

The Modern Beauty Contest

By Andrew Schaeffer, Gary Rindner and Yuri Mikulka

What makes business pitches successful in the current economy? In this new economic era, the process used by corporations to select outside counsel is evolving rapidly. If you want to succeed, you have to adjust to the changing times.

Indeed, as the three of us – a former general counsel of a global financial services company, a current corporate counsel of a Fortune 100 company, and a litigation partner of a global law firm – gathered to reflect on what makes business pitches successful in the current economy, we noticed some striking similarities between today's auto industry and today's legal industry.

After a decade spent bulking up, both now confront a precipitous economic decline. Each industry is facing significantly diminished demand and consumers who in the face of significant overcapacity are more selective than ever. While there is a tiny but lucrative market for Rolls Royce and Bentleys, or their legal equivalent, the bulk of services provided by outside lawyers to corporations are fungible, just like most cars. More than ever, as corporations face record budget cuts and layoffs, they are placing greater emphasis on efficiency, and they are putting outside counsel through their paces before making a choice.

To win legal business in the new economy, like a savvy car manufacturer, law firms must focus their resources on identifying their target consumer and understanding their individualized needs. Only then can they effectively demonstrate whether and how to meet that customer need. Like government bailouts, business will not be forthcoming

to those unwilling to adapt. Likewise, lawyers must reexamine the process by which clients are now selecting outside counsel. In this economic climate where stakes are higher and budgets are tighter, corporate counsel will not necessarily turn to their usual BMW-equivalent law firm.

To offer practical guidance on the evolving law firm selection process, we talked to chief litigation counsel and corporate counsel who regularly select outside counsel, as well as law firm partners who pitch business to corporations. Apparently, there is frustration on both sides. Outside counsel find the law firm selection process mysterious or tedious and recoil at the thought of having to “sell” themselves. After all, their expertise and experience should speak for themselves. Corporate counsel, on the other hand, complain that these “reluctant salespeople” peddle their firm’s wares indiscriminately instead of trying to truly understand the client’s business, needs and values. Neither reports enjoying the business pitch process nor its drain on their valuable time.

Based on our experiences and feedback from our colleagues, we scrutinized the law firm selection process from beginning to end, with anecdotes from our colleagues on what works and what doesn’t. By analyzing the process, we hope to dispel the mystery and frustration behind business pitches and to optimize the experience and the ultimate result for both the lawyer and the client.

The selection process starts with the invitation—maybe a call or an email asking you to pitch some business or a formal RFP from an existing or prospective client. As a practical matter, a relationship with the client starts at this moment. You may not be getting paid yet, but once the invite is sent, your every action and contact are judged by

the potential client through the prism of client service—a fact that is often forgotten by the lawyer.

Until recently, a typical law firm pitch for business reminded us of the old glitzy auto show, with the law firm proudly displaying all its shiny wares to potential buyers. In both cases, marketing professionals were retained to develop sleek packages, often consisting of glossy marketing brochures and highly polished, showy presentations. Like anyone who has attended a mega auto show during a seller's market, the hard work falls on the buyer, who walks around collecting fancy promotional material and being bombarded with clever but superficial pitches.

In the wake of the financial crisis, many automobile companies withdrew from auto shows or dramatically scaled back their presentations. Lavish fashion shows and hospitality suites were scrapped. Simple carpet replaced hardwood floor and tile platforms, saving upwards of \$1 million. Cost cutting was often cited as the primary factor, but another more compelling factor may have been the ineffectiveness of the former approach in current market conditions.

Nowadays, buyers of cars or legal services demand more from the sellers than ever before and do not have patience for a flashy show. In this buyer's market in which the competition is global and more intense and sales are harder to close, the priority is not buying the newest, biggest, and fanciest, but rather obtaining the best value for the money and the most effective solution.

Today, the prospective law firm client can design her own automobile show through the modern beauty contest, by establishing the venue, admission guidelines and timing, which can be as long or short as she desires. She gets to invite as many or as few

law firms as possible and sets all the parameters of the contest, ultimately reserving the freedom to select one firm or a cohort of firms, depending on her needs. In this scenario, law firms are expected to do the heavy lifting. To succeed, a law firm must closely study its potential client and offer services that are closely aligned with the prospective client's particularized needs.

