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Worlds Apart

by K.C. Victor

It has recently been my pleasure to have been asked to fill several in-house counsel searches, an experience that has given me the opportunity to see once again a truism of the legal search profession. Many more lawyers perk up their ears at the possibility of doing legal work within an organization whose main function is not legal services than express interest in a move to a law firm.

In my experience most lawyers' enthusiasm for a good in-house opportunity exceeds possible interest in a move to a law firm, even when the law firm move could include significantly more money, a jump in title and status or both. During corporate searches I have conducted, I have noted what candidates say about the allure of corporate life. I also, of course, have my own opinion.

When I ask lawyers why they want to go in-house, I get one answer more than any other. Many lawyers believe that the business of business is, if not necessarily more interesting than law, at least more vibrant. There is a pervasive belief that business is what makes the world go 'round and that a life in a firm is a life similar to the one lived by Bartleby, the Scrivener, before he would rather not.

There are many law firm lawyers who comfortably offer business advice to their clients on a regular basis, and good lawyers should be engaged with their clients' business. Still, many lawyers are shy about offering business suggestions from the outside or feel that when offering business advice they are overstepping their boundaries as lawyers.

Those same lawyers no longer feel they are imposing when functioning in-house. They perceive their role as in-house counsel, regardless of their official job description, as a quasi-businessperson. When getting to participate in their client's business decisions, with neither guilt nor embarrassment, lawyers have more fun.

I have spoken with many lawyers - particularly at the associate level - who, as outside counsel, find it difficult to get an intimate understanding about their clients' real activities. These lawyers feel that they might still be excluded from their client's serious business decisions; they would still be able, as if by osmosis, to discern their client's business needs and wants. They believe that they would understand the entire company and not just its intersection with the law.

I have been told that having one client means having a limited set of people and personalities to learn, as well as an ability to see how executives influence what happens within the company and between the company and the outside world. Although people within companies change, there are fewer changes when there are fewer companies. Another way this issue sometimes gets

expressed is that if a lawyer has only one client to serve, that lawyer can know that client very well and do a better job.

Lawyers often also expect a greater feeling of loyalty to their in-house client than a slew of various law firm clients. A litigator seeking an in-house position once said to me that she wanted to have a client she could “protect and defend.” There is a hunger for the warmth of familial ties. The familial, of course, does not always occur, but when the client is down the hall, lawyers believe that they can know their client personally, and often that is true.

In-house lawyers also believe they have more opportunity to be perceived of as heroes, as people who can sometimes save their company’s skin. I recently obtained a corporate interview for a lawyer who, after first meeting with some of my client’s current counsel, then met with the businesspeople with whom he would primarily work.

This candidate asked one of the businesspeople about the sort of lawyer he would like to hire. That person’s answer was that he wanted to hire a lawyer who would let him do whatever he wants in a business context. He then went on to excoriate most lawyers. In spite of the possible difficulty of working closely with such a client, whoever does work with such a client might regularly get to be a hero. There is a reasonable chance that the lawyer who does this job will, by stopping some business action, be in a unique position to spare the company, and perhaps this or other individuals, from defending a legal action, suffering a fine or possibly going to jail.

It is highly unlikely that someone who wants to do whatever seems like a good business move (and dislikes lawyers) would first seek the advice of outside counsel before taking a legally questionable step. Although in-house counsel might be resented every step of the way, when she or he interferes with such a legally dubious business move, there is no one who does not appreciate being saved from a legal action, serious embarrassment or worse. Sometimes even the worst of such cowboys thank their lawyers - privately of course.

Many years ago, I knew a litigator who was a partner at a major firm which for many years had been the primary law firm to a significant financial institution. This institution had rarely been in legal trouble. However, some executives at the company were being examined and were in a position where they might be threatened with personal legal actions. My lawyer friend told me, tongue in cheek, that, “After years of semi-snoozing in the Boardroom through discussions of possible corporate financial liability, it was amazing how perky people became when there was discussion of personal liability, perhaps even including some jail time.” About a year later, when an important in-house legal position opened up, their hero was offered the job. If saving was needed again, everybody wanted salvation, or at least avoidance - close at hand.

An additional significant reason lawyers pursue in-house opportunities, particularly at the upper levels, is the present or future financial reward of equity. The emotional corollary to this financial reward is a feeling of being helpful to your client as more than an hourly biller and the satisfaction of being rewarded on more than an hourly basis. In addition to the very real distinctions above, there are a number of perceived differences between law firm and in-house

life that have motivated lawyers to make these moves over the years, but which are today far from universal truths.

In-house counsel, at least those with non-routine, non-repetitive jobs, do not necessarily work less hard than their law firm counterparts. In fact, in-house lawyers may sometimes work harder than their law firm counterparts because they have a greater role within the same job function than that assigned to outside counsel. I recently was told by the chairman of a not-for-profit seeking a new general counsel that one of the general counsel's job functions will be to instruct the organization's administrative staff about how to comply with aspects of law applicable to various job functions within that company. When done by inside lawyers this work is often more time consuming than for outside counsel. When such legal training functions are performed by outside counsel, they usually stop at writing or editing a manual; when performed by in-house counsel, in addition to working on a manual, personal face-to-face meetings with individual instruction are often expected.

The notion that in-house lawyers have more job security than law firm lawyers is also no longer true. This situation has altered over the last many years, both because of changes in the corporate world and the law firm world.

Corporations of various sizes are bought, shrunk or merged. When that happens, legal departments or particular positions within legal departments may become redundant. The goal of a corporate merger is often overall efficiency, and there is no need to retain two lawyers performing essentially the same functions.

Additionally, in the last several years, life within law firms has become noticeably less "up or out" than it had been for a decade or two prior. The era of being made partner if you are a good lawyer who stays the course is long gone. However, firms are frequently finding that there is plenty of work for senior lawyers; they find that keeping such lawyers is good for the firm and its clients.

Experienced lawyers are often happy to remain at firms provided that they are treated well and paid well. Often, these lawyers control some business of their own so that their firm also values them as shower makers. Various titles exist for these non-equity senior lawyers, but "fired" is becoming less of a popular title than it once was.