



THE BENEFITS OF COLLABORATION

A Look at the Effective Use of Virtual Law Firms in Litigation

By Tara Kelly, Marsha L. Montgomery, and Lauren Daniel

Building an effective outside counsel team has always been one of the keys to successful litigation management for in-house counsel. But the need and the opportunity for a more creative approach to building litigation teams has increased due to the rise of complex multi-jurisdictional legal issues, the availability of communications technology, and the mobility of lawyers. One such creative approach is the use of “bespoke,” or tailored, outside counsel teams comprised of lawyers from multiple firms in different jurisdictions and with different expertise, who are all dedicated to, and specialized in, your company’s interests. This approach, often referred to as “Virtual Law Firms” or “Virtual Teams” (VLFTs), can result in superior outside legal services and exceptional results due to the diversity of skills and viewpoints of its members. Yet it is sometimes met with resistance by outside counsel, and is not without its own set of management challenges for in-house counsel. This article explores the benefits and challenges of using the VLFT approach and offers some pointers for in-house counsel to manage a far-flung team more effectively.

CHEAT SHEET

- *VLFTs.*
Companies typically employ virtual law firm teams (VLFTs) when multiple counsel with local and national expertise are necessary, or a company is facing complex litigation that requires the input of various practice experts.
- *Cohesion.*
To create a cohesive work environment and avoid silos, in-house counsel should clearly communicate expectations around the size and scope of work that each lawyer will bring to the VLFT.
- *Trust.*
Creating trust within the VLFT can be facilitated through face-to-face interactions and open access to information and documents.
- *Relationship.*
VLFTs are often most successful when the client and the law firms have a long-standing relationship.

VLFTs are not necessarily a cheaper or easier way of managing a matter. At the very least, this structure will require more active in-house management than hiring a single-firm.

To generate helpful insights, we interviewed seasoned practitioners from each of our organizations: BP America Inc.'s litigation team and Arnold & Porter's litigators. Our interviewees included 40-year veterans of practice, alumni of numerous and varying VLFTs, and managers responsible for overseeing the functionality of VLFTs across contexts. There was a remarkable consensus in our conversations about VLFTs, suggesting that a well-functioning VLFT is good for both the development of lawyers (external and internal) and successful litigation outcomes, but that there are also central management techniques that are critical to success.

Articulate the “why”

First, an in-house counsel must understand why he or she is organizing a VLFT and what benefit he or she expects it to provide. VLFTs are not necessarily a cheaper or easier way of managing a matter. At the very least, this structure will require more active in-house management than hiring a single-firm. The two most common reasons for organizing a VLFT are:

1. Multiple counsel are necessary due to the need for both local expertise and the resources and specialists of a large, national, or international firm; and

2. A company is facing a complex case (or cases) in which the litigation risk requires recruiting lawyers at the top of their practice areas, such as trial lawyers, appellate lawyers, regulatory specialists, international specialists, etc., regardless of their firm or location, in order to create an all-star litigation team.

But in addition, VLFTs can be beneficial in almost any case where in-house counsel are looking for creative solutions to litigation risk. This is because each law firm has its own strong, self-perpetuating culture that often limits its lawyers' ability to think more creatively when crafting litigation strategy. VLFTs help external counsel escape their boxes by aggregating diversity of thought and undermining complacency. They also undermine the hierarchy of a traditional law firm and allow creativity to flourish at all levels of a team. In the most functional VLFTs, friendly competition and constructive feedback push the VLFT members to do their best work and develop as lawyers. This sets the stage for the team to discover and be open to litigation risk solutions that

one firm on its own might not have identified.

While the benefits of better and greater fit-for-purpose resourcing of counsel (including diversity of thought and increased creativity) might seem obvious, articulating the “why” to your VLFT members is nevertheless critical. For example, if a new firm is brought in to “peer review” existing counsel's approach, or to partner with the original firm to ensure the best possible talent is brought to bear on the case, it is important that existing counsel are not left to wonder whether they are being fired for unexplained failures. It is also important for in-house counsel to ensure the new counsel understand and appreciate the existing counsel's value to the client so that if new counsel has any thoughts of a “takeover” of the case, those thoughts are shut down. When the reason for creating a VLFT is properly explained, good, smart lawyers who like to win will understand the benefits not only to the client, but also to their own professional development.

