Top Seven Tips for Successfully Working With In-House Counsel

Jennifer Hilsabeck

1. One of your primary goals should be to make easier your in-house counterpart’s job easier.

Many times, the “business folks” (read “nonlawyers”) within any given organization may question (and sometimes, challenge) the need to use outside counsel when they already have an in-house counsel on the company payroll. Of course, as skilled legal practitioners, both you and the in-house attorney seeking to use your services are well aware of your value and the expected benefit to be derived from retaining you for a specific project—but it may not be equally clear to those within an organization whose primary focus is keeping costs low. Therefore, in order to help bolster your in-house counsel counterpart’s decision to bring you on board, you should always strive to keep said in-house counsel informed of any developments in the matter on which you are working and to deliver tangible results. Naturally, these are goals that you would be seeking to satisfy in any attorney-client relationship, but because it will usually be the in-house counsel who retained you that is responsible for justifying your legal bills to the company business team, it is prudent to be sensitive to this dynamic and to be considerate to the demands placed on your in-house counsel counterpart.

2. Find an area of the law about which you are passionate and make that area your primary focus, but at the same time, try to pick up general legal skills that would be valuable to any in-house counterpart—in addition to having a strong referral network.

As most in-house legal practitioners tend to be engaged in the practice of law on a general scale, being required to handle a wide array of legal issues regardless of their employer’s ultimate business industry, they will often times reach to outside counsel for specific substantive expertise. Nevertheless, it certainly can’t hurt you to have basic knowledge of some of the more heavily practiced areas of law even if they aren’t your primary practice area, such as intellectual property, employment, general corporate compliance, and basic litigation, just to name a few. Even if you are only able to help your in-house counsel talk through a situation, identify main legal challenges, and then pass on a few possible referrals, your being viewed as the go-to outside counsel when issues arise will serve you well in developing a lasting relationship with any client.
3. Strive to be as accessible as possible, including outside of traditional working hours.

Although life as an in-house counsel might not be spent filling electronic timesheets, it can often be spent in a string of endless meetings, jotting down never-ending to-do lists. Try not to cringe and hit “ignore” if your in-house counterpart calls you outside of your traditional business hours, as this may be the first chance they have had all day to contact you.

4. Become very familiar with your client’s corporate culture and management hierarchy.

Each company, much like each law firm, is going to have its own special style and method of operations. For example, there might be certain executives who need to sign off before a final decision can be made on a legal matter, even though they aren’t lawyers. Many companies require issues to be vetted by multiple working groups before final decisions can be made, which can be quite frustrating for attorneys (both in-house and outside counsel) who have previously worked fairly autonomously when deciding how to proceed with respect to legal strategy. Therefore, be sure to discuss with your in-house counterpart the timing and approval structure for necessary approvals, particularly if you are facing strict filing deadlines.

5. As with all of your client relationships, having strong networking skills can be extremely valuable to your ability to work successfully with in-house counsel.

Being well known and well respected in your local business community should help reassure any skeptical business folks that bringing you on board was indeed the right decision by their in-house counsel. Also, having strong contacts with attorneys from diverse practice areas in various jurisdictions can help ensure that your corporate client’s needs can be met, regardless of where a need may arise.

6. Be open to alternative billing arrangements.

Although the billable hour continues its stranglehold on the legal profession as the preferred method for capturing work performed, many clients truly detest this form of billing arrangement. The preceding sentence can be doubly true for in-house counsel who were once slaves to their time-keeping systems and are therefore acutely aware of the pitfalls inherent to this form of billing. This isn’t to say that you should feel pressured to enter into a billing structure that will fail to fairly compensate you for your time and effort—rather, this tip is merely intended to suggest that by keeping an open mind when an in-house counsel client
proposes a flat fee or some sort of combined flat fee/billable hour combination will go a long way towards solidifying your reputation for being an ally in the war against inflated outside counsel legal bills. Even if you never end up formalizing an alternative billing structure, the fact that you were willing to consider it and crunch the numbers in support of, or opposition to, such an arrangement will be appreciated.

7. Show a sincere interest in your corporate clients’ primary business industry.

One of the perks to having a book of business, is the ability to develop these attorney/client relationships. This relationship development can take the form of informal lunches, invitations to attend sporting events, or sending email blasts in order to keep your clients apprised of industry developments. Every time you reach out to your client with a communication, in addition to remembering important details about what matters most to them as human beings (such as recognizing recent awards of distinction or special family news/milestones), you should strive to share something valuable that you have recently learned about their core industry. The keys here are recent and valuable. The best way to be in a position to receive such information is to regularly review (even skim) industry specific trade publications to stay abreast of recent developments. Thanks to the Internet, including Google alerts and similar tools from other providers, this shouldn’t take much time nor should it create any additional cost burden.

Authors

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https://www.americanbar.org/groups/gsolo/resources/new_member_monthly_newsletter/february_2012/top_seven_tips_working_in-house_counsel/
By Jim Boeckman

"IN"
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FOR OUTSIDE
COUNSEL
GENERAL COUNSEL are more focused than ever on spending less and getting more out of their legal budgets. They are reading the legal trade press headlines about allegations of abusive billing practices and attending seminars where their peers and other experts coach them on how to be vigilant when retaining outside counsel. They are also closely reviewing outside counsel’s invoices and implementing processes and technology to identify and reject inappropriate billings.

Against this backdrop, is the client-law firm invoicing process destined to be adversarial? Should outside lawyers resign themselves to a hard slog for getting even the most reasonable invoices paid? Or are outside counsel’s invoices opportunities to demonstrate the value of their services and to strengthen their client relationships—and perhaps even grow their share of some clients’ outside legal budgets? I offer here some practical suggestions on how outside counsel can turn the invoicing process into an opportunity, rather than a necessary but painful burden. For this article, I’ve assumed that most of your clients have an in-house legal team, led by a general counsel, but the principles discussed apply equally well to clients who don’t have any lawyers on staff or who have a general counsel operating as a solo practitioner.