So assuming that you are on the short list and invited to participate, how do you prepare?

Before you RSVP, you must do your homework to decide if your law firm should even attend and compete for the business. Specifically, do you really know what the contest is about? Is the client looking for a single or ongoing representation. Is it for a limited segment of its business or a specific division or geographic region? Is the client expecting discount or alternative billing arrangement that your firm cannot support? Are you in a convergence exercise, whittling down a large number of firms to a few preferred providers? If so, this might be a multi-year process. Are you prepared to stay the course? Consider how these needs mesh with your own firm's business plans and growth strategies.

Also, how will the event be structured – written submissions, conference calls, live presentations? Assess the commitment you are being asked to make in this pitch. Given your limited resources, is it worth your time? One law firm partner lamented about how lengthy and detailed a request for proposal (RFP) had become, wishing for a return to the days when a favorable reference and short phone call landed a client. And he is right; it won't be worth his time if the matter is not within his expertise or his firm's rate structure. Ultimately, you have to evaluate whether you are suited for what the client

is seeking. Are you capable of providing cost-effective representation for a Chevrolet matter or are you only staffed for Cadillac representation? Do you have the depth of experience necessary to handle a matter with significant risks to your client when your firm's expertise in that area is superficial at best? If you can't deliver what the client wants, this will almost certainly end badly in the future for all parties.

If you already represent the client and receive an RFP for its legal business, it is best to consider the invite akin to a command performance. In one example brought to our attention, a Texas law firm historically handled about 20-25% of the company's annual legal work. The law firm received the company's RFP, but assuming that it did not need to put in the work given its preexisting relationship, the firm did not take the RFP seriously. When the clients paid a visit to the firm for face-to-face interview, they were met with only one or two people who were noticeably unprepared. Instead of being ready for an actual substantive interview, they spent the interview talking about taking the clients to dinner, followed by a ballgame or show, even though the RFP made it quite clear that such offers would be inappropriate and unwelcome during the RFP process. Feeling taken for granted, the clients later made the easy choice of letting the long time firm go for failing to make the interview cut. Shortly thereafter, the general counsel took a call from the "arrogant" relationship partner at the firm who insisted they should be added to the list of converged firms based on a sense of entitlement – despite his decision, clearly erroneous, to ignore the RFP materials on his desk and assume nothing would change. The relationship partner was subsequently surprised when he received negative feedback from the general counsel and a kick out the door, all at a loss of about \$4-5 million in annual legal fees. By ignoring the ground rules explicitly set by the

client, the law firm gave the client an easy excuse to replace it with another firm more attuned with the company's needs.

Lawyers are generally reluctant salespeople who cringe at the thought of having to sell their services. That isn't surprising since for many lawyers, selling is not their strength. Yet they find themselves selling instead of doing what they do best and what is most effective – identifying key issues and finding innovative solutions. Lawyers may find their efforts more fruitful – and enjoyable – if they focused on earnestly understanding the client's needs, priorities and values, just as they would research the judge and the jury pool in a new case. Only then would they be ready to discuss whether and how their unique skill sets and experience may benefit the prospective client.

Make an effort to get to know the client and its needs. One general counsel recalled a pitch team that provided an detailed presentation on the law firm's experience in China. Given that the company had no legal needs in China, to this GC, the presentation was useless and made it obvious that the lawyers did not do their homework other than noticing that the General Counsel is Asian-American.

Before responding to the RFP, exhaust every available resource to learn about the client's business and culture. Many RFPs shout this out to rather deaf law firms. Read up on corporate counsel who will interview or work with you. Remember, the contest is really about the client and not the law firm. You can be sure that almost every pitch includes a presentation on how smart and efficient that law firm is so don't count on this bit of self promotion to carry the day. Give due credit to the client and assume that only equally competent law firms are in the running. Broaden your research to look for other

ways to add value to the relationship or to connect with the corporate counsel. This is just as vital as knowing the client's legal and business situation.

