Client Concepts of Value
When an Attorney Changes Law Firms

By Michael Roster
(626) 449-9797 | mroster@earthlink.net

For further materials about the Association of Corporate Counsel's Value Challenge, go to: http://www.acc.com/valuechallenge/.

"The Times They Are A 'Changing"

Once upon a time and not so long ago, general counsel and other in-house lawyers didn't have many concerns when a lawyer they regularly used, usually a partner, made a lateral move to another law firm. This was in keeping with the statement often made by in-house counsel, "I hire the lawyer and not the firm."

Those days are gone.

That isn't to say a corporate client won't often follow a partner or other lawyer to the new law firm. But a lot more thinking now takes place. Let me explain by addressing the kinds of questions that typically run through a general counsel's mind when we hear a trusted lawyer is changing law firms.

Why are you moving to a new firm?

In the old days, we clients assumed the partner/lawyer was making the move because she or he would get much better support services from the new firm and that they could serve us, the corporate client, better.

In today's world, we clients aren't stupid. We read American Lawyer and other trade publications. We and our senior executives see news reports about average profits per partner at specific law firms. Many/most of us once practiced at law firms, often as partners. So we know all about laterals selling their books of business – meaning, they often are selling the legal work of our companies to a new firm in order to enhance their own personal incomes.

As senior officers and fiduciaries for our companies, we have an obligation to confirm that our willingness to move will substantially enhance the work done for our companies. If you think about it, it can't be any other way lest we breach a fundamental duty we have as general counsel. And if one is following ACC's Value Challenge, that means:

1. Reducing legal costs, usually by 25% or more.
2. Providing high predictability.
3. Improving outcomes.

So it now behooves us to ask the lawyer making the move: Just how will this move help achieve at least one if not all three of these Value Challenge targets or similar factors?

In most cases, we have developed trusted relationships with our outside counsel, so we want to help facilitate their careers, including if that means their moving to a new law firm. But niceness can go only so far. At very least we need to hear how the move will help achieve the three targets or similar factors, how client services will improve and the like.

Does your move mean my company's legal costs will decrease? Increase? Stay the same?

This is a critical question. We general counsel have a very good sense of the different cost brackets of the law firms we use and firms we don't use. Long ago we concluded that some firms are very expensive but worth it. Others are expensive and not worth it. And some are lower cost providers that we love since their costs are significantly lower but their quality is high or at least calibrated to what our companies actually need (the Cadillac versus Chevrolet comparison).

Expect the question to be raised when you call us, the client, to say you are moving. Are my company's legal costs going to go up or down or stay the same?

And don't tell me you don't know. In fact, you better be able to say my legal costs will stay the same, and better yet if you can say that a key reason you are moving is that the cost structure of the new firm is less than your current firm's and as a result, my company's legal bills should be less than before.

What about conflicts at your new firm?

Client conflicts as well as subject matter conflicts have always been of concern to general counsel. As law firms become significantly larger, the conflicts situation has been become an even more severe problem for both clients and their law firms.

At your old firm, we've established long ago the parameters of when conflicts are likely to arise. These conflicts, whether with other clients or in a subject matter, have been discussed and sorted out.

When you move to a new law firm, all of these issues are opened up again. And the problem is all the worse since the firm you're moving to has achieved some sort of stasis with its current clients and matters, and my company is going to be at the end of your new firm's queue.

Hopefully you've checked all of this out before you call us with the happy news (happy, at least, for you) that you're moving to a new law firm.

And if there are conflicts, tell us up front, not after we've moved some if not all of our matters along with you. Among the worse things you can do is to tell us there are no conflicts problems, and then once our company's business has been moved, you start calling us and asking for waivers (which we largely can't or don't want to give) or that you can't handle matters at all.

Raising client and subject matter conflicts impacts not only the general counsel, but these issues are seen and discussed by the company's senior executives and the relevant business managers. They don't like hearing that a long-trusted lawyer is suddenly at a firm that has often been on the other side.

What if my company has an entire portfolio at your current law firm?

In many instances today, as value-based relationships take hold, a firm or practice group may be doing a whole portfolio of work for a corporate client – for example, all of a company's securities filings, environmental compliance, product liability litigation and the like.