Before we dive into changing the paradigm for invoicing, you first need to undertake a “readiness assessment” for this initiative. Ask this question: Have you eliminated the billing practices that make reviewing your invoices a joyless, frustrating chore for your clients each month? You can find various articles on the topic, or ask your clients how they would like invoices prepared. Or perhaps my post about “Ten Law Firm Invoicing Habits Guaranteed to Annoy Your Clients, Reduce Collections and Extend Payment Cycles” on the Boosting Legal Value blog will help. You need to take steps to ensure your firm is not displaying any of the billing habits that a senior in-house leader at a major tech company recently told me that he “loathed.”

Once you’ve addressed these basic issues, it’s time to turn to the more interesting and potentially rewarding work. That is, how can you turn invoicing into an opportunity to earn more—and more profitable—assignments from your best clients, or those you’d like to include in that category?

An example from my first stint in-house involves the lead lawyer from the company’s primary outside firm. Each month, he would drive from downtown to our suburban offices to hand-deliver his firm’s monthly bills to each in-house lawyer who would be the primary reviewer of those invoices. This partner had been working with the company since its earliest days, was involved in many of its cornerstone transactions, and was held in very high esteem inside the company, so no one expected him to take on courier duties as well. Although I didn’t fully appreciate the brilliance of it at the time, from my perspective today, he was taking the simple step of delivering invoices as an opportunity to solicit feedback on his firm’s services and to enhance his relationships with our in-house team, many of whose members were relatively new to the company and who had their own ties to other law firms. I have no doubt that he picked up some additional projects each month when he walked the halls, making for a very good return on investment for the time he spent completing this simple task.

If delivering invoices in person doesn’t fit your personal style or your client relationship—your client may be far away or it may want invoices submitted electronically in a particular format—what else might you do? Based on discussions with numerous in-house leaders over the past few years, I offer five ideas for turning outside counsel invoicing into a marketing opportunity.

Understand value. Before you send out another batch of invoices, meet with your client’s general counsel, in person, to find out how his or her company views the invoicing process. How does his or her company define the value of your services, how does it use invoices to assess the value of your services, and how can your invoices do more to demonstrate that value? Value can be based on a myriad of objective and subjective factors, weighted differently by each client. Possible factors to include in your discussion are (1) the opportunity cost of having in-house staff do the work rather than sending it outside; (2) the risks
presumed to be averted or mitigated by hiring expert outside counsel; (3) the "pain" (cost, reputation, and otherwise) the project represents; (4) the enterprise value to be derived from successful completion of the project; or (5) the savings gained from hiring your firm rather than a more expensive firm.

Bring something. When you have that discussion, bring along something or someone else of value. The easiest example of a "something" might be a great article, from your firm or elsewhere, addressing a key legal issue in the client's industry. Also bring a one-page executive summary of your recommendations for addressing the issue within the client's organization, based on your extensive knowledge of what they do, how they do it, their risk tolerances and any other relevant factors—prepared on your nickel, of course. A "someone" could be a mid-level associate whom you'd like to make available to your client for a few months—at your expense or a greatly reduced rate—to help the client clear out its backlog of "important but hard to get to" projects, and along the way learn something about the business—a law department "embed," as it were.

Consider segmentation. Discuss with your client whether segmenting your billings into major project phases would be useful. For example, last year I reviewed several million dollars' worth of bills from a dozen or so Am Law 100 firms for a major financial services enterprise, and I found that one of their primary firms voluntarily segmented their billings on merger and acquisitions deals into five useful categories: due diligence, drafting, negotiating, research and
specialist work. What segments would be useful to your clients? What would it take to add segmentation to your billing practices?

Discuss your team. If your projects include numerous professionals (particularly specialists) billing time to your client, talk with your client about who those timekeepers are, what they did and how their work contributed meaningful value to, or mitigated significant risks of, the project. Anyone who billed an hour or more on the invoices under discussion is a candidate for mention in such a talk. You may even find that this discussion turns into an “I didn’t know you did that, but we need help in that area” type of conversation. However, keep in mind that your primary goal is not “cross-selling,” but rather to help the general counsel be ready to answer the “Who are all these people who billed time to this project and ran up the bill?” type of question that he or she likely may get from the chief financial officer.

Get creative. Take your client to lunch to brainstorm “outside the box” opportunities. Open your mind to include ideas that would not have a direct benefit for your law firm but could significantly improve the in-house legal department’s operations. For example, could you help the general counsel structure a legal process outsourcing type of arrangement—either with your firm’s own lower-cost resources or by partnering with a legal processing outsourcing vendor—to manage a legal process (e.g., nondisclosure agreements, low-value-but-frequent vendor deals or slip-and-fall cases) that takes up too much in-house time and adds too little value or mitigates relatively inconsequential risks? Or is there a new law department technology idea that your firm’s chief information officer (CIO) spotted at the most recent legal technology conference? Talk to your firm’s CIO about being on the lookout for one or two interesting innovations at conferences or in discussions with vendors. Id’ wager that your CIO would be thrilled to be involved in business development in a new way.

To summarize, as outside counsel, part of your job is helping your clients in the legal department look good—or better yet, great—when they are asked the kinds of questions I know they get every day, such as “How much will it cost?” or “How much has it cost so far?” and, ultimately, “Why did it cost so much?” I believe that if you keep those three questions at the front of your mind as you prepare and deliver your invoices—in addition to doing great legal work at a reasonable cost, of course—you will regularly find opportunities to grow your practice and build your client base. LP

How can you turn invoicing into an opportunity to earn more—and more profitable—assignments from your best clients, or those you’d like to include in that category?

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By Timothy B. Corcoran

The Changing Definition of Value

What matters most to in-house counsel.

The Rules Have Changed.
Law firm partners worldwide reached professional maturity in a much simpler world: One delivered a quality work product and everything else fell into place. Clients were satisfied, lawyers were engaged in thought-provoking work, associates received good training and generous, albeit hard-earned, revenues and profits ensued. This worked. Until it didn’t.