Finding ways to connect with the prospective client is crucial. Clues are everywhere—take a look at the client's website and find out what kind of nonprofit groups and volunteer activities it supports to see how they complement your own. Research their own diversity commitment. Compare your office locations with the client's own physical locations. A client in Buffalo might be better served from Detroit or Cleveland than a New York City branch.

Even if you have a pre-existing relationship with the client, gain a fresh perspective by assigning a senior person with no prior history to seek unexploited synergies. The most effective method to distinguish yourself in the contest is by matching your unique abilities with the client's needs and understanding its future business direction.

Based on your inquiries and a hard look in the mirror as to your firm's capabilities and resources, the correct response may be a polite "no thanks." Declining to devote the resources to participate may be the most sensible reply, as long as you explain your rationale to the client.

Never ignore the RFP. Failure to even acknowledge the opportunity will not go unnoticed by corporate counsel. Write a simple note expressing appreciation for being considered and explaining why your firm is not best suited to handle the matter. The client will appreciate your responsiveness and honesty. Remember, your reply will be the client's last (and lasting) impression of you and your law firm for the foreseeable future. Corporate counsel constantly seek formal and informal references from each

other and a feedback such as “that law firm blew off a chance to compete for our business” is not going to place your firm on anyone’s go-to list.

If you decide to participate, be certain to obtain all the details you need to prepare for the contest, such as structure, timing, limitations, and deadlines. Treat these as explicit directions from a client. Like local court rules that require meet and confer attempts before filing a motion, if you fail to follow them, you will not get far with the judge. If you receive instructions to limit the pitching team to attorneys with strong connections to local government officials for California litigation, flying in three attorneys from the East Coast (as recounted to us by a corporate counsel) is not advisable. Even though the law firm is absorbing the cost of the entourage at this stage, the real message is that the law firm neither takes directions nor works efficiently.

If you are still confused about what the client expects, a few inquiries artfully phrased to solicit the right response may be extremely beneficial. Aside from sharpening your focus, it may prevent you from being lazy and rehashing an old presentation just because it is available.

Undoubtedly you will be required to submit written materials or to answer a series of questions prepared by the client before any formal presentation or meeting. While slick, glossy brochures are nice to look at, their worth has been substantially diminished by the internet and its capabilities. For instance, car brochures can be impressive but the latest fad is building your own car online. Similarly, most law firm brochures are readily available online for perusal so de-virtualizing these materials for a formal presentation will not set you apart. Instead, a bespoke response that focuses on the client’s existing

(and future) needs, which hopefully will surface during your research stage, is infinitely more effective.

Since time is the rarest of commodities for busy corporate counsel, quality should always trump quantity in your submission. With the same consistency that heavier cars get lower mileage, a bulky presentation will typically elicit a quick skim and less actual reading. If you feel compelled to throw in the kitchen sink, include an index with executive summaries of your material. One corporate counsel received a 99-page power point presentation, which she would have had to summarize for the general counsel. In her mind, this made it clear that the law firm does not value her time and may similarly waste her time in the future. The salient takeaway was the volume of the materials and not substance.

If there are limitations on the size of a submission, stay within these limits. Whether you agree or disagree, these are instructions from a prospective client and must be followed. If your customer asks to see a compact blue sedan, but you drive up in an oversized red SUV which you insist is better, you will immediately lose credibility. Similarly, ignoring your client's instructions will send a strong, but wrong, message about how you expect to work with the client.

Even subtle messages do not go unnoticed. As shared by one colleague, some firms tell corporate counsel that they enjoy working with corporate legal departments because they are helpful in collecting documents and identifying witnesses. For him, this clearly foreshadows how limited that law firm views the corporate counsel's roles and capabilities.

Avoid the tendency to treat all pitches the same by starting with a form reply. If you do this, your response will more closely resemble the last contest with different rules and judges than the one you are presently seeking to win. While clients appreciate piggybacking on memos prepared for other clients as a means to reduce fees, recycling previous business pitches is not admired. Be sure you carefully expunge any names or identifying aspects of a previous document, such as the Properties feature in Microsoft Word, that might reveal an earlier provenance.

