



Our 2nd Quarter Managing Partner Roundtable participants took on the latest hot topic in business: collaboration. From co-working spaces to competitors pairing up to win bids, businesses are thinking outside the box about how to grow and share their piece of the pie. This quarter's panel discussed what law firms are already doing to collaborate with their clients and co-counsel and what they might learn from business as they look forward. From left to right, Jim Johnson of Otten Johnson Robinson Neff + Ragonetti; Peter Gould of Patton Boggs; Kent Modesitt of Reilly Pozner; and Jeff Weeden of Feldmann Nagel. | LAW WEEK PHOTO ILLUSTRATION ALI BIBBO

# LAW WEEK

## COLORADO

## Can Law Firms Innovate By Collaborating?



The 2nd Quarter Managing Partner Roundtable participants clockwise from left, Jim Johnson of Otten Johnson Robinson Neff + Ragonetti; Peter Gould of Patton Boggs; Jeff Weeden of Feldmann Nagel, Kent Modesitt of Reilly Pozner, and Meg Satrom of Law Week Colorado. | LAW WEEK PHOTOS AMY VANCHINA

COLLABORATION is a hot topic in business these days. From headlines in *Forbes* and *The Harvard Business Review*, to startups focused on workspaces that foster collaboration among employees, businesses of all sizes are trying to find ways to play nice within their organizations, and in some cases, with their competition.

Law firms are typically behind business in finding ways to innovate, but our 2nd Quarter Managing Partner Roundtable participants had some relevant examples of what their firms and their clients are doing to stay ahead of the collaboration game, and they're doing more than you might think.

As a growing number of clients are looking for new and different ways for their outside counsel to deliver a top-notch legal product, an increasing number of firms are thinking about ways to create collaborative work assignments for their attorneys, old and young alike. A few are even working to collaborate with other law firms.

But is collaboration the new frontier for law, or is it just a passing fad that will soon fade? Our managing partners answered some difficult questions along these lines. The participants included Jim Johnson of Otten Johnson Robinson Neff + Ragonetti; Peter Gould of Patton Boggs; Kent Modesitt of Reilly Pozner; and Jeff Weeden of Feldmann Nagel.

Meg Satrom, editor of *Law Week Colorado*, moderated the discussion, and Lori Martin of Hunter + Geist recorded it.

LAW WEEK: The *Harvard Business Review*, which I think is one of the best

publications out there, last year devoted an entire issue to collaboration. It's a hot topic in business right now.

Some people might say that collaboration and the law are mutually exclusive, particularly when litigation is concerned. But I don't think that's the case. Before we get into that though, I'd like to know, are your clients talking about collaboration? If they are, in what ways are they collaborating? And are they broaching the topic with law firms?

MODESITT: I often represent very large corporations with numerous subsidiaries, siblings, parents and all of these different entities, and what I saw especially, five or six years ago, was a lot of competition among those siblings. That seemed to be the norm then, but that has changed.

Probably beginning in 2008 with the financial problems, I've started to see a lot of reorganization — now there's one umbrella

corporation that's capitalizing on the collaboration that's available. So instead of having competing siblings in the same area going for the same potential customers, they reconfigure their products in order to allow collaboration to occur.

I haven't seen it as much among competitors in the normal sense of the word, but certainly within larger organizations, I've been seeing it a lot.

WEEDEN: I've not seen a lot new in regards to collaboration with our clients.

But I think that within firms, and in not only our firm but other firms, I've noticed an intentionality regarding collaboration. The new normal is you have to be able to make the pie bigger, at least for your firm. And it seems that firms are finding ways for attorneys to collaborate so that the firm might obtain more market share from a competitor.

There are also lots of opportunities

between firms of different sizes to collaborate because you handle different cases oftentimes, and so that winds up being collaborative in a way that does not raise the competitive ire that is typical in most situations.

We have found opportunities to collaborate with other firms that either have a size difference, a geographic difference or a practice area difference that allows us to augment something that we do, or in turn, we might augment something they do. That has allowed us to do more work. And that's a relatively collaborative approach.

One thing that we would like to do more of is any kind of global work. It seems to be particularly suited to firms that need a local presence somewhere we have an office but they don't, or where it requires some knowledge or best practices within a given subject matter. That's a great opportunity for collaboration within a global arena.