As with all extraordinary ecosystem disruption, many are reeling, casting about for an anchor in the storm. Partners face seemingly conflicting demands from clients who require quality work product but refuse to pay premium rates. To the clients, however, and particularly to in-house counsel, there is little conflict. The definition of quality has simply been redefined to encompass the manner in which legal services are delivered, and not merely the price or the outcome. And clients are happy to describe what this means to them.

“We’re in the midst of consolidating the panel of counsel that we use. We’ve identified five decision criteria that reflect our values: the firm’s relationship to us, including years of service and any customer relationship we have; billing rates for partners and associates; diversity; approach to resourcing and budgeting; and innovation,” reports Anne Sonnen, deputy general counsel and chief administrative officer for BMO Financial Group. Marilyn McClure-Demers, associate vice president and associate general counsel of corporate and intellectual property litigation at Nationwide Insurance, offers a similar robust definition: “Our top metrics are result, diversity and cost-efficiency, but this is closely followed by communication. This refers to timeliness, understanding urgency, managing expectations and helping us avoid surprises with our business management.” James Partridge, formerly chief counsel
for outside counsel relations with Ally Financial Inc., continues the theme: “We developed a scorecard to capture the metrics the company values. These include service quality, program delivery, cooperation and teamwork, communication, financial management and price, which is really a component of financial management.”

To in-house counsel, quality lawyering is merely table stakes. It’s how outside counsel manage the relationship that matters most. “Outside counsel can be insensitive to the amount and frequency of communication that the client needs during the course of a matter,” laments Ted Banks, a partner with Scharf Banks Marmor and formerly chief counsel of global compliance for Kraft Foods. This is echoed by Partridge, who notes how exceptional good communication can be. “One firm impressed us by going well beyond our expectations for normal communication, providing a monthly update on all matters whether we asked for it or not, offering unsolicited insights on litigation techniques, jury pools, judges and the like. This was better than what the majority of our other outside counsel were doing. I liked this approach so much that I worked to turn it into an early case assessment process and asked other outside litigation counsel to adopt the approach.”

Many in-house counsel report that a well-crafted project plan and an accompanying matter budget are critical to managing expectations with business leaders. Yet, law firms tend to resist such requirements, believing that the ebb and flow of complex matters, and certainly the outcomes, are beyond their control. While this is true to some extent, reports Banks, experienced lawyers can still provide directional guidance based on deep experience: “If you’re using a law firm that holds itself out to be an expert in a certain area of law, you expect them to provide a
“By and large, we don’t see proactive innovation. We find ourselves encouraging outside counsel to embrace creative value-based billing arrangements and opportunities.”

—Marilyn McClure-Demers, Associate Vice President and Associate General Counsel of Corporate and Intellectual Property Litigation at Nationwide Insurance

counsel to embrace creative value-based billing arrangements and opportunities.”
But outside counsel don’t have to blaze this trail on their own. Sonnen avers that the best arrangements are developed collaboratively: “Many of our in-house team, along with outside counsel, have attended the ACC Value Challenge workshops, and as a direct result, we are piloting several different types of AFAs and having better conversations with our counsel about value. Cost is one factor to consider in determining value, but predictability and outcomes are also key.”

Ingato says CIT isn’t looking for firms with the lowest hourly rates. Rather, it seeks “competitive rates compared with the efficient delivery of quality legal services.” In-house counsel are increasingly analyzing fee trends and applying benchmarking to identify which tasks can now be performed routinely by multiple providers and which, according to the immutable laws of economics, should therefore decline in price. Such sophisticated analysis has become much easier in recent years as new tools have emerged. Sonnen reports that at BMO “we’re incorporating a new electronic billing system, TyMetrix, that can provide far more analytics and support for AFAs.”

And these tools capture more than merely financial metrics. Partridge indicates that “Ally regularly surveys each of its in-house lawyers to collect feedback. It imports the metrics into our Sky Analytics system, and then conducts financial and nonfinancial benchmarking. When a new matter arises and Ally needs to retain a firm, its lawyers can then query the database to find a firm that meets certain financial and nonfinancial criteria.” Over time, he reports, “nonfinancial measures grew to become a significant factor in [outside counsel hiring] decisions.”

According to Banks, solid relationships are based on more than price and outcomes. “If it’s litigation, you win some and you lose some, and most clients understand
that. It is when the outside counsel presents an overly rosy assessment of a case, or fails to communicate developments that affect the likely outcome, that the relationship will suffer long-term damage.” The mandate to “learn my business” results from a common frustration by in-house counsel. As Peter McDonough, general counsel of Princeton University, says, “Higher education is different. Period. The lawyers who have made the deep and consistent effort to understand it, including the faculty-centric nature of it, and—very importantly—know how to avoid corporate-speak and truly use the language of a higher education environment without faking it have a huge leg up. Not getting that right is a deal-breaker.” This mind-set is shared by Banks, who pays careful attention to his style of communication now that he sits on the other side of the table: “I try to make sure that whatever work product is delivered, is delivered in the format that the client wants. Some want formal memos, some want results in PowerPoint. Clients generally don’t want highly formalistic structures of communication full of lawyer-speak.”

A key and growing imperative for many businesses is diversity. Many in-house counsel, Sonnen of BMO included, expect their law firms to value diversity as well. “Diversity to BMO is more than a social responsibility; it’s a business case,” she says. “There is a direct link between our diversity profile and our financial performance. Shareholder earnings are enhanced when we employ a diverse workforce, and we expect our key suppliers to reflect and support the same rationale.” At Nationwide, confirms McClure-Demers, diversity is also a critical initiative that matters to everyone, including the CEO. “Our outside counsel voluntarily submit their diversity metrics today, and our chief legal officer reviews this at least quarterly with our CEO to discuss our progress. We’ve implemented a new program recognizing diversity in our outside counsel.

“We're a supporter of NAMWOLF [the National Association of Minority & Women Owned Law Firms] and will also be recognizing a NAMWOLF firm in this most important area.”