Assemble your team for the project early and carefully. Clients often see the composition and size of the team, as well as the interaction between the team members, as an indicator of what it would be like to work with the firm. For instance, it may reveal the level of collaboration they can expect between the lawyers and how well they have worked together in the past. One inside counsel recalled a pitch meeting where the lawyers on the team did not even know each other, having only met each other for the first time at the meeting.

Show up with the team that will work on the case. Bringing the relationship partner or the senior lawyer who will try the case may be important, but it is equally imperative (if not more so) to bring the lawyer with nuts and bolts knowledge of the issues and will manage the case. Corporate counsel do not appreciate “bait and switch” – being sold on one team and receiving another team once they sign on. If a customer was sold on the luxury package with leather, heated seats but receives the standard package with vinyl, cold seats, you can be sure you will have an unhappy customer.

Plan carefully and avoid too much professional marketing presence in front of the client. If you’ve ever asked a technical question at an auto show, you realize the

marketing person has superficial knowledge of how a car works. The same is true of your marketing personnel in most cases. So do not just rely on the materials your marketing professional pulled for you and ensure that the actual lawyers on the pitch team weigh in on what finally gets viewed by the client.

Before any scheduled meeting, identify your audience to the extent possible and try to match up your team with the client's team, bearing in mind that people typically relate better to people who are like them. While not everyone on the team must match the client team, if your prospective client is comprised of young, casual technology entrepreneurs in Silicon Valley, showing up with white haired trial lawyers in tailored three piece suits and cuff links may immediately spell out the mismatch.

Everyone on the team should thoroughly know the materials submitted to the potential client. If they are technical, perhaps a briefing session is called for with a quick executive summary of the materials. If nothing else, such an exercise increases the chances of catching a silly mistake in your presentation, such as promoting a previous litigation victory which is contrary to your prospective client's interests. Not that these aren't kudos, just not the ones to trumpet during this presentation.

Assuming you have the technical competence and resources to handle the work (or you should have already declined the invite as suggested earlier), look for other ways in which you fit with or complement the client. In car lingo, this might be like suggesting the sport or ski package to an active, athletic buyer – while trying to avoid selling a convertible to a Seattle resident. A quick website perusal provides volumes of facts about a client – both hard (finances, products, management team) and soft (mission, core values, diversity commitment, community involvement, Six Sigma). Use this knowledge

to find and highlight areas of overlap between your respective businesses that could support a broader and deeper relationship.

Apply what you learn. For example, a client with a strong environmental sustainability initiative may not appreciate receiving 20 bound copies of your presentation, most of which will be promptly tossed. A CD-ROM version or even an online link or presentation would be better appreciated. At the annual Katten Muchin Investment Management conference that one of us attended, five pounds of papers bound in three enormous loose leaf binders were replaced with a single CD the next year and the only people likely to be disgruntled were the chiropractors for attendees. Think how well received that change would be at any company trying to shrink its carbon footprint.

Diversity is a major hot button in law firm selection as companies seek firms whose attorney ranks are more closely aligned to their own workforce, customers and the judges and juries who will decide their litigation matters. Some companies such as Microsoft Corporation has demonstrated commitment by going as far as offering bonuses to their Premier Preferred Provider law firms for improving their overall diversity numbers or including more minority and attorney women on Microsoft matters. In-house counsel too are eligible for bonuses under this program. Other clients may request diversity more subtly, but never underestimate their commitment.

A chief litigation counsel told us that his RFPs discussed the importance of diversity to his company's law firm selection. Despite this, firms routinely show up with entirely non-diverse teams at meetings. Since the legal business is premised on reading carefully and paying attention to details, this is a remarkable omission to corporate counsel.

For instance, one law firm attended a business pitch with six white male attorneys. When asked about diversity, they responded that it was hard to find qualified minorities. In addition to the chief litigation counsel (a Latino), his team included a Latina, an African-American female, an Asian-American female, and two other women. And apparently lacking the qualifications to recognize this law firm's brilliance, this corporate counsel and his team never retained them.

