Just Say No: When Law Firms Should NOT Participate in Beauty Contests

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It's the defining moment in law firm marketing. Here's a professional caste called lawyers who, a decade ago, regarded any form of marketing as unseemly at best, demeaning at worst. The idea of going hat in hand to a prospective client—any prospective client—and competing with other law firms in a so-called "beauty contest," would have seemed absurd.

Now, after years of competitive wrangling, law firms are waiting in line at beauty contests for a chance to pitch their practices. These beauty contests have signaled the birth of a new era in the history of the legal profession, for at least four reasons.

- First, the law firm is being asked to prove its very existence as a quality organization.
- Second, the firm has to justify its staffing procedures, its billing rates, even the coherence of its work product in ways it would have thought unthinkable a few years ago.
- Third, the firm has to be willing to compromise in areas, like pricing, that it once arrogantly deemed non-negotiable.
- Fourth, the firm has to compete for its own business. Old client relationships are not only at risk, they're at risk in quasi-public settings! Like a middle manager in a downsized or acquired company who has to interview for his or her own job, law firms now must resell themselves to existing clients who may be indifferent to yesterday's accomplishments and the implicit commitments of the past.

In other words, beauty contests, more than any other phenomenon in today's competitive environment, demonstrates that the client is in control. Of course, they are in control. The very integrity of professional services is predicated on obsessive client service. In the client's view, the shift in control is a welcome alternative to the perceived arrogance and independence which too many law firms indulged a decade or so ago.

On the other hand, the shift in the client's favor has been so enormous that, it invites a certain disingenuousness on the part of many clients. Old clichés like "power corrupts" survive as clichés because they happen to be all too true. The apparent abuses of power by some clients are nowhere more evident than in how they set up and manage beauty contests. Law firms must learn, not only how to effectively compete in a beauty contest, but also how to assess each beauty contest opportunity—and know when to simply decline to participate.

Participation is voluntary (provided you remember that the "golden rule" applies, i.e., those that have the gold do unto others as they darn well please). Yet, in the current market, non-participation could seem to be a radical decision. It may give most law firms a queasy feeling to spurn the advances of the corporate buyer with rumors that they are too arrogant to compete. Maybe the buyers will start thinking you don't need or want new work!

My advice is to be bold and just say no—provided you know how to spot the tell-tale signs that reveal which beauty contests are dangerous wastes of time. In most such instances, clients are just looking for leverage. They've made up their minds to retain another firm. Any commitment you make to lower rates or lower costs gives them negotiating power

with whomever they've already selected. In other words, you're being used.

Even worse, clients could divulge information in a beauty contest that will disqualify your firm from representing a competitor. Not only might you be conflicted out from handling a related transaction or litigation, you could be permanently disqualified from working for one or more companies on any matter.

Sounds paranoid? It happened a few years ago to one of the nation's ten largest firms. All the evidence suggests that a preliminary interview was a purposeful tactic used by the prospective client to make sure this great firm was put out of commission. By all accounts, it was a painful experience.

Here's a bit of general advice: approach each beauty contest as if its host were already a new client. Treat it like more like a marketing opportunity. Apply the same client intake process, replete with preliminary research and conflict monitoring, that the firm applies when any new representation walks in the door.

Even when you're relatively confident the firm is on safe ground, make sure that your lawyers talk hypothetically, during the beauty contest itself, both about the matters that the interviewing client intends to assign as well as any past or present related matters the firm is handling.

Few could hope to read the minds of many corporate legal buyers. Fortunately, there are red flags that indicate when a beauty contest is probably bogus. These signals are found in the wording of the request-for-proposal that initiates the beauty contest process, or in certain statements or actions by the client before and afterward.

In some cases, these red flags suggest the retention decision has already been made and that your chances are nil from the get-go. In other instances, the job might still be open, yet participation in the beauty contest could be injurious. In fact, the worst-case scenario is that you'll win the beauty contest and get the job, with a client who instinctively looks at you like an adversary.

If I were a managing partner or practice group head, I'd memorize these signals:

Arm's-length client. Any refusal on the part of general counsel or whoever makes the final retention decision to meet directly with key law firm representatives beforehand is generally a sign they are not serious.

Clients complain, when law firms don't send the right lawyers to a beauty contest. If, for example, a marketing partner shows up without the practice group head who'll be handling the work that's up for grabs, it shows less than complete seriousness on the part of the seller.

That sword certainly cuts both ways. If the person who's got the actual clout to hire you isn't there, you're sitting in the wrong room. That person is probably talking at that very moment to the firm that will be hired.

Impersonal communications. This is a significant variation on the arm's-length client. If you're in serious contention, particularly for a major litigation or transaction—and certainly if you're in a beauty contest that will consolidate all the client's work among a greatly reduced number of law firms—the prospective client couldn't possibly be unwilling to personally meet with you at any time to discuss his or her legal needs.

Remember, for most types of representations decided at beauty contests, the client will wind up virtually living with outside counsel for the duration. Clients usually know this. It is in their obvious self-interest to get to know you as closely as possible. If they're only willing to

communicate by mail, they're pulling your chain.

Overemphasis on rates. Look carefully at the RFP or try to get some prior sense of what the client wants you to talk about most in your presentation. If it's fees and price, if there's a strong focus on hourly rates, you may want to sit this one out. They're likely shopping price in order to squeeze their current counsel.