Firms that get it right will earn more business. McDonough confirms that “if a lawyer in a firm has wonderfully served us, we'll follow that lawyer. Yet, if that lawyer's colleagues also served us well, and we appreciated the firm on other levels—such as a real service mind-set, a real understanding of higher education, quality and consistency, pleasant people, etc.—we will try to also keep his or her former colleagues, and maybe even the firm in general, specifically in mind as opportunities develop.” McClure-Demers says Nationwide is eager to recognize outside counsel for outstanding efforts. As she indicates, “One of our outside counsel took the initiative to combine their institutional knowledge of our business, information from matters they were working on for us and insights looming on the horizon, and recommended a two-year litigation strategy to address these issues. The result clearly addressed our needs, but it also helped set new law and helped our industry as a whole. Our business management loved it!” The firm earned not only more legal work, but became more involved in legal strategy.

The legal marketplace is indeed changing, and law firm partners should take heed of the evolving definition of value and what matters most to in-house counsel. For every client seeking a low-cost provider, many others are seeking law firms who understand their business, who communicate frequently, who manage expectations through budgets and project plans, and who acknowledge the importance of a diverse workforce. Law firms getting this right enjoy loyalty and repeat business, the most critical ingredient for long-term profitability. What matters to your clients? What do they value? Don’t guess. Ask them. LP

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June 29, 2017

Spotlight on the Corporate Counsel Division: The Corporate Counsel Brief

Andrea G. Woods, Nabholz Construction Corporation

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The awkward conversation on billing arrangements must happen. There is no way around it if in-house and outside counsels are going to assure the best value for the client. No matter how many years of practice you have under your belt, this conversation can be as uncomfortable as confronting a teenager about their romantic activities. Likewise, the closer the relationship, the more difficult this can be to accomplish. Nonetheless, it must be done.
My first word of advice to outside counsel is to approach this topic yourselves. Don’t wait for in-house counsel to raise it, and don’t let the first statement for the New Year be the means of communicating rate increases. One of my best (and often repeated) accounts of outside counsel addressing billing rates was also, selfishly, one that provided for no increase in billing rate. Our local counsel contacted me during a recent autumn to discuss how our company was handling the difficult market. He let me know he understood the difficulties we were facing in the industry and promised me no rate increase the following year.

This discussion can only be described as positive. First, local counsel was keeping up with our industry regionally and nationally. He was well informed on the economic challenges and pressures the construction industry faced in the down economy. In house counsel obviously value outside lawyers who keep up with their businesses and industries. Second, he was aware that, although we were profitable, we experienced layoffs in some regional offices and significantly fewer employees received bonuses or salary increases. If our employees weren’t getting increases, why should we pay our outside counsel more? An empathetic outside lawyer will always be welcome in my office. Third, the client was pleased all the way around. Holding a billing rate steady and empathizing with your client goes a long way with management. This was a great discussion to recount to our CFO and CEO. Fourth, and finally, the conversation was a great segue to broach the topic of alternative billing arrangements.

The reality, especially for a small or medium law department, is that every time the call is made to outside counsel, in house counsel considers the cost ramifications of the contact. I once told local counsel, “Everyone in our company is directed to reduce overhead in this economy, and for some, the Legal Department is overhead. I have to assure top value.” The partnership between in house and outside counsel is critical and counsel must keep in mind the overarching business realities when approaching any legal task, litigation or otherwise.

My final word of advice is for in house counsel. Don’t learn the hard way that you do “get what you pay for.” I learned this lesson the hard way, and if it can be avoided, avoid it. Take the time to communicate frankly with outside counsel. Their reputations are
essential to their practices, and their priority is to provide you quality legal services. Surely they are worth the time and effort of the awkward conversation.

Authors

Andrea G. Woods, Nabholz Construction Corporation
The Attorneys on the Inside: Functions and Goals of In-House Legal Counsel

Pervin R. Taleyakhan

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Why hire an attorney? The answer is quite simple: attorneys are hired to help resolve legal issues. Why hire an in-house attorney? The answer to this question is often not quite so simple. Many factors can influence an organization’s decision of whether to hire an in-house legal counsel or create an in-house legal group. Here, I offer a glimpse into some of the functions of in-house counsel that can drive this decision-making process.

Cost-Saving Functions

More often than not, finances are a key driving force behind an organization’s decisions. Therefore, among the most common reasons to bring an in-house counsel onboard is to help control the organization’s expenses, and in particular, its legal expenses.

Depending on the organization, this in-house legal counsel can have a general or specialized legal background. For example, a university technology transfer office focused on commercializing the university faculties’ research work may feel that hiring an in-
house attorney specialized in intellectual property law is a sound hire. Likely frequently dealing with a multitude of business transactions, this same office may also consider hiring an attorney seasoned in transactional matters. As with most decisions, the cost-benefit analysis is a key determining factor as to exactly which type of and how many in-house counsels an organization can afford to add. Simply put, the value added by having the in-house counsel must at the very least outweigh his/her costs to the organization. Those costs can come in the form of salary and benefits paid to the in-house counsel, any additional costs that may accompany legal work (e.g., costs of legal research), and value of the legal work performed.

**Managing Outside Counsel**

While an in-house counsel has been brought onboard to perform legal functions within an organization, the hiring of an internal attorney does not always mean the role of legal experts outside the organization is diminished. Sometimes the role of the in-house lawyer comprises managing the work being performed by other attorneys. Such a managerial function can present important benefits to the organization. For example, in-house counsel can enhance the quality and value of outside counsel’s work product. The in-house counsel is in a unique position to appreciate both the organization’s legal issues and its overarching mission. Therefore, the goals of a particular legal assignment can be more concisely and accurately translated to the outside legal counsel. Likewise, the outside counsel’s work product can be reviewed by another legal mind, to ensure that legal issues are appropriately addressed.

