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How Law Firms Can Compete With Alt Service Providers

By **Melissa Maleske**

Law360, Chicago (April 7, 2017, 5:55 PM EDT) -- As an ever-expanding marketplace of alternative service providers becomes the new normal for law departments in search of lower-cost work, the law firms whose work they threaten are learning to live by the old adage, "If you can't beat 'em, join 'em."

Once upon a time, document review was big business for law firms. The standard playbook for a sizable litigation or transaction involved hordes of associates combing through the roomfuls of records or the digital equivalent for relevant information — and billing accordingly for their labor.

That paradigm has changed. Technology-assisted review can now automate some of the process, and legal process outsourcers, or LPOs, and other contract services can provide low-cost skilled teams to tackle what remains.

"With the advent of the electronic age, large parts [of discovery] were ripped out from under law firms largely because they just didn't have the business model to accommodate the better pricing models the third parties have," said Amar Sarwal, the Association of Corporate Counsel's chief legal strategist.

The same story is unfolding across numerous categories of legal work for which law firms once were the go-to option, primarily the routine, recurring, high-volume work that was a large and reliable source of law firm income. And as they proliferate and gain mainstream acceptance, alternative service providers are threatening law firms' revenue streams.

According to HBR Consulting managing director Lauren Chung, along with e-discovery, law departments are seeking out legal process outsourcing providers who can provide lower-cost solutions for contract management, corporate governance, corporate secretarial work, intellectual property management and legal research.

Sarwal says nonlaw-firm providers are advising law departments on ongoing compliance concerns and human resources systems in an effort to proactively address issues before they rise to the level of enforcement actions or litigation, which would likely necessitate bringing in a law firm. Managed service providers are now recruited to serve in a central coordination and management role that a law firm used to perform.

At the same time, law departments are moving predictable, low-complexity work in-house, handling it themselves, perhaps with a technological assist. Some companies are even setting up their own captive LPOs. 3M, for example, has for nearly a decade sent lower-risk work to a legal team it set up in Bangalore, India.

And law firms are feeling the loss of the routine work that for decades was their bread and butter, according to Ken Grady, Seyfarth Shaw LLP's "lean law evangelist" and the former general counsel of Wolverine World Wide Inc.

"For a long time, companies would send out some portion of the more routine work to the law firms, which would then use that work to keep associates busy, train associates and provide a steady revenue stream to the firms — and that work has gone away. ... And that's training material, that's money, and that's part of the steady connection between the client and the law firm," Grady said.

There's no indication the trend will reverse itself. Sarwal speculates that the only way it could is if bar regulators come down hard on some of the nonattorney third-party providers, but he says it would be hard to justify that level of scrutiny when the clients hiring them are such a sophisticated group.

So in a marketplace that is slowly siphoning away their work, what are law firms to do? The good news is that they have options.

Alternative service providers are less likely to impinge on law firms' high-risk, high-complexity work, so a certain band of law firms with a sufficiently steady stream of that type of work will be able to survive the loss of lower-end services.

Deep subject-matter expertise is where law firms still have an edge, says Joseph Otterstetter, managing counsel and associate general counsel at 3M. Plus, the reputation of a top-tier BigLaw firm is hard to beat when GCs are trying to justify their picks for high-stakes litigation and transactions to risk-averse boardrooms.

That's an approach sustainable mainly for the most elite firms, however. For most firms, ongoing success in a changing legal market will mean learning to live and compete with the third-party providers threatening their business. Otterstetter says that the pressure on the current legal model is creating amazing opportunities for proactive law firms.

"Leads change in the turn, and we're in a huge turn for the legal industry," he said. "I'm optimistic. Firms that are willing to get out in front of some of these things can distance themselves from the pack and build a brand around both value and quality. ... In the past, everyone was focused on elite quality, depending on the market segment, but now there's a chance for firms to jump out in front and demonstrate both."

One opportunity for law firms is to work with the third-party providers, serving as a conduit between the client and provider or using the provider to enhance the law firm's own efficiency, resulting in savings that can be passed along to the client. Otterstetter expects to see more of that as clients continue looking for ways to drive down costs.

Many law firms have adopted tech solutions to become better project managers, for example, or established relationships with LPOs to cut down on clients' document review expenses. Ahead-of the-curve firms are partnering with predictive analytics companies to better serve their clients.

A benefit to this model is that law firms can vet and oversee providers so their clients don't have to. One advantage law firms retain over alternative service providers is the comfort of the familiar. It's going to take a lot more vetting on the law department side to feel confident that promising but new-to-the-market startup is worth engaging. Grady says the learning curve will be complicated as law departments confront a complex new supply chain with seemingly endless options.

And once hired, it takes more management to establish a relationship and ensure the provider is delivering high-quality work and service. Value is important, but quality is table stakes, according to Otterstetter, and his legal department is not willing to compromise on the level of work.

"When there's a well-established relationship, it can work well without that high touch, but initially, there's probably going to be more of a managerial factor involved," Chung said. "Law firms are more traditional service providers — you know what you're getting."

And then there are the law firms that don't just want to tolerate third-party providers — they want to compete with them directly. There are law firms that, like 3M, are establishing operations in lower-cost locales, for example, and ones that aren't just co-opting outside technology. They're helping to develop it for the specific needs of their clients.

Seyfarth Shaw LLP is one firm that has been investing in technology and new service delivery models for more than a decade. To compete with managed service providers, LPOs and lower-cost contract attorney services, it has developed project management technologies and methodologies, as well as a client service model based on Lean Six Sigma principles that offer efficient, lower-cost services.

Additionally, the firm has launched a subsidiary, SeyfarthLean Consulting, to advise legal department clients on its own operations — and not necessarily the law firm's existing clients — in recognition of the fact that clients today are always in search of lower costs, more efficiency and better predictability. Where clients saw a need, the law firm worked to address it.

Grady says the feedback from clients has been positive, and the setup has worked well for the firm. For law firms that haven't yet ventured out of the box, he says it's harder now than it was 12 years ago, when Seyfarth began thinking about how its client service delivery model could evolve. It didn't come quickly or easily for the firm, he says, and now there are more competitors in the field, more advanced methodologies and less time to get up to speed.

But it's not too late for firms to catch up.

Innovation seems to be the way forward for law firms, which still retain market dominance as law departments' primary external service provider, Chung points out. While the use of alternative service providers is growing steadily, adoption is still about 30 percent, according to HBR Consulting's 2016 Law Department Survey.

"I think to stay competitive, law firms will need to be more innovative in the delivery of cost effective legal services — particularly on the routine, high-volume, lower-risk and complexity work," Chung said. "Those firms that have been more thoughtful about exploring lower-cost alternative service delivery models are well-positioned to meet the evolving needs of their clients."

--Editing by Christine Chun and Catherine Sum.