Another corporate counsel shared that when a law firm showed up with five white male attorneys and was asked about diversity, the firm representatives insisted that they were committed to it, and that they had excellent women and lawyers of color in their firm. To this counsel, the fact that none of these diverse excellent lawyers were present indicated lack of opportunities for diverse attorneys at this firm. When it comes to a law firm's "commitment to diversity," actions speak louder than words.

While diversity may not be the number one issue on every company's list, you can be pretty certain there are at least one or two topics that they care about more than others. General Electric is famous for its in-house training program, spending more than \$1 billion per year teaching its employees management, technical skills and "Six Sigma" methodology. So in a pitch to GE, you might anticipate a question about your firm's training commitment or include it in the submission or at least be aware of it and respond intelligently to a question. It also helps to learn more about the CEO and his interests – these tend to trickle down in an organization for obvious reasons.

If you and your team cannot figure out a potential client's hot buttons by the time you submit an RFP, you likely did not try hard enough. On the other hand, those who do

will make a lasting impression and gain the competitive edge that can be the deciding factor in the end.

If you survive the preliminary screening, you likely will be asked to meet with the client. Even though you are still auditioning for the assignment, we would recommend approaching this visit with the same care and preparation as if you expected the CEO to be present in the room. Any general counsel retaining lawyers to handle a bet the company litigation or a major merger is quietly pondering—would these lawyers embarrass me in front of my CEO?

To keep their attention, your presentation must be original and tailored to demonstrate your intimate knowledge of the client's existing litigation or recent acquisitions, as well as their current and future business plans. As we mentioned, corporate counsel rapidly lose interest with self serving pitches such as "hire our firm because we are smart and efficient." After a few of these statements, one General Counsel was ready to respond: "Thank goodness you came because everyone else has been telling me they are dumb, redundant and incredibly slow."

Presentation venue varies. Many companies are perfectly content to have teams of lawyers trek into their offices for the beauty contest. Aside from the added convenience, it offers insight into the law firm based on the team assembled to travel to your offices.

Some potential clients are willing to travel to the law firm's offices, especially if relatively close. But the motivation is not entirely benign; visiting outside lawyers' offices can be quite instructive to corporate counsel. One general counsel reports that when she sees lavish buffet lunches, limos to the airport at the firm's beck and call, silver

tea and coffee services and the like, she knows who is ultimately paying for it. She is more impressed by an office piled with papers, a week's supply of coffee cups on the windowsill and an administrative assistant who is busy and only has time to point to the coat closet. She then knows that she has a hard working firm that is probably hungry for business.

While the appearance of complete disarray and disorganization must be avoided, an immaculate office may not be the solution either. In an exchange between two law firm partners one of us recalls, the junior partner, with a squeaky clean office and a desk void of any scrap of paper, admonished the senior partner: "Jack, your office's always a mess, desk buried under piles of papers. Remember the adage cluttered desk, cluttered mind." To which the other simply replied: "And an empty desk?"

We are not advocating you retain a stage manager. It is far too easy to tell if someone is in a natural, comfortable setting or not. But we do recommend that you cast an objective and critical eye around your offices and be aware of the message you are sending to prospective clients.

By definition, you will be competing with one or more law firms for legal business. It may or may not be possible to learn the identities of the other firms, although it is certainly worth inquiring. The more you know about the other firms and their lawyers, the better you can refine your own pitch to highlight strengths and distinctive aspects of your practice. Knowing if you are competing with one or more incumbent law firms may alter your approach.

Whether you learn the identity of your competitors or not, we recommend against trashing other law firm as part of your response or presentation. How good do you feel

when as a way to enhance the car he wants to sell you, a car salesperson trashes the brand of car that your spouse drives? It is hard to believe that general counsel would rush to hire a law firm that freely disparages another law firm that the company regularly engages. Counsel should have a reasonable expectation that their outside law firms peacefully coexist and, at times, might even assist each other or work together when it is in the client's best interest.