**Performing Legal Work In-House**

In addition to managing legal matters being performed by attorneys in outside law firms, the in-house counsel may also function as an “outside attorney on the inside.” The in-house counsel is in a position to recognize legal issues at their outset, if not even before they occur. Such a function can prove invaluable to an organization. For instance, an organization generating and protecting technical knowledge may benefit from having an intellectual-property attorney, likely a patent attorney, on-hand to draft and file patent applications. The decisions for which patent applications the in-house counsel is to draft versus which the
office will engage outside legal counsel to handle can themselves be based on a vast array of factors, including cost, efficiency within the organization, and complexity of the matter at hand.

**The In-House Counsel Can Be an Asset as an Attorney on the Inside**

Organizations can greatly benefit from having at least one attorney onboard within its walls. In addition to performing a consultant-type role as a full-time attorney, the in-house counsel may also be a valuable asset in managing the legal work being performed by attorneys outside the organization. The in-house counsel must therefore become well-versed in the organization and its goals in order to effectively facilitate the organization’s legal and business objectives, and thus add value to justify being brought onboard. When utilized appropriately, all parties involved can stand to benefit from the efforts of the in-house counsel, the attorneys on the inside.

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September 19, 2018

Q&A with In-House Counsel Robert Harrison of ADT

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What accomplishment as an attorney are you most proud of?
One thing that comes to mind is the work that I did with the George W. Crawford Black Bar Association in Connecticut, which is the oldest and the largest black attorneys bar association in Connecticut. When I first started practicing in Connecticut, the organization had been dormant and somewhat inactive for a few years. I, along with a few people I handpicked, worked to reengage and restart the organization. The organization is very strong today. It is crucial that the organization is active because part of the organization’s mission is to advocate for social justice and other things in terms of insuring that black attorneys are active and at the table not only in the private sector but also in the public sector.

What about being an in-house counsel do you like the most?
I like the fact that I’m not only a legal advocate or legal advisor but I’m also a business advisor. Fifty percent of what I do is provide legal guidance, but the other half is general business advice about how the business should proceed. So it stretches my intellect in that we are all at the table and were all trying to figure out how our business can be most profitable, but also keeping in mind that we need to be ethical and compliant with the laws and regulations that are applicable to the business.

What about being an in-house counsel do you like the least?
I think sometimes it’s a challenge because there are all sorts of business meetings within the organization. Sometimes it is a challenge to have time to actually do the work that is required or the deliverables that are identified within those meetings because you are always in meetings.
What is the most important factor you consider when choosing outside counsel?
Having an outside counsel that has supreme expertise in that area is the most important thing. The second most important thing is that their billing platform/pricing is compatible with what we’re trying to get. But I think the most important thing is that we are getting top-notch service, which is linked to ensuring that we have someone who has supreme expertise in that area.

Is there any kind of alternative fee arrangement or method that you typically prefer?
The flat rate arrangement with a caveat that if certain variables are changed or are not met that we would either revisit or that there would be some provision for the outside counsel to renegotiate or get more out of it. We want it to be a win-win situation. We don't want to take advantage of the law firm and we understand everybody needs to make money, so my preference is to have some sort of fixed arrangement with the option of transitioning to something different if things changed or don’t go according to plan. We make certain assumptions at the flat rate and if those assumptions are way off then from my perspective then we both should sit at the table and renegotiate.

What are some of the things that outside counsel do or do not do that you find annoying?
One thing I find generally annoying is outside lawyers that are nonresponsive. From a billings perspective, being charged for work that is not related to my matter. In addition, sometimes outside counsel can be condescending at times because they are the expert. Sometimes they have to remember that they are talking to an attorney as well. Also, sometimes outside counsel forget to keep us in the loop, which can be problematic because the more they share the more the in-house counsel can be helpful ... I think the outside lawyers that do not understand the importance of partnering with the in-house lawyer are at a disadvantage.

What are some of the biggest challenges associated with the change from outside counsel to in-house counsel?
The challenge is that you are now directly working for some form of business and you have a huge learning curve. You have to learn the business, the people, the acronyms, as well as the culture of the business. There are also substantive differences in terms of how you practice law, because now you are not only providing legal input, but you are also sort of a business advisor.

What advice would you give to an attorney who recently moved in-house?
My advice would be to learn the business very well. Always do exceptional work and in order to accomplish this you have to partner with your business colleagues. You need to set up meetings and conference calls so that you can talk with the folks that you are supporting to find out what they do and how you can be most efficient and helpful to advancing their platforms and how you can best provide legal services to the team. Be engaged so that the business sees you as a valuable contributor to the organization. You want to build your reputation so that other people within your organization think of you before or when they are
making moves strategically. But having people actively seek your advice and counsel is only going to happen if you build those relationships internally, put the time in to learn your trade and the business, and if you provide sound business and legal input to your colleagues.

**Keywords:** litigation, diversity and inclusion, advice for lawyers, in-house counsel

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Like many in-house healthcare attorneys, the legal issues in my practice cover a wide spectrum. Health law includes its own discrete areas of expertise, such as the Stark law\(^1\) and Medicare reimbursement, but also subjects that are often considered disciplines unto themselves, like antitrust and employment law. An in-house attorney often encounters multiple areas of law in any given day. Frankly, this craziness and breadth of my practice is what I love about being a general counsel in healthcare. Of course, to do my job, I often need help from outside counsel.

In litigation matters, I have generally been on the defense side of cases, but in one matter several years ago I found myself as the in-house attorney managing a very large plaintiff’s case. As we headed to trial, the court decided my client’s trial would be the benchmark for the other plaintiffs who would go later, including two related class actions. In addition to the litigation attorney I had hired, I found that I also had to work with several plaintiffs’ class action attorneys. Candidly, one of the lead class action attorneys confessed he had not ever had a lawyer as a client and wondered what I wanted or needed from him as my outside counsel. Here is what I shared with him and would share with any outside attorney I hire:

1. **Be honest about your expertise.** I am hiring a lawyer or a law firm because I do not have the expertise or capacity (or both) to address a legal matter. I need to know if you have the expertise to help me and who will do the work. If I am hiring you for your expertise but you plan to hand off my work to an associate, I want to know in advance. If the issue is beyond your ability to help me effectively and efficiently, please let me know.

