

## **HOW TO GET THE BEST FROM EXTERNAL SOLICITORS IN NIGERIA**

The aim of this paper is to identify how in house solicitors can get the best out of external solicitors. Put another way, how can external solicitors be motivated for greater output. This sounds like the stuff of management experts. This is an area that legal practitioners appear not to have mastered in our environment. In other professions, a lot of premium is attached to factors that assist in enhancing professional performance. To be sure, so many principles have been espoused in this area by international management experts, resulting from extensive research studies.

Regrettably, in our profession, we appear rather slow in taking advantage of these factors. Yet, if we look closely, those principles hold true for us, as they do for our counterparts in other professions. Through those same basic management tools that have brought about radical changes in other professions, this paper would attempt to demonstrate how they can be beneficial in our own profession too. There are quite a number of these factors. The following are some important ones.

### **1. Communication**

It is generally accepted in management circles that communication is very vital. We therefore hear of top-down, down-up communication etc. We do not have to search far to understand why this is so. External solicitors by their profession act on instructions from clients, through our in house colleagues. Often times, instructions are not carried out properly because they are not clearly communicated. It is important to close the communication gap between the in house lawyer and the external solicitor as this is bound to increase the external solicitor's output.

Typically instructions are received in writing or at meetings or occasionally through the telephone. In house lawyers should endeavour to clearly explain what they expect to achieve from the instructions given and emphasize if time is of the essence. Although it is fairly standard practice for external solicitors to render regular status reports on assignments they are carrying out, where this is not the case, in house lawyers should express an important need for this. This is important so that external solicitors are properly guided in taking appropriate steps and avert costly errors before it is too late.

But it is not only where external solicitors are being briefed that communication is necessary. In house lawyers also need to set up an internal mechanism where objective feedback can be exchanged between them and their external solicitors. There cannot be any substitute for this. The external solicitor would want to have an idea of what his client thinks of his services to enable him make necessary adjustments. Some corporate clients have these processes in place. The Legal Department of Nigeria LNG Ltd. for instance has developed a method where, twice a year, it appraises the performance of its external solicitors by grading them in excellent, good and fair categories. The Legal Department of Chartered Bank Plc. has even taken this form a step further. Once a year, it invites its external solicitors in to discuss various legal matters they are handling. At such meetings, resolutions are reached on how best to move forward, while solicitors get to know what the client feels. These methods are actually not new in developed jurisdictions and the Law Society in England actually encourages it. These methods are commended to colleagues in Nigeria. Apart from feedback on

general performance, vital information that otherwise would not come to the fore, is shared at these meetings to improve performance. The opportunity is created for an exchange of ideas on current and authoritative texts, current trends; current position of case law and current statutes in areas of mutual interest.

## 2. Identifying the Appropriate Counsel

Here, the point is that in selecting external solicitors, particular attention ought to be paid to whether such a solicitor has the requisite skills. In advanced countries, it is rare that in house solicitors would have very serious problems with the quality of service of the external solicitor. The reverse appears to be the case in Nigeria. The reason is not unconnected with the fact that in our environment, we have not developed a culture for specialization. There are many square pegs in round holes.

Generally, Legal Practitioners delve into general practice to be able to get a bit of everything and their knowledge not unexpectedly, is at best, hardly deep in any particular area. It is therefore not unusual that a practitioner, who has developed his professional skill mostly in Human Rights, is being instructed to carry out work in intellectual property. I seriously wonder what we truly expect from a practitioner who has hardly had any professional experience outside chieftaincy/land matters who provides legal service in Maritime law. Although specialization is a culture that is not so pronounced yet in Nigeria, some practitioners are already embracing its virtues. For instance, in my firm, there are some types of services that if instructed, we would politely decline. There are areas that out of choice, we have chosen not to get involved in and therefore do not have the strong competence or vast tools to render the service. I know some firms in the country for instance that offer maritime or intellectual property services exclusively.