PETER GOULD

LAW WEEK: Absolutely. And I want to drill down into some more of those examples maybe when we get to the next question, so thank you for reminding me of that already. Peter, what have you seen?

GOULD: I thought about it as I was reading the materials, and it occurred to me that I don't see a lot of it. I work for clients in highly regulated industries (dealing with government enforcement within those industries and trying to work out the enforcement and maintain compliance), so the kind of collaboration that we're talking about here, I haven't seen as much.

But when I thought about what the clients are doing, I said, "Well, gosh, collaboration is the way that I have to practice law."

When you are dealing with a regulator in the enforcement context, you cannot maintain a scorched-earth policy one day and the next day ask them for permission to do something on a question regarding compliance and still maintain that good working relationship that the client or the industry needs to make progress.

You said that we're probably going to talk about some examples, so maybe I'll save my next comment for that. In terms of collaboration within the firm, the private comments were right on the money, especially in the movement toward inclusiveness and diversity and clients demanding that collaboration within the firm from people from a variety of backgrounds with a variety of different ways of looking at the same problem.

Clients are expecting that because that's the biggest value add, especially for some of the firms that operate on a larger scale and may have, just by virtue of their sheer size, more diverse viewpoints and ways of looking at and solving a problem.

LAW WEEK: Absolutely. And it's interesting to me that every time I do these roundtables, regardless of the topic, diversity and inclusiveness come up, which I think signals the need for a roundtable devoted exclusively to them. Now Jim, what have you seen?

JOHNSON: I don't know that I can really elaborate much on what these guys have already said, but what I'm seeing, especially with our large clients who do business around the world, is that they're demanding their counsels who represent them

collaborate.

Our firm does client interviews where I go out and spend some time with our clients to see how they're doing, how we're doing, etc. It's a trip for me to go get to know them and tell them we value their business, that kind of thing. I was recently on one of those trips in San Diego, and the client said that they have four firms that they work with, including us.

And what they were talking about was how each firm they use has their own tweaks to the documents the client regularly uses. For example, if their people set up a deal with their California firm, that deal will come out slightly different than the firm in New York might do the same deal. And what they were concerned about was what happens when they want to make a change to their standard documents; how do those changes get disseminated to the four firms? How can they ensure the four firms are on the same page when it comes to the client?

What they were suggesting was that because the four firms doing their work are operating in distinct geographical and practice area, we shouldn't view ourselves as being competitors and that we should be collaborating with one another — not only on changes to their standard documents, but on best practices across the board. So I suggested to them that we should all get together for an outside counsel collaboration.

They're not the only client that's doing that. When you have more than one outside counsel, clients are starting to require the outside counsels to work together collaboratively.

The other example I'd provide is about forming alliances. We're a member of the Law Firm Alliance. It's a group of law firms that operate in usually one geographic area, so none of the law firms compete, and they're all of similar size — 50 to 100 lawyers. We get together twice a year in different locations for meetings and talk about best practices, about referral sources and so on.

We're a referral source for each other for different kinds of work, and I've found it to be very valuable — if I'm having an issue with somebody or with a partner or with an associate, with staff or something in my firm, I can have a very candid conversation with this person who is from Seattle or from Honolulu or from London. And what I'm finding is that everybody's having the

same kind of problems.

It's very refreshing to hear somebody say, "I had that problem a year ago, and here is how I handled it."

And what we also do, and I think maybe something that you mentioned, Jeff, is that we get together on proposals. We've done a couple of things where some firm has an expertise, and we have an expertise, and we combine and put proposals together, to win work we might normally bid.

MODESITT: It's interesting. But I'd like to go back to your first comment when you were talking about the client demanding or requesting collaboration. We saw a very real example of that recently with a client who had 500 or so law firms working for them. They made a concerted effort to try to reduce the number of firms and then to require those that remained to collaborate.

They put out an RFI and two of the questions out of 20 were about collaboration. One question asked, "how can you collaborate with other firms to produce a better product?" Then secondly, "What have you done in the past to collaborate with other firms?"

So it certainly is something they're thinking about, and now it's just going to grow.

JOHNSON: I don't think they view us as competitors. They're thinking "We're trying to get one service, and we need you guys to talk."

LAW WEEK: That's the definition of cooptation that I provided pre-reading on — the idea that competitors might benefit from collaboratively competing.