As an issue in a beauty contest, the cost of legal services is second to none in importance for everyone. But there's a big difference between cost and rates per hour. Discussions about cost are creative and freewheeling. They test flexibility on both sides. They test the seller's willingness to help the buyer save money without deleterious effect on the seller. They test the buyer's willingness to formulate cost-effective schedules that still provide incentives for the seller to do a good job.

Rates are one part of the cost discussion. As soon as you see they're the only part, go home and mow the lawn.

Unattainable goals. Here's another example of bad faith financial negotiation. The client is insisting on budgets that cannot possibly be sustained or asking for write-downs that would be burdensome even to the most cost-efficient law firms.

One of two things is happening when clients bargain for the impossible. It could be another give- away that the decision about whom to hire has already been made, and that you're being used as a bargaining tool.

Or, even worse, the client actually wants the firm eventually hired to pledge itself to undoable standards. Maybe you'll kill yourself trying to stay within the unrealistic cost parameters. The client still saves a bundle in legal fees even if you fall short of the original projections. Or maybe you won't come anywhere near meeting the goals. That irrevocably poisons the water between you and the client. But the buyer then poses as the disappointed party and thus maintains a psychological advantage.

Most law firms would not agree to impracticable budget or performance goals, but I'd further advise a firm to walk away from any beauty contest where the clients begin by postulating impossible cost restraints, even if they're only doing so as a negotiating ploy. The fact is, you deserve more good faith than that. Most of the corporate clients you should want to be representing are as concerned about your economics as you are, because they know your financial survival is also in their best interest.

The clients whose business is worth competing for look at you the same way you look at the vendors who supply your litigation support software or keep your networks up and running. If they go broke, you could too. Clients who'd bargain law firms to the brink aren't worth representing unless, of course, you're absolutely desperate for another client.

Artificial proposal or bid deadlines. Overly specific deadlines are usually a sign the client is just gathering market data to use in negotiations with someone else. ASAP deadlines are real red flags. Such deadlines severely limit a law firm's capacity to be competitive.

The client probably knows this but doesn't care. After all, the client doesn't need a firm that's not really in the running to be competitive.

No performance standards for selection. Look carefully at the RFP. If there is no statement somewhere in it, or if you can't get a thoughtful response from the company, as to how the winner will be chosen, then it's because there probably won't be a winner.

Ideally, there should be two types of provisions clearly communicated by the client. First, the RFP should articulate criteria for winning: depth in specific practice areas, willingness to adhere to the budget, willingness to accept a regular management review by the client, ability to work with local counsel, etc. A clear report card for performance is mutually beneficial.

Also, the client should be willing to disclose verbally or in writing who specifically is making the retention decision, what sort of follow-up or further effort after the beauty contest could help candidates influence the final decision, and when the decision will be made. This is all basic courtesy, folks. If they're not basically courteous, then you should basically not be interested.

No oral presentations. Here, your written response to the RFP is decisive, too much so. The beauty contest itself—if there actually is one—becomes a Kafkaesque interrogation in which the client picks out specific points from the RFP and asks respondents generally close-ended questions. It's tantamount to a corporate MRI in which a law firm is the patient with absolutely no room to move.

This approach is particularly suspect since informed retention decisions obviously depend on the most expansive possible verbal discussion. The client ought at some point, either in the RFP or in follow-up communications, to indicate when and where law firms under consideration will have opportunities for such ample dialogue.

Law firms that see too many of these red flags flying may decide they really need to compete in substantially fewer beauty contests—if any at all! Yet, marketing is an art that requires constant refinement, and law firms shouldn't necessarily neglect opportunities for practice. In other words, there's at least one reason to participate even when one or more of the above signs convince you the beauty contest is a shell game, and that's because you need the experience.

There's another good reason to compete in a rigged beauty contest, albeit a depressing reason. Your own client is bidding out the work you've been doing because new management wants a change, or at least wants to see what's out there. The decision to dump the firm may already be irreversible, yet you still have to prepare a presentation and take your best shot. It's your client, after all, until you hear otherwise.

Not just as a training exercise, beauty contests may help firms market themselves irrespective of their chances of winning the main event. You may, for example, do such a good job in your presentation that the client will retain you for a choice piece of the work—even when there had been no original intention of assigning it elsewhere than to the company's current and primary firm.

Second, most beauty contests offer an ideal opportunity to get the word out on a new service, or a new practice group, or a prominent partner who's just lateraled in. We hear no end of stories about corporate clients surprised, and very interested, to learn that a firm is strong in an area that has nothing to do with the competition at hand.

Some of the clients who hold beauty contests will never meet you halfway. But among the others, there are some who, while they are dragging firms through beauty contests they can't win, are still open-minded enough and shrewd enough to pay close attention to everyone who passes through. With these clients, we ought to redefine the premise. Their beauty contests aren't totally bogus; they're simply longer-term opportunities than the original RFP might have suggested.

The point is, it's still worth competing for their work even if the decision on immediate retention has already been made. Firms get great airtime this way, and a chance to be a bona fide front-runner the next time the client goes shopping.

Lawyers have to get over the old bugaboo of valuing a marketing effort only if it leads directly to new business. The most lucrative marketing is longer-term than that, and a beauty contest that's not winnable today may be the best case in point. The key is to clearly define what you want, on a prospective client-by-client basis, and to at least realize that every RFP is an investment opportunity.

Invest wisely!