I value people who honestly assess their expertise. In fact, I once asked an immigration attorney referred to me if she could assist on a specialized issue related to physician recruitment. She told me straight out that I needed someone else and provided me with several possible references. At a later date, when I found a matter where this attorney had the right expertise, I knew I wanted to hire her. She had already established her credibility.

2. **Communicate effectively.** We are both busy attorneys, so it is essential that we respect each other’s time. You and I should agree in advance on the scope of work – what the client needs and wants. No in-house attorney wants to receive a lengthy memo (and the related bill for $15,000) when an e-mail or phone call would have sufficed. In litigation matters, it is
generally impossible for me to review a motion for summary judgment the day before it must be filed. Preferably, we have discussed the strategy behind the motion well before you write the brief. Likewise, I understand I need to review documents promptly and respond to your questions because you also have deadlines to meet and other clients’ work to do.

Effective communication is critical to providing excellent service. One aspect of that is simply responsiveness. One of the biggest frustrations for each of us is the outside counsel or in-house client who does not return messages. Responsiveness builds trust between counsel,
even if the response is a simple acknowledgement of the other person's call and a commitment to call or write back soon. I recently fired an outside attorney who, although very expert in his field, repeatedly promised to send me documents the next day but was always days late (and without explanation). My assumption is that if you promise something, you will deliver or call me as soon as you know a deadline is unrealistic. And I try to hold myself to the same rules.

3. Partner with me. Ultimately, the relationship between counsel is a partnership, which means we are direct and honest with each on all aspects of representation of our common client. There should be candor and no surprises. It is important that in-house counsel knows of both good and bad news early so that he or she can prepare the company for whatever is coming. In litigation matters, for example, I want to know both the best case we can make and the best case that can be made by the opposing side. Ultimately, we owe our client the duty to provide an honest assessment of a case, including the upside and the risks.

Fee arrangements and budgeting for specific matters is another area where outside and in-house counsel have to work together. Providing sound legal advice to the client is paramount, but law departments must also manage budgets, and legal fees are an important factor in in-house counsel's decision on who to hire for a given matter. In my experience, most outside counsel are sensitive to budgetary constraints of in-house law departments. Occasionally, however, I am surprised by bills for research or other work I did not know about or hours for an associate that are unrealistic, given the scope or significance of the matter. In-house counsel often manage fees by setting a specific budget for a matter or using billing guidelines. Unfortunately, I have been surprised at times to discover that the lawyer at the firm I hired is not monitoring the budget or following our billing guidelines, leaving me to ask why fees and costs are higher than we projected.

Managing a legal matter well requires both expertise and the appropriate use of resources. As partners, in-house and outside counsel each has to be responsible for monitoring fees and costs. When a legal bill seems wrong or too high, I will contact the billing attorney directly to discuss the matter. The attorney should be able to explain the charges on the bill or, at a minimum, commit to reviewing it closely and getting back to me. Although the conversation about bills is probably one of the least fun for both in-house and outside counsel, it can also be productive because it reinforces our need to collaborate in defining a project, managing fees and costs, and providing the best advice to our client.

Sometimes I am asked how I select outside counsel. Relationships matter, and I will generally select an attorney (or firm) that I know and respect for his or her expertise and integrity. Ideally, outside counsel knows my client well enough that I do not have to reeducate the attorney on the nature of my company's business and key business clients. My organization is growing, so I also find myself having to identify outside counsel in new states or with expertise.
that I have not had to seek before. Because the community of health law attorneys is relatively small, I generally find new outside counsel by asking other healthcare attorneys for recommendations. Ultimately, I look for outside attorneys and firms who bring expertise and efficiency and will genuinely partner with me to provide excellent service to our clients.

We had a great outcome in the case where I had to collaborate with class action counsel. The result did not come without challenges, but a large part of the success was due to the commitment of my outside counsel (the attorney I had hired) to partner with me and class counsel in coordinating our efforts at trial. She was direct and honest with each of us about the case and remained focused with me on achieving the best result.

It is collaboration like this among counsel that serves the needs of our mutual client and what an in-house counsel is looking for.

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Inside Counsel: Work With Me, Not Against Me

Get with the Program. And the Program is simple: ACT LIKE AN ATTORNEY AND DON’T MAKE ME LOOK BAD.

By KAY THRACE

Oct 2, 2018 at 5:03 PM

Back in the heyday of my misspent youth, sometime after I’d left Biglaw and definitely before I stopped measuring my in-house experience in months, I was asked to sit on a panel about general in-house topics, which included a softball question or two about working with outside counsel. Up until that point, I’d actually had limited interactions with outside counsel. There wasn’t much a company of our size with our legal department couldn’t do in-house. So I’d replied vaguely and politely about how important it was to be clear and concise with outside counsel so that your expectations were clear. Or some clap trap like that.

Then my respectably sized fish of a company started eating all the other fish in the pond. When it tired of feeding off the chubs and minnows, it made for the brackish waters and from there, the whole wide ocean where it morphed into one of those prehistoric megalodons that co-star in summer blockbusters with the likes of Jason Statham.

Overnight, my leviathan of a company had needs beyond what our legal department could provide. Because damn it, I’m not an international tax law expert, or particularly well-versed on the finer points of maritime law. Suddenly, I had nowhere to turn but to outside counsel.

I get it. I used to be outside counsel for companies that could afford me. And I do realize how things have changed. Even for a spastic behemoth like us, we don’t use the big-name Biglaws unless it’s bet-the-farm litigation. No one can justify those rates for everyday transactions. Not when your Finance department is a bunch of Big 4 ex-pats. Or is it 3 now? Ba-zing!

So, in this age of cost-cutting and zero-sum budgeting, you would think the outside counsel we do bring in for non-bet-the-farm litigation would get with the Program. And the Program is simple: ACT LIKE AN ATTORNEY AND DON’T MAKE ME LOOK BAD.