I'm grateful you mentioned law firm alliances because I think they're such an interesting idea. It's so great to see law firms, of their own volition, coming together to talk about those issues. I love when that happens, and to hear that that's happening on a national and international scale is really interesting.

Well, one of the things that I wanted to talk about is internal collaboration as opposed to external.

Internal collaboration is sometimes more difficult than external. When you look at smaller firms that specialize in one area, does that prohibit the kind of collaboration that a larger law firm can provide by leveraging across practice areas? What

ways can firms promote or encourage internal collaboration, regardless of their size?

WEEDEN: I don't really see specialization as much of an issue. In fact, specialization provides a real opportunity for collaboration because oftentimes if there is anything that specialist cannot or is not willing to do, they can reach out to someone who may want or have more of an interest in that work. It's an opportunity because there are typically people either within your practice group or within your organization who specialize in whatever you'd like help addressing.

So I have not experienced it as limiting to collaboration, but it has actually been a bit of an opportunity for collaboration.

Collaboration, from our perspective, is very relationship oriented, and it's very networking oriented. So when we have someone who does something that is highly specialized, particularly if we're not necessarily doing that, it's an opportunity for us. It's a profound opportunity to say, I know someone who is a lobbyist and who does this type of work within that world.

It's a great opportunity for us if we happen to land some of that type of work or we're trying to land that type of work, to be able to collaborate with someone else to make that happen.

JOHNSON: I think the low-hanging fruit in internal collaboration is cross-selling across the different practice areas. My experience, both internally and externally, is that some firms do a great job of it, and some firms do a horrible job of it. There doesn't seem to be much in between. But what we've tried to is capitalize on that.

For the first time about a year and a half ago, we hired a marketing person. We never had a marketing person before, but it was time.

And Heather [Baker] has been putting this thing together that she calls BD boot camp; she's divided a number of us up into teams — 16 to 20 of us on four or five teams.

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same practice area. So a litigator would be teamed with a corporate person and a real estate person and so on. And each team is trying to get business. We meet once a quarter, so it's not oppressive, but she encourages us to open our business development plans together and work collaboratively to figure a way to work together to bring in new clients.

Can we put a presentation together? Can we do some kind of press thing? A blog? or whatever it is ... we do different things that get us working together.

She's tried to make it competitive by awarding points to teams that get certain things done. So if you bring in a new client, then you get X points. If you just go to coffee with a current client, you get Y points etc., and she totals up the points every quarter and then gives people some prize if they've performed well in that time.

So it's a collaborative internal effort. Lawyers, at least in my experience, don't always like to talk to each other, and this gets people talking about what they're working on and the clients that they're working on. And I think the more you provide opportunities for people to talk, the easier it may be.

LAW WEEK: It's an interesting idea because I think the common perception is that the traditional law firm is silo oriented. There is a definite and hard break between practice areas, between litigation and transactional work, so fostering discussions between what are sometimes very opposing personalities can be really helpful.

JOHNSON: I think as a firm gets larger, there can be very distinct silos but at least in my firm, people move around a little from transactional to litigation and from various practice areas, and that's a little unusual, but that actually provides opportunity for collaboration as well, because you can say, "Hey, I was in your group, and I did what you were doing, and now I'm doing something different but I know your people, and I know the clients you're working for, and I've got this new client who's doing X and Y and Z. And why don't we chat?"

MODESITT: Reilly Pozner has a similar situation. We have 30 lawyers, and that's a good size in that we don't have those silos. We do one thing: We litigate, we try cases.

So we don't have practice groups, and what happens is if somebody is interested in a particular area of law and a case comes in with that, they may ask to be on the team, or we may assign folks as we see fit.

If it needs 10 more, we'll grab 10 lawyers that will be good for the case, and they'll become a team; but over the course of time you're working with many different people.

I work closely with everybody, all 30 of the lawyers, and I think that really does foster collaboration in that you understand the other person and you know them well, you can trust them, and that leads to something else. When you had asked, "How do you foster collaboration?" I thought it begins with the hiring process.

It begins with hiring; you want to make sure when you're hiring somebody, he or she is going to fit into your model. In our case, it's a collaborative model, and one thing our firm does is that every single lawyer participates in an interview of every new candidate once it reaches a certain level. Every lawyer has to approve hiring the new person, so everybody has a say, and I think it really brings in people who fit with our firm.