The point here is that by allowing the lawyer's competence to guide the in house solicitor in selecting counsel, in house lawyers are almost always guaranteed quality service. The gains of briefing a specialized solicitor are enormous. The in house solicitor reposes so much trust and would not need to interfere and be distracted with his own remit. For the external solicitor, his professional independence is guaranteed and he is able to achieve a lot this way. We must not forget that competence is developed through concentration in an area which can only occur with the support of the in house lawyer. It was quite disappointing sometime last year when BPE stated that foreign lawyers have been allowed to participate in rendering legal service in Nigeria because the relevant skills were not available in Nigeria. What BPE has forgotten is that the only way to develop competence is to encourage practitioners. There is bound to be improvement with each fresh instruction.

In house are therefore challenged to place a lot of premium on the solicitor's competence. The in house lawyer must develop a way of identifying the right solicitor with the right skill for each assignment. This would not always be easy. It is not uncommon that an oil company would need the services of an intellectual property lawyer to register a contract that contains technological transfer with NOTAP, and a real estate solicitor to negotiate the acquisition of land for its petroleum exploration operations. This is the only way that the best can come out of these external solicitors and a strict oil and gas lawyer would not have much role in such a case. It must be mentioned at this point that a very large firm may have the capacity to specialize in more areas than a relatively smaller

firm.

Specialization should not be limited to the external solicitor. The in house solicitor copes better by having more than surface knowledge of his area. This is the only way he can easily identify intricate issues involved, how to resolve them, and which solicitor possesses the skill to deal with them.

Seminars afford the opportunity for continuous legal education and this is necessary for all solicitors, in house or external. Professor Odita, at the 40<sup>th</sup> anniversary lecture of the Nigeria Law School said that after obtaining the academic degree in law and passing the professional Bar examinations, lawyers require continuous legal training to remain relevant.

Our in house colleagues owe this to themselves. As in house lawyers, they are the first to have contact with legal issues, their role can be likened to that of the medical practitioners who administer first aid treatment to accident victims and then determine which patient needs a surgery, which one needs a life machine, which one needs a bone specialist. If this role is not carried out well, they would have failed in their duty to assist the specialist. This is the way it is with our in house colleagues. If they do not possess sufficient competence in an area, their analysis of the issue is likely to be suspect and they may end up with the wrong prognosis and therefore call in the wrong external solicitor.

### 3. Appropriate Reward System

It is a truism that you get the best out of man through a proper reward system. In management, this principle enjoys a lot of prominence through the famous management theory, which holds that money plays a role in motivating man at work. What is particularly interesting in our profession is that a lot of our colleagues on the other side of the divide, who by virtue of career advancements in corporate environments are exposed to these management principles, choose not to apply them when it comes to rewarding their colleagues in practice. There is clearly a problem with pricing legal services in Nigeria. When a fee note is sent in, those fees are arbitrarily slashed without recourse to the external solicitors or even without regard to the nature of service. And then on many occasions those in practice are made to plead, cap in hand, before those fees are finally settled. Unfortunately, fees are largely unregulated in Nigeria and even where the Legal Practitioners (Remuneration for Conveyancing Matters) ORDER of 1971 prescribes fees, from experience, clients insist on a take-it-or-leave-it approach. As we would all recall, the Legal Practitioners Remuneration Act came into force when there was almost parity between the dollar and our Naira. The continued use does not reflect inflation trends. And this is what clients still insist on not applying. And in an environment where unjustified patronage is placed above competence, the external solicitor is at the mercy of the client. Yet, it is from these fees that the external solicitor is supposed to retool to be able to remain competitive for the client and attend international and local seminars, acquire expensive specialized law books, belong to and pay professional subscriptions to international and local professional bodies, and acquire modern business machines to facilitate his work. It is hard to understand why this is so. The answer is simply elusive. What is clear however is that our colleagues readily complain about sub-standard legal service in Nigeria and quickly point at the very high standard in developed countries.

