, said general counsel departments are understanding their role as part of a larger enterprise and how to help company executives achieve their goals.

"You want to find a solution for whatever the business problem is. And it doesn't always mean spending a ton of legal fees on it. It may be finding a way to quickly settle the issue or more quickly settle the deal," Sarwal said.

In-house attorneys are also taking advantage of opportunities to raise revenue themselves, he said.

In companies with valuable intellectual property, for instance, they are litigating and prosecuting those patents to recover funds, or they are pursuing open claims in contractual disputes.

"That's going to be good for the bottom line and you will be showing how you demonstrate value to the company," Sarwal said.

Law firms that can help in-house counsel manage its workload, save time and focus on what is important become valuable partners, he added.

Sarwal said the seeds of change were planted decades ago in the 1970s and early 1980s when companies began hiring general counsel who were sophisticated professionals at the height of their careers to manage law departments.

"They weren't just senior partners who were

going to hang out on the golf course and give the work to their former law firms,” Sarwei said. They were often former federal prosecutors or gifted trial attorneys who knew “where the bodies were buried” and how litigators might take advantage in billing statements.

Then, the slowdown in business activity that came with the 2008-09 financial crisis and recession brought financial pressures on companies and,

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—Christopher Ralston, litigation partner, Phelps Dunbar

in turn, their law departments. Private entities and governments began expanding their legal departments to better control spending, rather than farm matters out to law firms.

Christopher Ralston, a litigation partner at Phelps Dunbar, found that some clients took a different approach to litigation and settled things that they might otherwise have litigated out. Some have become more selective in what they want the firm to do or monitor.

“We definitely saw a different approach to legal spending, particularly after 2008 by certain clients in certain industries and sectors,” Ralston said. “We have here, and I think other firms have tried to adapt to that.”

Beyond the financial effect, the 2008 crisis gave in-house law departments a tremendous amount of leverage in their relationships with outside counsel, Sarwel said. “They haven’t let go since, and I think law firms have started to grow to understand that is not some cyclical thing where this is going to go back to the gravy train. This is forever.”

The new realities of the legal marketplace and clients’ changing expectations can be seen in their requests for proposals from law firms, MacDonagh said.

Almost every RFP that she has seen in the last year has a question about what firms are doing around process improvement, continuous improvement and project management. Clients also want to know how firms handle pricing and insure budget predictability, she said.

“It only makes sense, right? If one of the reasons you should hire me is I have a certain experience in a certain area -- I really ought to be able to explain to you how I deliver my work and I should be able to give you a fairly decent estimate with some variables built in,” MacDonagh said.

“No longer can lawyers say, ‘It depends,’ when they are asked how much something is going to cost.”

Increasingly, large institutional clients seeking more cost predictability are asking outside counsel for flat fee arrangements, according to firm managers. Most commonly requested for large portfolios of repeatable work, alternative fee arrangements can take other forms and involve class action or merger agreements, for instance, where each stage or milestone might contain its own fee proposal.

“So we have to sit back and we have to actually budget,” Gregorie said. “We have to look at cases where we have similar matters and arrive at a price that appeals to the client and still allows us to make a profit at the end of the day.”

Which circles back to process improvement and project management, Gregorie said, and the ability to “render a legal service to your client more efficiently.”

Sarwal said sound project management -- a concept related to process improvement but is essentially about agreeing on the scope of the work, the timing of deliverables and the goals of a project -- is the foundation on which value-based fee arrangements can be agreed upon.

“If you do really good project management, then what could happen is the client can say, ‘If you can make this deal happen in the next 30 days I will

give you a 10 percent bonus. If you can make it so that this class certifications motion is denied, I’m going to give you a 20 percent kicker,” Sarwal said.

“That kind of thing can be generated a lot more easily when you have the assumptions agreed upon in that project chapter.”

Gif Thornton, managing partner at Adams and Reese, said that when it comes to streamlining operations and providing value, some might observe that law firms have generally resisted changes to their business model.

In part, that’s because it is not as easy to measure profits at a law firm than, say, at a manufacturer that sells paper clips or silicon chips.

“But that doesn’t mean you don’t try, that you don’t try to position yourself to match the services

now, and can save additional time by finding and ejecting duplicates.

“A client doesn’t necessarily want to pay a lawyer to sift through eight copies of the same thing,” Ralston said. “Using this technology investment in e-discovery and on other ways we can help streamline the process, which can result in cost-savings to the client.”

Jeff Richardson, a partner at Adams and Reese and chair of its technology committee, said that mobile technology like smartphones and iPads have also become an important tools in practicing law, allowing lawyers to work with speed and power.

“So much of our work can be done on my iPhone. I can pull us every pleading from years of litigation, every correspondence, every document on my iPhone,” said Richardson, who created the popular website iPhone J.D. in 2008 for attorneys using the device.

At the same time, he noted, clients are paying more attention to security of private information.

“More and more of our clients are being sophisticated in tech requirements. One of the standard parts of the initial conversation with clients is what kind of security do you have? And some will even come to us with a Top 10 list of things they want to see.”

“Technology is amazing in what it allows us to do, but it also comes with risk,” Richardson said.

Still, some things haven’t changed. “What we know is that clients value trusted counsel and zealous advocacy,” Thornton said.

He said that as clients have gained a deeper understanding of how legal services are provided and taken a more proactive approach in how they secure those services, there is an ever increasing



provided with what the market says it telling you it is willing to pay,” Thornton said.

For law firms, it might mean one lawyer going to court rather than two, or using staff attorneys for certain work rather than partners. It may also mean outsourcing matters or work previously performed by lawyers to professionals at legal support services companies for things like electronic discovery.

Technological advances in computing power, sophisticated algorithms and paperless electronic storage have been playing an increasingly important role in how legal services are delivered while providing value as well.

In the complex litigation context, Ralston said electronic document review and discovery have brought immeasurable saving to clients.

Gone are the days when a team of associates and paralegals need to comb through boxes of documents. Software programs do much of that work

premium on law firms understanding their clients’ businesses.

“It’s understanding what the goals and priorities are of clients and how we provide legal services that fit - where we can move the needle to advance a client’s set of goals, including business objectives,” Thornton said. “Not just simply winning a lawsuit or closing a transaction, but partnering strategically with a client as they chart their course to be successful.”

Sarwal said that building “a trust-based partnership” is essential for firms and their clients.

“And these kinds of tools like project management and process improvement can help to generate trust-based communication and make it so that everybody feels like it is a win-win,” Sarwal said.