I've been at the firm since September 11, 2001. That was my first day. It was 10 lawyers then, now it's up to 30, but we've still managed to keep the culture that I think has allowed us to succeed, and part of that is through the hiring.

The next step is that you also have to manage the collaboration because there can be positive collaboration and, frankly, negative collaboration. Just meeting for the sake of meeting doesn't benefit anyone.

There can also be decision-making problems with collaboration. If you don't have somebody who ultimately has the say, I think that you can get into this endless loop of trying to make a decision, and that doesn't serve anybody's needs.

LAW WEEK: It sounds like collaboration is a more organic process at Reilly?

MODESITT: Very much so. In terms of how the groups are established, and then how the various managing attorneys on a particular case handle it is different, you'll see different approaches; and periodically those of us who manage the cases will sit down and talk about what worked and what didn't. Or this software was great for organizing things or this wasn't.

LAW WEEK: That's meta-collaboration. And that's great because you engage in lots of experimentation.



JIM JOHNSON

MODESITT: Well, if there's error you learn from it and you move on.

WEEDEN: I was going to just riff off of something that Jim said. He was talking about the low-hanging fruit, cross-selling. And, yet, firms don't do nearly as good a job as they think they are doing.

Most firms think, "If we have a capability within our own firm, we're certainly going to cross-sell that," yet without being thoughtful and intentional about cross-selling, that mentality can become a barrier to collaboration. If firms aren't thinking broadly about what they can offer, and they're just relying on the same tools over and over again, they're not doing enough.

Whatever tool it is, whatever mechanism you have, whether it's a knowledge management component or whether it's more of a project management component or a marketing component, firms should be contemplating all they can offer and thinking outside the box in terms of offering even more, even if that means working with another firm.

I think every firm says that they cross-sell well and every firm wants to, but we're trying to be a lot more focused on challenging that. We're asking "how well are we doing that? What are we doing, what else can we be doing?" Because that's probably the easiest and best thing you can do to not only improve your bottom line but to improve collaboration within your organization.

GOULD: What you were alluding to is that there are different kinds of collaboration within a law firm.

The easiest examples are developing the work and performing the work, and developing tends to lend itself to cross-selling very well. Performing, depends on the task, and sometimes the client doesn't have an appetite for collaboration. If they just want you to hurry up and get one quick, easy thing done, they don't want you to sit around and collaborate. They're going to say "Just get the thing filed, we can talk about it later, I don't want to see a big bill."

But cross-selling is perhaps one area where lone wolves rarely succeed as well as a group, and what my firm, for example, does to encourage that is to reward cross-selling.

Lawyers can be arrogant as a breed, and sometimes they think that they can do something better than a group could,

so you have incentivize them sometimes to work together.

So Patton Boggs gives extra credit for selling across departments and across offices and, frankly, I find it more satisfying to work with colleagues, partners, associates in various offices on various continents to help a client solve a problem or to bring in a new client and help present a solution to a particular problem to them.

The most rewarding projects are those big projects where you have a lot of people working together in different time zones and different geographic areas in different practices. Like my favorite is a huge due-diligence project where you need IP lawyers and you need regulatory lawyers, you need dirt lawyers and everybody's got to kick the tires on this deal before the client can evaluate whether it's a good deal and there's usually a very short turnaround on that and everyone's moving together and

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— Jeff Weeden

clicking on all cylinders. I find those to be the best kind of projects to work on from a collaboration standpoint.

LAW WEEK: They're great stories to tell as well, and we like to tell those in our quarterly big deals issues.

Does anyone else want to talk about internal collaboration before we move on? I'm interested hearing your thoughts about those times when cross-selling may not be possible, where you may have to look externally for a good partner.

How often are you bidding with another firm on a project? It's done frequently outside the law, but I rarely hear those stories from firms. Are law firms going to move in that direction? Is it even possible? And specifically with litigation, does litigation preclude collaboration?

MODESITT: Well, I can talk about litigation and as we've been discussing there are circles of collaboration.

Intra-firm, as we discussed. And then inter-firm, which I think is where you're moving — how do various law firms work together to serve a client? Collaboration with a client, collaboration within

co-counsel or opposing counsel.