Choose the how

VLFTs can be structured in a myriad of ways to meet the needs of the



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litigation and the in-house counsel team. Perhaps the most familiar form of the VLFT is the local/national counsel model. However, this is not the traditional approach of pairing a local counsel, who serves as a local “mailbox,” alongside a second, non-local firm that performs the vast majority of the strategic and tactical work in the matter. Instead, in the VLFT model, the local firm is a fully integrated partner in the litigation team, providing advice and delivering work-product along with the larger firm. This structure provides in-house counsel with the critical benefit of local expertise backed by the resources of a large firm that is equipped to conduct time-intensive tasks, such as fact investigation or discovery in a large case. The VLFT may include multiple local counsel as well as a national firm in the role of coordinating counsel, providing overall strategic direction and maintaining consistency. This national coordinating role is particularly critical in litigation or regulatory matters involving a significant volume of cases with common factual and legal issues proceeding simultaneously across multiple jurisdictions.

Another form the VLFT can take is the “best lawyer for the job” structure. In this model, in-house counsel selects the best, most experienced lawyer for each function on the virtual team, regardless of the firm. This structure is particularly appropriate for cases that raise new legal issues or where the financial health of the company is at stake. In this structure, it is important for in-house counsel to help each member of the team to not only understand his or her role, but also the role of other team members and why each individual was selected for the team. Defining value for each team member and component firm will help minimize tensions and mitigate the tendency to jockey for a bigger share of the work. In-house counsel will also need to clearly define the expectations

around the size and scope of the supporting players (associates, paralegals, etc.) that each selected lawyer brings to the VLFT in order to avoid creating a huge and unwieldy team that works in silos, nearly negating all the benefits of the VLFT structure. As a result, the “best lawyer for the job” form of the VLFT may require significant monitoring and guidance from in-house counsel, at least in the early days, to ensure the strategic vision is carried out consistently and efficiently.

Understand your team and help them understand one another

As with any other team, it is important to manage personalities on an ongoing basis. In a VLFT, this is even more critical because the team will often have two or more co-equal heads leading the efforts on behalf of their respective law firms. These leaders will be at the top of the hierarchy in their organizations and will probably be used to getting their way. If they cannot cooperate and do not or will not convince other lawyers within their firms to cooperate, it will undermine the team and reduce its effectiveness. This is why carefully choosing the firms — and even more importantly, the particular lawyers — for a VLFT is such an important decision. Selecting counsel whose personalities, strengths, and weaknesses are already known from other matters is one way to reduce the risk of friction and even dysfunction on the VLFT, but it is not always feasible, especially if in-house counsel is looking for the acknowledged expert in a particular legal specialty. In-house counsel, working with key VLFT lawyers for the first time, should plan to spend extra time getting to know these team members and monitor how they are integrating into the larger team.

In addition, in-house counsel needs to help build trust between all individual lawyers and the firms participating in the VLFT. Even if in-house counsel has worked with the

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Finally, it is important to remember that in a VLFT, one of the key metrics for evaluating a firm's performance is to assess how the firms cooperate with each other. When a team member or members are cooperating well, this should be acknowledged and further encouraged.

individual external counsel before, the VLFT is a new world, with new relationships in which trust must be established. This can be facilitated through the in-house lawyer encouraging or creating systems for open access to information and documents across firms. Openness and even over-communication should be encouraged and hoarding information discouraged. The need for trust also highlights the importance of face-to-face interactions among the team members. It is much easier to build a trusting connection between lawyers over a social dinner than over a video conference call. While social events may be viewed as unnecessary or even an extravagance in other contexts, in a VLFT, they are often necessary.

There are, however, certain things that should be kept outside of the VLFT and communicated by in-house counsel directly to each firm through the traditional structure and lines of communication. For example, while an in-house counsel certainly will need to budget for the matter as a whole, budgeting and fee negotiations with each law firm will need to be handled separately. The VLFT firms should be treated as co-equal thought partners, but their rates and budgets may differ for legitimate reasons. Airing these differences within the team generally only invites problems. Similarly, while it may be attractive and sometimes necessary to outsource overall VLFT team management to one of the firms in a virtual team — for example, when the firm is acting as national coordinating counsel — this approach should be used thoughtfully. Even when this approach is appropriate, in-house counsel still should provide active input and management to enforce team expectations.

Nurture your team

Everyone responds well to positive feedback and the members of a VLFT are no exception. A VLFT can create situations that bruise egos and allow insecurities to fester if not adequately managed. While the biggest egos and thinnest skins may simply be ill-suited to being part of a VLFT, the in-house lawyer must also actively combat the

incursion of such negative forces into an otherwise functional team.