Some contests may be structured with a test drive of sorts, delivering actual work product like motions or memos on a pending matter. If there are explicit instructions about the length of a project or the time devoted, do not deviate from them. Doing so will prove in a concrete manner that you are unwilling to follow direction from the client. During the test drive, beware of setting a standard that you have no intention of maintaining once you are retained. Offering the eight-cylinder sports package for a test drive when the customer can only afford the six-cylinder standard package will only result in disappointment and lost sale. Similarly, producing a \$15,000 memo but passing it off as within the \$5,000 limit set by the client will only harm you in the long run by establishing a standard you cannot realistically meet.

At some point, pricing will become an issue, particular in these times of economic turmoil. In some contests for routine or repetitive work, price may outweigh almost every other factor among equally qualified firms. If the client is seeking a level of economy that you cannot deliver, then you should decline the invitation and save yourself (and the client) the time, effort and distraction.

In any case, you must know your own costs and efficiencies before quoting rates. You don't want to be the car manufacturer that sells each car at a loss but intends to make

up its losses with volume. As the car manufacturers learned, incentives are both costly and addictive. Starting at reduced or teaser rates and hoping to later revert to full pricing is not a good business model.

When putting the finishing touches to your fee proposal, do not assume this is like the old days of haggling over car prices with lots of back and forth. Consider yourself at a Saturn car dealer – final prices are posted and negotiating is eschewed. One general counsel reported back to us: “When I tell firms why they were rejected, they often ask if it’s too late to put in a more aggressive fee proposal. Yes it is. I’m busy. I looked at the package you offered. More importantly, if firms know that I will give them an opportunity to improve their bids, the bid I get will never be as good as the one I will get if they think they only get one chance.”

Corporate counsel usually welcome, and sometimes mandate, creative and alternative fee billing arrangements. Requests for alternative fee proposal must be taken seriously. One colleague noted how some firms simply ignore the request or propose what amounts to only a very modest fee discount. In his view, those firms have a high hurdle to get over to even be considered. They need a defined and substantial quality edge over a strong fee proposal.

One general counsel described how she negotiated a reduced hourly rate for a major insurance litigation with her current litigation counsel. Coupled with the reduction was a 15% bonus for the law firm if the judgment exceeded a certain sum (the service non-compris plan). The objective was to encourage efficiency, while offering a kicker to reward the firm’s risk taking and hard work resulting in a successful outcome. She

prevailed in the lawsuit and was happy to pay the extra fees upon collection of the judgment.

Reducing rates, while music to most corporate counsel's ears, is not the only way to reduce costs. In fact, some corporate counsel believe that discounting rates simply leads to increased billable hours by less efficient lawyers. If your firm is unable to offer reduced rates or an alternative fee arrangement, concretely demonstrate what other efficiencies you bring to the table. In this new economic reality, it will be a rare firm that is unexpected to contribute to reducing legal expenditures and helping ease the pain of their ailing clients.

As our in-house colleagues remind us, simply declaring that your firm is more efficient will not set you apart. Provide some specific examples. Perhaps your firm has conducted numerous patent infringement trials in the Eastern District of Texas and has in place the winning trial team, local counsel, expert and jury consultant, none of whom will waste time learning about the local rules, the judge or the jury pool. Maybe you can offer to develop, and commit to, a budget based upon the client's perceived value of the case (taking into account contingencies such as unanticipated motions ordered by the court). In exchange, you request a success fee contingent upon concluding the case under budget and obtaining a favorable outcome as defined by the client. In effect, you would be putting skin in the game and improving predictability for your client. Whatever you offer, the key is demonstrating your commitment to work with the client to save costs.

In many cases, the contest ends with a simple phone call telling your firm it won or lost the contest. In other cases, you may endure numerous rounds of elimination before learning if you have the business or not. We strongly suggest that your firm

maintain its momentum and focus during these additional rounds. Even though you are still operating in the pro bono mode during this period, prospective clients are evaluating your responsiveness to their requests as if you were being paid.

If you land the business, it is vital to reduce salient aspects of the relationship to writing to avoid later surprises. You may have spoken about numerous items during the courtship period and these promises need to be clearly set out in an engagement letter, which may stand-alone or supplement an engagement letter from the client. Be sure that your law firm has absorbed and acknowledged any established outside counsel guidelines that the client mandates. Getting off to a smooth start and setting expectations on such sensitive issues as billing and rate increases is the foundation to a strong and lasting relationship. Ensure that your entire team, including associates, paralegals and staff, fully understands the relationship dynamics and the billing protocol.