It is unfortunate that they have never been able to see the direct correlation between the proper pricing of legal service and the quality of that service. If you

are well rewarded, having been properly identified, it is not likely that you would offer sub-standard service. It is as simple as that. In those developed countries that are referred to, their billing is done mostly on an hourly basis. The client is held accountable by the solicitor for virtually all the time that is spent on its work. It is unthinkable that in Nigeria the external solicitor would charge for the time he spent holding a meeting with the client. Several times in house counsel have prevailed upon external solicitors to accept fees clearly below services rendered. And the excuse is almost always the same. It is never in doubt that the service rendered is to the client's full satisfaction. Management is however simply not willing to pay more than X. Rather than persuade management to accept the solicitors fees, the in house counsel resorts to pleading with the external solicitor to accept what is offered, with a promise of continued patronage.

This is clearly a warped reward system. Left with little choice, the external solicitor accepts this position very grudgingly and in hindsight is unable to put his best in subsequent assignments. Some managements actually struggle with the fact that solicitors are prosperous. They believe that external solicitors ought only to get by on their income and their alarm derives, not from any lack of quality of service, but the volume of fees. It is true our profession is noble and our service social. But we are also entitled to being wealthy. A banker client who had just read John Grisham's *King of Torts*, wanted to know from me if there were lawyers in the United States who actually owned private jets and yachts - believed in this part of the world to be exclusive toys of entrepreneurs. The point therefore is that with a good reward system, our colleagues can be assured of quality service. In house counsel are therefore challenged them to address this issue.

#### 4. **Strengthening Our Value System**

It is hardly a hyperbole that the general standard of the legal profession has never sunk lower than this. Month after month, story after story, we are regaled with tales which would have been considered unthinkable at the time we were aspiring to be legal practitioners. Generally, it is believed that external solicitors and judges are behind this. If the truth has to be told, some of our colleagues in house also share in this problem. They allow themselves to be put under intense pressure by desperate managements to obtain specific results. Our firm was once contacted by the Legal Department of a bank which wanted to know what our professional charges would be for obtaining an injunction against a debtor. They were not impressed by our explanation that we could not guarantee obtaining an injunction. The facts had to be studied to determine if an application for one was deserving, within the context of an action that we would have to file. Of course they went elsewhere for their objective. Our colleagues may not be in private practice. They are however still very much bound by our professional ethics. It is a good thing that we have those ethics to guide us, sadly however, little is being done to uphold these values. There are so many factors why this is the case. One however is relevant here. We all leave the business of enforcing and upholding the values of the profession to very few people. It is generally believed that our colleagues cannot be bothered about what the professional body is doing and hardly participate in its activities. What they fail to realise painfully, is that with their involvement in the body's activities, the Bar is bound to be stronger and we all stand to gain from this.

We all know that professional liability is taken very seriously out there in most advanced countries. And because of this, invariably, solicitors take out an insurance policy against professional liability. By now, this should be the

direction of our practice in Nigeria. It is more in our in house colleagues' interest that quality service is rendered. They therefore need to be more involved in the body and promote some of these practices that are bound to heighten the standard of legal practice in the country.

### **Conclusion**

This paper has attempted to provoke thought on how in house counsel can obtain value from instruction to external solicitors. The issues discussed above are by no means exhaustive, it is however believed that they constitute a starting point to challenge all legal practitioners in coming up with very robust ways to address this very vital area. If this is achieved, the paper would have succeeded in its task.

The information contained in this publication is only intended as a general review of the subject concerned and should not be treated as a substitute for specific advice concerning specific situations. If you need further information about any issue discussed above, please contact Wale Babalakin at bob@babalakinandco.com

**BABALAKIN & CO.**  
8<sup>th</sup>-10<sup>th</sup> Floors, 24A Campbell Street, Lagos  
Phone: +234-1-2632185  
Fax: - +234-1-26237136  
http: www.babalakinandco.com  
E-mail: mails@ babalakinandco.com