



SHOVELING SMOKE: NO PLACE FOR “TRANSFERRED ARROGANCE” WITH OUTSIDE COUNSEL



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In the second column in this series on legal department management and professional issues, Ron Pol discusses elements of managing outside counsel, sometimes likened to herding wild cats or, as he prefers, shoveling smoke.

Here, he discusses an often overlooked barrier to effective teamwork: transferred arrogance.

A senior partner of a firm with 400+ attorneys recently shared the view that in-house counsel “go to lots of meetings, give ‘off the cuff’ advice to management, and then take advice from outside counsel to back them up.” He indicated that outside counsel perform all of the “real” legal work, with in-house counsel little more than the conduit (read “roadblock”) to management, and endorsed an observation that lawyers seek in-house roles almost exclusively for “lifestyle” reasons—impliedly unable or unwilling to cope with the demands of private practice.

Although such views persist, considerable anecdotal

evidence suggests that such perceptions now seem mostly the exception rather than the rule.

Some 15 or 20 years ago, outside counsel may well have treated in-house counsel with arrogant disdain, motivating the development of such organizations as the predecessor of ACC and similar groupings in countries near and far, such as Canada’s CCCA, Australia’s ACLA, and New Zealand’s CLANZ.

Today, however, in-house roles are increasingly perceived as the peak of lawyers’ careers, with outside counsel better understanding and appreciating the value added by the in-house legal team.

Yet in demonstrating their own value, some in-house counsel may have begun treating outside counsel as mere legal technicians. They might keep outside counsel informed of strategic initiatives on a “need-to-know” basis, may require them to meet increasingly difficult targets, and may dictate the number of attorneys deployed and the precise scope and cost of their endeavor. Each of these factors has an important role in the effective management of professionals, but an often overlooked risk comes with “transferred arrogance”—when in-house counsel treat their external providers with the same arrogant disdain of which in-house counsel themselves once complained.

Some might ask, what’s the harm? After all, as the pri-

mary client representatives in the management of legal risk for our organizations, we’re best placed to exercise the client’s right to manage its legal affairs, right?

Well, partly. In-house counsel certainly have an obligation to manage their organizations’ legal affairs efficiently and effectively. Managing teams of professionals is also an inherently difficult task—sometimes compared with herding wild cats or shoveling smoke—for which carefully defined engagement protocols, fee guidelines, and other tools remain valuable.

Yet the crux of the issue lies in the outcome, not simply the process. Formerly, if in-house counsel were in effect sidelined, the results produced were only as good as application of outside counsel’s expertise, experience, and skill. If in-house counsel now treat outside counsel as mere technicians, requiring them simply to do what they’re told, when, how, and for a specified cost, there’s a very real prospect that the result will be only as good as application of the expertise, experience, and skill of in-house counsel.

Sure, the expertise, experience, and skill of in-house counsel may be considerable. The result may also be the product of using valuable additional (outside counsel) resources and in many cases may well be sufficient to achieve organizational goals.



Yet the true value from managing teams of professionals comes not simply from molding them to your requirements, but from producing results that are *better* than the results that either in-house or outside counsel could have achieved on their own. This achievement involves testing each other’s assumptions, embracing constructive criticism, combining different perspectives, and, above all, providing the framework for this cooperation to occur.

Requiring outside counsel to “jump through hoops” that don’t generate solutions that are better than those that the in-house or external teams might achieve by themselves may serve more to demonstrate transferred arrogance than the effective management of legal risks.

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