All of these things exist. In terms of litigation, I see varying degrees of success with collaboration on all those circuits. Usually we do not bid on a job, so to speak, together with another firm, but we will engage another firm as needed. Let's say bankruptcy. We don't have a particular specialty in bankruptcy, per se. We do litigation within bankruptcy but not the actual bankruptcy work. So we will work with often the same law firm and work together to serve the client's needs, so that certainly occurs.

One of the interesting things is collaboration with opposing counsel because that would be a point where you think the interests are so divergent that collaboration just would not occur, but I think that there is a certain point where the lawyers recognize that working together can actually serve both clients' interests. It's not a zero sum game.

Instead, there are times when it's better to work with somebody to fix a problem. For example, just an example that popped into my head, we had a very large case and we were on the defense side. The plaintiff had sued numerous entities within this big organization, and one of them were having problems figuring out what the appropriate company was within the organization; and after speaking with my client, I actually worked with plaintiff's counsel to get the right company because after speaking with my client, we realized that the time spent fighting them wasn't worth anybody's time.

There's a benefit that comes out of that. You establish a rapport with opposing counsel, which I think is critical to a beneficial resolution. You avoid fights that don't have to be fought and thereby save your client money, and I think it helps in a lot of ways. So the collaboration in litigation certainly can occur, and it does occur on many different levels.

LAW WEEK: We're starting to see it in some practice areas very frequently. In family law, there is a formal collaborative law process. And lately there has been an increasing discussion about collaboration



JEFF WEEDEN

in the criminal law context. The New York Times had a great piece last year about restorative justice, which is a collaborative process between all of the parties, victims, defendant, counsel and judiciary. Jeff, have you seen that yet?

WEEDEN: I see us moving towards restorative justice in collaborative models. There's not a lot of that that goes on right now, although it can happen organically. Oftentimes a particular judge will foster that if the right people are in the room for sentencing.

But there's so much more that could be done as far as putting in a regime or a structure that would facilitate that.

I see a lot that's being done where someone will have a situation that they don't want to go through the court system and yet a wrong has been done or someone needs to be made whole, and a restorative justice initiative can be used there. And it seems that juveniles are particularly well suited for that type of situation, but I think that it's one of those things that in 10 or 20 years people will smack their heads and say, "Why weren't we doing that all the time? Why isn't this something that leapt out at us as something that's intuitive and understandable as a desired result within that context?"

JOHNSON: It seems to me that's going to be very case and victim specific because there may be some victims that just don't want to be anywhere near the perpetrator, I would think.

WEEDEN: Absolutely.

LAW WEEK: The other area that I think is particularly interesting is government, which seems to be the antithesis of collaboration. At this particular moment in time, nothing in Washington seems to be collaborative, but Peter, are you seeing any of it in your work?

GOULD: I am. You know, agencies are very funny. They change personalities every couple years. Each agency has its own personality and depending on who is running the show you'll see different models. So that depending on the issue, it can be collaborative.

On a particular case, it's very easy to sit down and try to work out a collaborative approach to solving a problem that's arisen;

but in long-term, big-picture planning it's rare, because as soon as they start to implement it, it's time for them to vacate the offices and make room for the new guys.

Where I have seen it recently, in the litigation context especially, but also with transactions is with the use of outside consultants. A lot of the work they do is work that we could all do if we had the time or the budget. It just makes no sense for us to do some of this commoditized work that our consultants do. It adds value to the client and we can manage it and make sure it's being done properly, but we don't need to have our hands on every aspect of a particular transaction or a piece of litigation.

There are also some instances of forced collaboration, particularly in some rule-making processes.

MODESITT: Forced collaboration is an interesting issue. And I have a recent example. In San Francisco we had a case, and the judge there was very high on collaboration between opposing counsel to avoid, in this case, discovery disputes.

He would not allow you to file a motion to compel regarding a discovery issue until both of you stood before him in his courtroom to discuss it. He really wanted to limit those motions.

And the lawyers learned pretty quickly that they were going to have to work together in order to come to a solution because if they didn't, we were going to have to do the same thing in front of the judge again and again, and you may not get what you wanted.

LAW WEEK: So what was the resolution? Did it help the case?

MODESITT: I believe it did, yes. I believe that we had no motions to compel in a major case and ultimately what happened was that what was needed to be done was done in the case as a result of this forced collaboration.

