

Kluwer Mediation Blog

20 Questions every corporate General Counsel or Head of Litigation might very well ask

Michael Leathes (Corporate counsel & author) · Tuesday, July 8th, 2014

Being responsible for resolving a large number of disputes for any organization is a stressful occupation. It involves risk, cost and resources and navigating between leadership and management, success and failure as well as blame and experimentation. Although there is no magic bullet, the task can be aided considerably by harvesting the answers to the following twenty questions, and devising an action plan where weaknesses are exposed.

Many of these questions are inspired by, or directly drawn from, the responses to a survey of companies around the world run last year by the International Mediation Institute, to which 76 companies responded (the results are available [here](#)) and a 2011 survey conducted by Pepperdine and Penn State Universities in 2011 of Fortune 1,000 companies (the results are available [here](#)). The twenty questions, in no particular order, are:

1. Should mediation be routinely built into all multi-step dispute resolution clauses in the Company's contracts?
2. Should the Company have a public written policy favouring early settlement negotiations in all appropriate cases?
3. Should in-house litigation team members be trained and empowered to negotiate with third parties to achieve clearly expressed business goals?
4. Should all external litigation counsel be required to have undertaken negotiation and mediation advocacy training as a condition of representing the Company and should external counsel be rated on their effectiveness in these areas?
5. Should all internal counsel be trained in mediation advocacy skills?
6. Could the value of risk reduction (in addition to cost reduction) be more clearly understood and measured?
7. Could current legal cost centres credibly demonstrate their impact as profit centres in terms of total value added?
8. Could some features of other companies' case analysis tools be considered useful additions to the Company's case management system (and where such a system does not exist, should it be

created)?

9. To explore new ideas for dispute resolution and form collaborative networks for testing those ideas, should team members participate more actively with relevant outsiders, such as the Corporate Counsel International Arbitration Group (CCIAG), the German Corporate Round Table on Mediation and Conflict Management (RTMKM), the Association of Corporate Counsel (ACC) and the European Corporate Counsel Association (ECLA)?

10. Should team members be encouraged to regularly follow external thought leadership in dispute resolution publications, such as blogs and journals?

11. Should team members be encouraged to publish short pieces that give visible expression to different aspects of the Company's dispute resolution ethos and values?

12. Should business colleagues be referred to as "clients" and should external counsel be discouraged from using such a term when referring to the Company, because shouldn't these relationships, in reality, be partnerships?

13. Have the respective roles of internal and external counsel been clarified in the minds of external counsel, including who controls what, in both theory and practice?

14. Do team members feel fully empowered to experiment with new dispute resolution techniques (mediation, use of settlement counsel, hybrids, etc.) or does an inhibiting culture of blame or turf protection pervade the organization?

15. Should the internal and external litigation teams be trained in techniques to bring the other party to the negotiating table in the right frame of mind?

16. Should internal legal/business teams (not just litigation teams) be encouraged to undertake mediation awareness programmes?

17. Should team members participate in outside working groups considering changes to the way disputes are handled both locally and internationally?

18. Could the Company's internal CPD/CLE programs include invited outside speakers from other companies on how they resolve disputes effectively?

19. Could Company facilities be offered for public-private debates and seminars on Effective Dispute Resolution issues to publicly emphasise and illustrate the Company's support for early resolution of business disputes?

20. Should the Company collaborate with other leading corporations to lobby the world's arbitration institutions to introduce mediation as a routine process step before and during the arbitral process?

Michael Leathes and Deborah Masucci

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