Every lawyer on the team needs to understand his or her value to the client. The in-house lawyer should solicit input from all team members, listen to all opinions, and not appear to favor the advice of one team member over another for any reason other than merit. When making important strategic decisions, this may require acknowledging the difference of opinion, thanking everyone for their honest input, and giving clear reasoning for choosing the advice of one firm over another. While this may sound like too much hand-holding, ensuring everyone has been brought into the decision-making process and is committed to executing the strategy is critical to the success of a VLFT.

Finally, it is important to remember that in a VLFT, one of the key metrics for evaluating a firm's performance is to assess how the firms cooperate with each other. When a team member or members are cooperating well, this should be acknowledged and further encouraged. While it is the job of the firm leader to ensure each of these individuals is committed to the cooperation model, it is the in-house lawyer's responsibility to ensure these meaningful contributions are recognized and valued.

Loyalty goes a long way

VLFTs are most seamless where the client and the law firms have

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3 Ways to Motivate Your Legal and Litigation Teams (Sept. 2017). www.accdocket.com/articles/3-ways-to-motivate-your-legal-and-litigation-teams.cfm?_ga=2.35842472.988184595.1554747039-459870809.1549484996

Signs of the Times: The Rise of Managed Legal Services (Aug. 2017). www.accdocket.com/articles/the-rise-of-managed-legal-services.cfm

Program Materials

Designing the Perfect Law Firm and Perfect In-house Team (July 2018). www.acc.com/resource-library/designing-perfect-law-firm-and-perfect-house-team

Raising the Bar for Law Firms: How to Move Outside Counsel into Integrating and Delivering Managed Services (Oct. 2017). www.acc.com/resource-library/raising-bar-law-firms-how-move-outside-counsel-integrating-and-delivering-managed

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long-standing relationships. A firm will be more likely to play nice with others when it already understands that the company values its contributions, and the relationship is likely to extend into the future. Similarly, the in-house counsel can more readily trust that a law firm can make a VLFT work when he or she already trusts that the firm is committed to delivering extremely high-quality work and results. Conversely, VLFT members need to be assured of the client's continuing loyalty. It should be understood, and perhaps even made explicit, that good cooperation (along with normal metrics of success) will lead to more work.

Walk the walk and line up the others

The in-house lawyer should clearly articulate his or her expectation of cooperation and refuse to tolerate non-collaborative behavior. This includes everything from sarcastic remarks made in passing to deliberate obstruction of another firm's efforts. When issues inevitably bubble to the surface (and they will), it is generally best to encourage the VLFT firms to work out issues among themselves. If this has been tried but failed, the next best alternative is to meet, address the issues head on, and collaborate as a VLFT on their resolution. But the in-house lawyer must also be willing to act as the arbiter or tiebreaker should a collaborative path forward not be possible. In the most extreme situation, the in-house lawyer should be willing to remove non-collaborative lawyers from the team if the unhelpful behavior continues and all efforts at resolution fail.

Institute systems, but not too rigidly

VLFTs must be managed in a way to ensure complete case coverage and to minimize duplication of work. If lawyers are working in silos, tasks could slip through the cracks as each firm could believe it is the other firm's responsibility to complete a given task.

Or both firms could complete the task, wasting time and money. Coordination of counsel will require significant time and effort by in-house counsel, especially at the outset of a matter, or if the firms have not worked together in a VLFT in the past. At a minimum, in-house counsel will need to define each firm's "lane" or function in the case.

Beyond specific topics or sub-matters, the in-house lawyer should also define who will perform central functions (for example, document management). In conjunction with assigning roles, the in-house lawyer should also ensure the case is not over-staffed. If there is not enough work for each team member or firm to have a meaningful role in the case, they will start tripping over one another or hoarding work — behaviors which do not support the VLFT goals of efficiency and creativity.

In addition, protocols should be created to ensure each firm has access to the information it needs to execute its function and clear expectations for how and when tasks should be completed. For instance, regular calls, shared calendars, task lists, and clear procedures for everything from receipt and drafting of discovery requests to obtaining authority to settle or try a case will be useful to ensure essential tasks are completed according to in-house counsel's expectations and with time for team feedback and review.

But each firm or lawyer's role should not be too rigidly defined. Unforeseen issues will arise, and when they do, VLFT members must proactively communicate with each other to provide sufficient coverage. The highest functioning VLFT will, once trust is established, see and appreciate the strengths of each team member and can often decide who the best person is for each task. This collaboration will often unfold naturally, without client direction, as team members begin to count on each other and

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develop working relationships and even friendships.

Conclusion

The VLFT brings with it the potential for great challenges for in-house counsel but also the opportunity for even greater successes. In exchange for an investment of time, the VLFT concept gives in-house counsel another way to deliver excellent litigation risk management results to their clients. **ACC**