GOULD: Got the backbones out of the way, got to the merits pretty quickly.

MODESITT: Exactly, and he had an out; if you absolutely couldn't agree after working with him, and he would work very hard on it, he would allow you to file a motion, but for the most part and in our case, the entire time we did not end up filing a motion to

compel.

GOULD: Just going back, Meg, to one thing you asked and I just recalled where we do see collaboration or I see it in the government context is members of Congress are very willing to work with their constituents to help them solve problems that involve government agencies perhaps overstepping their bounds.

That is a fascinating and really exciting thing to watch play out — you can have a member write a letter to somebody, the head of an agency, and really get some pretty quick results if it's the right member, and it's the right issue, and it can short-circuit many months of litigating and briefing, summary judgment motions, and appeals and I've seen it happen quite a few times, and it's remarkable.

LAW WEEK: Well, that's optimistic. I had thought this topic was going to be a little bit of a downer discussion because I haven't really seen collaboration in the law. But once we started talking about this you guys all have had examples and that gives me hope that it's possible.

JOHNSON: I'd like to back up to the first point that you made when you introduced this last topic, which was collaboration among firms.

And what I'm seeing more and more, and I'd be curious to see if you guys have seen it too, maybe it's just the space we operate in, but the first five, six, seven years that I was at Otten, Johnson, I don't recall seeing many RFPs at all.

Primarily the work came in through just word of mouth or an individual attorney, but in this past year, we have responded to more actual RFPs for legal services than we responded to in the first six, seven, eight years that I was at the firm.

And lately we have started responding to Request for Proposals that we would never consider responding to ourselves, after reaching out to primarily our Law Firm Alliance partners but also other firms in town to collaborate and provides scopes of services that we couldn't do on our own.

And in that sense, I think the legal field is becoming more like a regular business.

WEEDEN: I would agree with that. We have not found that to be the case in our space. We're a full-service firm, but all of

our work tends to be relationship centric. We know what's coming. What's coming is more and more of the work you're talking about, RFPs.

The way that business handles contract procurement, all of that sort of thing is going to change — we need to be prepared and nimble enough to handle that, and one of the ways we'll be able to do that is by collaborating inside our firm, outside our firm, with larger firms, with smaller firms.

Probably the biggest challenge — well, at least a challenge that I think that we are facing, is with the value proposition that we're trying to make to clients being challenged more and more with price sensitivity.

The new normal is that everyone wants collaboration. If you tell a client, "Hey, how about we bring in five experts in different practice areas and have them take a look at all this, put an extra set of eyeballs on this, put some really smart people on this?" Everybody says "Absolutely." Yet when you say, "But we're going to have to pay those five experts," people say, "Whoa, whoa, whoa, let's slow down."

So I think that the difficulty is overcollaboration, where is undercollaboration, what is the nexus of that with the value proposition to the client. That is tricky.

We've not had to navigate those waters much as law firm managers in the past, and if you're not now, like Jim is, you're going to in the future. That's for sure.

JOHNSON: This is changing — the whole practice of law is changing from a relationship business into a more fungible service, and we're seeing that in our long-term clients. They're saying, "You know what, let's see a few different price structures."

We've always prided ourselves in delivering the top-notch product. We spend every minute that's required to deliver just the best product we're capable of producing, but we're seeing some of our clients say that maybe they don't need the A product.

They're saying "We got a deal that

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— Jim Johnson

needs to close in two weeks. We got three issues that are a problem for us. Protect us on those and get the deal done.”

They don't want us to spend hours and hours on it. They want a budget. They want a budget and they want us to meet that budget and they want us not to necessarily deliver the A product, and that's a struggle for us internally because that's just a whole mind-set change.

MODESITT: Right. I think that, in many ways, the legal profession, more so than in the past, has become a commodity.

I'm seeing with clients and potential clients treat it that way, including having non-lawyers from the company establishing standards based upon the law being a fungible commodity.

There are some problems with that in that. For example, I am seeing mixed messages from the clients — one client was very high on the collaboration among lawyers; but at the same time, when we got the next job from them and received their billing requirements, it said no meetings with more than two lawyers. I've seen that a couple of times now and I've gone to general counsel



KENT MODESITT

and said, “Those meetings with more than two lawyers are where the best stuff happens. And it’s an essential aspect of what we do, because there’s a value to collaboration. We haven’t really talked about what the value is.