Often it takes the first year or two for everyone to get used to how a portfolio will be managed including who handles the routine matters, who gets involved for the more challenging matters and how costs will be monitored and controlled.

So if the lateral move involves a whole portfolio, all of the concerns discussed above about staffing, conflicts, etc. become bigger still.

Among other things, we corporate clients need assurances you will have the legal resources at your new firm to continue to handle the portfolio, that your new firm understands how to price and manage portfolios and that moving to the new firm will help us achieve one or more of the Value Challenge targets or similar factors.

What's happening with the rest of the team that handles our matters?

Whether you handle selected matters for us or whole portfolios, we and our internal managers have become accustomed to your entire team. And no offense, often we see that better value is coming from more junior partners and associates, even paralegals and secretaries.

So is the entire team moving with you? If not, why not?

Let me repeat that last question: If the whole team that we rely on isn't moving with you, why not? Is it because the economics at your new firm won't support the full team even though you are likely to make more money from the move? Worse, are there reasons the people working with you don't want to move with you?

How does the new firm compare with the old firm on some key metrics?

We general counsel increasingly have access to and use a variety of data bases to test the value of matters and firms. Those metrics might be hourly rates, the success of the old firm versus new firm for specific types of matters, the ratio of partners to associates (leverage), etc.

When you call to tell us you're moving, you better know those metrics for both your old firm and your new firm.

And if you think about it, you better have thought about those metrics before deciding to make the move.

Do we already know the new firm you're moving to, and if so, what do we think about that firm?

Most of us general counsel and other in-house lawyers have formed opinions about a wide range of law firms, even if we don't currently use those firms. We might have used them in the past and stopped using them for a reason. Or we have regularly heard good and bad things about the firms from our colleagues at other companies.

So it would be useful if you would ask us, even before you make the move (assuming you can legally and ethically have that discussion with us), what do we think about the firm you're proposing to move to?

If you can't ask us beforehand, be sure this is one of the first things you ask us when you call to say you're making the move. If instead you just tell us what a great opportunity this is for you and don't even think about discussing the concerns we might have, that's going to be remembered by us, whether or not we go along with you when you make the move.

If you're hit by the proverbial bus, who will take your place?

Most of us general counsel meet once or twice a year with our CEO, as do most other senior executives at our companies, to discuss a single issue: If we are hit by the proverbial bus, who would take our place.

At one of my companies, after we identified the two or three key candidates for each senior management position, we then went out of our way to give those internal candidates increased exposure to the CEO, the board of directors, other managers and the like.

Increasingly, we general counsel are asking the same question of the leading partners at our law firms. If you're hit by the proverbial bus, who would handle our work at your current firm?

I raise this point because it's increasingly seen as a fiduciary obligation that we GCs have a succession plan with our outside counsel just as we do internally so that if and when you retire, we already have confidence in your successor.

But the question now has an additional purpose. That is, if you're moving firms, we might say to you, "Godspeed and we wish you well. But per the succession plan you and we have agreed upon, the next people on your team will be more than adequate to continue handling our work, and at your old firm."

The fact is, we might even prefer the next layers in your team but never got around to telling you. Your move now calls the question.

MICHAEL ROSTER BIO

Michael Roster previously was Managing Partner of Morrison & Foerster's Los Angeles office as well as co-chair of the firm's Financial Services Practice Group worldwide, resident in both Los Angeles and Washington, D.C. He subsequently served as General Counsel of Stanford University and Stanford Medical Center and then of Golden West Financial Corporation.

For the past seven years, Mike has been teaching an advanced contracts course at the University of Southern California's Gould School of Law where the goal is for students to be at a first- or second-year attorney level or higher in contracts by the end of the course. He also served on two faculty task forces looking at reforms in the law school's curriculum.

Mike also is the steering committee co-chair of ACC's Value Challenge and is an outside director of MDRC, a nonprofit corporation based in New York that that evaluates the effectiveness of government and other programs affecting lower income families and individuals.

Mike has been a director and chair of ACC, an outside director and vice chair of Silicon Valley Bank, chair of the Stanford Alumni Association, and chair of two start-up companies: Insert Therapeutics and Encirq. He also is a former director of the California Bankers Association and the Federal Home Loan Bank of San Francisco.