No, really. It’s that simple. And yet, for as many outside counsel I adore and keep at the top of my rotation, there seems to be an equal number of bad eggs out there. And it all boils down to one true
thing: Don’t act like a business person.

I know. This encompasses so much, but can be distilled down into a few key points. First, don’t make me chase you. If you say in your email you’ll have comments back by this Friday, then I should have the draft by (wait for it) Friday. If come Monday morning, I’m the one that has to break radio silence and fend off the business partners I told would have their draft, I’m putting you on the shit list. Life happens, stuff comes up. But if for some reason you can’t make that deadline, let me know so I can manage the expectations of the wolves. You keep track of your time in six minute increments, I know you have better recall than that.

Along those lines, do not sneak shit into my document. This is similar to when a business partner scrawls nonsense in the margin of a contract, draws some contradictory arrows, and signs that puppy. He or she has left me with an incomplete contract now up for interpretation. So it is with an outside counsel who writes in the slightly more dignified comment field in Word that he or she needs to do “additional investigation on this question” and leaves it at that. You’ve just left a pile of steaming crap in my draft. What am I supposed to do with this? Hint, the answer is not, “chase you until you have an answer or admit you forgot about it and it’s probably fine.” If you need to flag something you can’t resolve before you send the draft, do it in the cover email. Don’t leave me a nasty surprise in my document.

Follow directions. Particularly, when it comes to billing. Yes, I too hate our billing software. I completely support your theory it was designed by soulless millennials. I sometimes spend more time approving your invoice than I do reading that email guidance you gave me. But, like the tide, the software is inevitable. Please don’t try and skirt the process, or ask me to make an exception for you. Remember the Big 4 ex-pats? They’re all over these invoices and reports like flies on ... garbage. I can’t move up your payment term. I can’t approve your block billing. Please just follow the directions in the outside counsel guidelines I gave you.

While I’m on the subject of following directions, memos are for law students and litigators. I’m a corporate monkey. When I see you’ve sent me a memo, I want to crawl under my desk. Maybe rock myself in the fetal position if I see citations. When I say, “just shoot me a few bullets in an email,” I really mean that — just shoot me a few bullets in an email. This is not bet-the-farm litigation. I just want some advice on independent contractor classification. I get that it’s messy, but sending me a memo is just going to make it worse. I can’t give that thing to HR. They’ll freak out. Maybe create a meme about it. I’m just going to have to rewrite what you sent me into bullets. So really, you’re making more work for both of us.

And finally, whatever you do, do not throw me under the bus. I repeat, do not throw me under the bus. I spend my life crawling out from under the bus. I expect to regularly eat pavement from my
business partners, but I expect better from you. If we hop on a call with our team and you insinuate that you were unable to do something to your satisfaction because of a delay on my end, I’m going to call you on it. Particularly, if it’s something along the lines of, “I asked your counsel for it yesterday, but I’ve just received it this morning, so I’m unfortunately unprepared for this call.”

This is not a good look on you. I get it. You’re swamped, you’re frustrated that you sent an email out at 10 last night looking for information and that slovenly in-house counsel who doesn’t know her ass from her elbow when it comes to data privacy regulations in the EU, ignored your email until this morning. I get it.

Maybe the answer is, I actually was right all those years ago on that panel, when I said the key to a successful partnership with an outside counsel is clear and concise communication and level setting of expectations. Maybe being more explicit up front as to how I expect us to work together is the way to go. And in any event, it should at least cut down on the amount of memos that cross my desk.

Kay Thrace (not her real name) is a harried in-house counsel at a well-known company that everyone loves to hate. When not scuffing dirt on the sacrosanct line between business and the law, Kay enjoys pub trivia domination and eradicating incorrect usage of the Oxford comma. You can contact her by email at KayThraceATL@gmail.com or follow her on Twitter @KayThrace.
Some Advice On How To Avoid Pissing Off In-House Counsel

The top pet peeves (or should we say commandments) of inside counsel who manage outside counsel.

By JILL SWITZER

Oct 10, 2018 at 3:15 PM

Kay Thrace’s post last week on working with outside counsel was spot on.

Outside counsel, regardless of firm size, often need a refresher course in the care and feeding of in-house counsel, who hire (and fire) you, review your work, and review your bills. So, I’m chiming in on the theory that piling it on doesn’t hurt and some of my comments may even be cringeworthy.

When I was in-house, I said that the relationship between in-house and outside counsel was essentially “two bodies, one brain,” the one brain being the melding of our knowledge and creative thinking to solve problems — and yikes, even every once in a while — be able to act in proactive, preventive manners. I considered the relationship a partnership.

One of the last panels I was on before leaving the in-house world was a program presented to the Legal Affairs Committee of what was then called the California Bankers Association. We did not expect very much attendance since it was really “same old, same old,” things we all in-housers had said ad nauseam for years to our outside counsel. However, the audience must have had acute hearing problems because the room was packed. It also may have been our choice of title: “Top pet peeves (or should we say commandments) of inside counsel who manage outside counsel.” An attention grabber?

Even though I haven’t been in-house for a number of years, I don’t think the advice has changed much, if at all, to judge by Kay’s post. However, what has changed is that there have been several crops of newbie lawyers who need to hear this advice, and more than once, from Kay, from Mark Herrmann, from me, and from anyone else who wants to see that newbie outsiders don’t form bad habits. The failure to understand and heed these peeves (aka “commandments”) can have negative consequences.
I will try not to repeat anything Kay said except to emphasize that in-house counsel can be either your best friend or your worst enemy. I wasn’t in corporate, but in litigation, so dealing with outside counsel was somewhat a different kettle of fish, but not entirely.

Don’t assume that support staff is plentiful for in-house departments. Depending on the department’s size, in-house lawyers may do tasks that outside law firm lawyers have staff to do. A cavalier “just have your paralegal do it” may show an appalling lack of understanding of how a particular in-house department operates.