The value is you get to take people’s skill sets and combine them. And build upon them — the whole is greater than the sum of the parts, and that can be lost.

GOULD: I’ve seen that in billing guidelines, too, and I’ve always wondered what the rationale is.

JOHNSON: Non-lawyers are putting together the billing guidelines.

WEEDEN: All of this is more evidence for us to be very focused on the value proposition to the client because that education is important. The days of people dragging warm bodies into meetings are gone. That’s not going to work anymore, but if you’re talking about some kind of important synergistic, collaborative effort that you’re trying to do, they’re going to buy that.

People are going to buy that, but the trick is that you very well may have to have in-house counsel or someone aiding you, because if you’re talking procurement that is difficult.

We’re going to have to collaborate within the businesses to find people who will help us carry that message forward because it’s enormously important, and the difficult thing is that we have all been part of collaborative meetings where it wasn’t magic and unicorns and rainbows, but you have to be able to make that pitch that there’s something very special that can happen here that can’t happen in any other mechanism that is going to wind up being very valuable to you, and for you to have been able to communicate that is a model for all of us because we’re going to have to be fighting that fight moving forward.

JOHNSON: The issue here is we’re talking about the symptoms and not the disease. What the issue here is that we’re billing by the hour.

That’s the issue. We propose alternative fee arrangements all the time to our clients, and I think they appreciate them. We track our time still, and we find most of the time we make more money on an alternative fee arrangement, but, the solution is you don’t need to know how many people are in the meeting.

You need to know that we’re getting your results on budget for you.

WEEDEN: That’s good.

MODESITT: Are you finding, as we are, that there is a drastic surge in clients’ recognition of the values of alternative fee arrangements and their request that you do at least present different fee arrangements to them? We’ve seen that in the last probably two years.

GOULD: We’ve seen it. Everybody seems to embrace it, the concept of it, but we don’t see as many people jumping on the bandwagon to accept the proposals.

JOHNSON: Yep.

GOULD: Some do and some work out well for both client and firm. But not always. Litigation is a prime example.

Lobbying is the same deal. You just don’t know what you’re going to end up working. The commoditized practices are easier to set — you have the expectations, they’re easier to sort of set alternative fees, but, gosh, before you figure out who opposing counsel is going to be, you don’t know if they’re going to file a motion to compel every other day.

MODESITT: Well, yes. That’s absolutely true that it is difficult, but that brings up another possibility for collaboration with

your client.

Before they’re your client.

You sit down with them and you figure out stages.

For example, if we get to this stage, it will cost this. Here is the budget given these circumstances. But given circumstances we don’t foresee, we’ll have to sit down and discuss again.

So if we’re at X, it will be this much, if we’re at Y, the fee is going to be this much. You have to be very creative for these to work.

JOHNSON: You’re exactly right. It’s an opportunity for collaboration with your client, because you can actually talk about not just the goal but how are we going to get there, and we found what works really well is tell them what the budget includes. Here is what the fee includes, and so if we get to X and the assumptions are all wrong, then this isn’t going to work, and we’re going to have to sit down again to talk about where we’re going.

GOULD: Or it doesn’t include trial. If it looks like we’re going to trial, we’ll go back to the billable hours.

JOHNSON: And it assumes — in the transactional aspect, we’ll say — it assumes we’re going to turn this contract between us and the other side three times; and if it goes back and forth more than three times, then we’re going to have to talk about that again or something like that.

LAW WEEK: But you guys are all poised and possibly cursed by being in the positions you are in at this moment in the evolution of the practice of law, because we’ve never had these conversations before, but they have to happen now.

So bon chance.

MODESITT: One last thing I want to say is that we do have to be creative about collaborating with our clients. One thing that we’ve done recently is on the bigger cases we’ll have a postmortem — we’ll fly out to wherever the client is on our dime. We’ll put together presentations saying, “We spent X amount on summary judgment motions, was that worth it? Or we — we had five associates working, should we have had four and another partner?”

And we’ll go through and have this discussion; and what I’ve found is that it aids us as much as it does them on a number of levels in terms of understanding if we wanted to do alternative fee arrangements, figure out the data, number one, but, number two, it’s a wonderful client relationship tool. •