

THE AMERICAN LAWYER

americanlawyer.com

JUNE 2012



FENWICK'S IN-HOUSE TEMP AGENCY

Late in the last decade, Fenwick & West partner Ralph Pais and his colleagues in the firm's tech transactions practice saw many of their start-up clients moving their work on smaller deals to boutiques and solo practitioners in Silicon Valley. They also saw clients who were not quite ready to hire full-time in-house lawyers, but who were still generating enough legal work to warrant some part-time lawyering. Pais thought that Fenwick could help. In early 2010 he created Flex by Fenwick, a legal temp agency that provides in-house lawyers to budding tech clients.

Two years later, Flex's lineup of some 20 contract lawyers have served 31 clients on 46 engagements. All of the Flex lawyers have practiced in a law firm and in-house and have at least eight years of experience. Pais screens candidates through an experiential interview process: He has them mark up a mock commercial agreement, and then he calls pretending to be a pesky client who wants to discuss the document. The contract lawyers handle commercial and licensing deals, employment agreements, or any other legal work that might come up in the start-up's life cycle. Clients can subscribe to a set number of hours or days per week spread over a quarter, and the firm works to match them with the right Flex lawyer in terms of skills and work style. Fenwick covers the Flex lawyers's overhead, provides their malpractice insurance, and handles their billing, but only pays them while they're on assignment. Flex clients pay rates that typically decrease with increased usage and run about half of Fenwick's hourly rates.

Although Pais and the firm declined to discuss the specifics, Pais says the project has outperformed its budget, and the firm did not build low expectations into its projections.

Cyriac Roeding, the CEO of shopkick Inc., the maker of a mobile shopping application for smartphones, has worked with Fenwick on corporate issues since 2009. He has also used Flex lawyers for the past two years to handle more routine commercial agreements with retail partners. Roeding says that with Flex, start-ups like shopkick get to keep their ties with their large full-service firm without paying their prices. "You have a sustainable and affordable model while retaining the overall link to the mother ship that knows the corporation itself and the issues it has," Roeding says. He adds that Flex lawyers have called attorneys at Fenwick for advice on trademark, liability, and complex human resources issues.

Bobby Garcia, who landed his position as senior corporate counsel at Ustream Inc. in January 2011 after working there on a four-month assignment with Flex, has also leaned on Fenwick lawyers to help with more complex issues. Garcia brought on an additional Flex attorney to pitch in with the growing workload at the company, which provides a platform for live interactive Internet broadcasts. Still, Ustream runs into some issues that require them to call a Fenwick lawyer. "We do still have our limitations—as a Flex attorney, as a generalist—where you really need to run something by a specialist," Garcia says. For Fenwick, that's a good thing, too.

—R.T.