One of the traits of outside counsel that pissed me off to no end (and to this day still gets me irate) was waiting until the very last minute to email or fax a pleading that had to be filed that very day, and I often didn’t get the pleading until just a few hours before the filing deadline. Really? Any time management issues here?

Did outside counsel really think that we were just sitting around twiddling our thumbs (this was in the days before Candy Crush) awaiting their deathless prose? Hardly. There seemed to be an impression that in-house counsel just weren’t all that busy and so could drop everything to attend to whatever outside counsel had waited until the last minute to draft and thus expected immediate turnaround. Inconsiderate? Yes. Memorable? Definitely.

We were busy working on our own cases (yes, we had those), meeting with clients in an effort to head off possible litigation at the pass, requesting settlement authority, or any one of the myriad tasks that are within the job description of in-house litigators. We were not, I repeat, not just waiting for your work. Did it occur to you that we might be in court, in depo, traveling on business, or even (gasp) on a day off or vacation? Of course not.

Some advice that still holds true:

Don’t wait until the last minute to ask in-house counsel to find records responsive to discovery requests. Especially with multistate institutions, documents can be in a variety of locations, including but not limited to remote storage facilities, and they can take some time to find and then retrieve. Waiting until the next-to-the-last minute does not endear you.

Don’t also wait until the last minute to ask who should be the PMK (person most knowledgeable) and who should verify discovery responses. In my world, in-house lawyers did not verify responses, so as to avoid any inadvertent privilege waiver.

As Kay points out, her clients don’t want treatises — they don’t even want memos or emails longer than a page. The same is true for clients involved in litigation. They don’t want dithering (“on the one hand, but on the other”). What they want and need is advice in plain, understandable, jargon-free
language that outlines the pros and cons, the risks involved, so that the business people can make an informed decision as to how they choose to proceed. (Settle now or proceed on the theory of “a million dollars for defense, not a penny for tribute?”) They make the business decisions; the lawyers don’t. Do not get down into the weeds. Business people don’t keep weed whackers in their offices, and they get pissed paying for what they don’t want or need (or wasn’t authorized).

Don’t overstaff, which leads to overbilling. If I thought the bill was excessive (of course, that NEVER happened), I’d ask for an adjustment. A Biglaw partner once asked me how I thought the bill should be written down. Not my job, I said. You know what was involved. You make the changes.

Nobody wants to look stupid, but there’s nothing more stupid looking than the inane “huh” look of inside counsel when the client knows more than the inside lawyer does. And who do you think was responsible for that look? Keep the in-house counsel in the loop. The failure to do so will be the kiss of death for any future work.

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Jill Switzer has been an active member of the State Bar of California for more than 40 years. She remembers practicing law in a kinder, gentler time. She’s had a diverse legal career, including stints as a deputy district attorney, a solo practice, and several senior in-house gigs. She now mediates full-time, which gives her the opportunity to see dinosaurs, millennials, and those in-between interact — it’s not always civil. You can reach her by email at oldladylawyer@gmail.com.
Cracking the In-House Counsel Code

In-house attorneys from various organizations offer advice for their law-firm counterparts.

By Saša Trivunić

For many law firms, working with in-house counsel presents unique challenges. To better understand the role of in-house counsel—to “crack the in-house counsel code”—we spoke to in-house counsel from Nationwide Insurance, Huntington Bank, the Columbus BlueJackets, and Battelle about what they look for from their law-firm counterparts. By the end of our discussion, it was clear that in-house counsel, regardless of industry, have certain expectations from their attorneys. Although other clients may have the same expectations, the following is what the in-house attorneys had to say.

Outside Counsel Can Make My Job Easier by …

Avoiding surprises. In-house counsel hire outside lawyers to make their lives easier. To that end, they expect no surprises—especially in costs and deliverables. Avoid this gaffe (and the uncomfortable conversations that follow) with an early conversation, setting realistic expectations for the in-house attorney about the product you will deliver and the cost to deliver it.

Initiating updates. In-house attorneys expect timely, regular updates without asking for them. In-house lawyers have more than enough to do; they don’t want to add babysitting outside counsel to their list. So give them regular updates, even if it’s to say there is nothing new. In-house lawyers will thank you for each minute you save them with a brief update.

Delivering a concise, easy-to-use product. In-house lawyers don’t need a 30-page memo where a five-page memo will do. Usually, the in-house attorney does not have the time or resources to summarize your work. Give in-house lawyers a product they can easily present to their client (CEO, CFO, etc.). Again, the less the in-house attorney has to do, the better.

In-House Counsel Hire the Lawyer, Not the Law Firm

When it comes to hiring outside counsel, our panelists unanimously agreed that they hire the attorney, not the law firm. When outsourcing legal work, in-house counsel look for particular attorneys, rather than a particular law firm, with the skillset they need. Although this inevitably
leads to a relationship with the law firm, in-house counsel base their initial hiring decision on the particular attorney.

Data Security and Privacy Increasingly Important
All of our panelists said that data security and privacy is a regular topic of conversation internally, and an area of expertise they now look for in their outside counsel. Specifically, in-house counsel, their clients, and their clients’ clients want to know what attorneys will do to protect their data and privacy, and what they will do in the event of a data breach. Developing an expertise in this area will go a long way to attracting, and retaining, work from in-house attorneys.

Inclusion Is Diversity 2.0
Unsurprisingly, “diversity is a game changer” for our panelists. They value diversity and require that their outside counsel law firms are not just diverse, but inclusive. That is, they don’t look for law firms that simply “check the diversity box,” they look for law firms where diverse individuals are supported, included, and valued. To them, “inclusion is diversity 2.0.”

World-Class Experience with Outside Counsel
Finally, we asked our in-house counsel panel to describe their world-class experience with outside counsel. Their answer was simple: They want a lawyer who cares as much about their problem as they do. They want someone who takes the time to learn about their business and who asks good questions to understand the problem.

Follow these tips and you will be on your way to cracking the in-house counsel code.

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