Car companies compete on quality and aggressively seek feedback from buyers. Law firms, as service providers, should be just as proactive in obtaining feedback. Surveys can be lengthy and tiresome but they can be streamlined and sent as emails. Simple calls seeking feedback at the end of a matter or a financial quarter work well also and display a desire to improve your level of service.

Law firms seeking sustainable, long term relationships with clients might consider treating the first six months after landing the business as a warranty period during which the law firm fixes any mistakes or misunderstandings. After all, you are still learning about the client's needs and mistakes are likely to occur. Take the initiative. Inquire about even mild problems and proactively implement appropriate fixes before they explode into major friction. If you fail to do so, your client will do it for you and fix the

problems by moving the case to another lawyer or make a decision to not recommend you for the next big case.

Like a car manufacturer, a warranty period during which you automatically assume responsibility to correct any problem is merely investing in a long term relationship. Manufacturers create financial reserves to cover these costs. A law firm might even set up a non-billable account to track and monitor these items for a new client. By taking the time to review entries in this account and to assess the causes of “warranty” problems, law firms can also benefit from another popular practice in building cars – Kaizen, the Japanese strategy of continuous improvement. This is also well known in corporate circles as “Six Sigma” methodology.

Regardless of the outcome, failing to do a post-mortem is a lost opportunity. If you do not land the business, the post-mortem is critical to evaluate what went wrong and a chance for the team members to learn from the experience.

A discrete inquiry to the client may identify some negative factor of which you were totally oblivious but worth filing away for the future. For example, you might learn that the prospective client with offices in Japan decided to retain a firm with associates fluent in Japanese, which you also have but did not point out during the pitch. You might learn your fee proposal was just not aggressive enough even though you were prepared to come down another 10% if requested.

Post-mortems are just as valuable if you succeed but typically are forgotten in the glow of success. Promptly assembling the entire team that competed is again essential. First, it’s an opportunity to collect all the soft promises made during the contest and reduce them to writing for internal guidelines and the client, if appropriate. For example,

a promise to reduce paper usage or to waive electronic research charges must be communicated to the entire team to avoid embarrassing mistakes.

Second, the meeting can reveal what factors attributed to success and what can be done better next time. While there may be a tendency to ignore the negatives because of a favorable outcome, this approach seems short sighted at best.

During the post-mortem meeting with the entire team, regardless of outcome, seek everybody's input. Prepare a list of Do's and Don'ts from the exercise, perhaps compiled by an impartial facilitator, for sharing with other colleagues. Be sure to celebrate the success and thank everybody who pitched in and helped. Aside from being common courtesy, this will motivate your team to again put in the extra effort next time.

Even if you do not make the cut, consider the pitch as having served a unique opportunity to develop rapport with the prospective client and to learn about their needs, which will give you the leg up the next time. For that to be effective, utilize the information and knowledge that you have obtained in some systematic way; don't just discard it. Put a tickler in your file to follow up in six months with the client to see if their legal needs changed (or if they regret their selection). Figure out which firm events or publications might be of interest and ensure that they are delivered to the appropriate contact by someone they met during the process. Also, track the whereabouts of the people at the client that you met during this process as they may move and end up elsewhere needing representation.

Finally, remember to thank the client for the opportunity to compete—this was a privilege not a right. A simple thank you can leave a lasting positive impression that survives the selection process.

Business pitches are not for the faint hearted. Like devising a marketing campaign for a new car line, they require careful research of the target client and the market place followed by a thoughtful presentation that is tailored to the client's needs. We are not convinced that providing legal services is the same as marketing a car. Both businesses, however, have become more complicated than ever and are under tremendous pressure during this economic downturn. To be sure, both industries will continue to evolve and those firms that quickly adapt to the changing consumer needs will emerge as the new industry leaders. And, as seen with the precipitous fall of the Detroit three and recent law firm dissolutions, those that fail to may not survive.

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