





From Clients' Lips to Counsel's Ear: Effective Service to Institutional Clients

By Timothy M. Lupinacci

Over the past few years, I have moderated several panels

with in-house counsel from a variety of businesses, including Fortune 500 companies. The focus of these programs was to identify ways that attorneys can provide effective, efficient and valuable service to in-house counsel and their clients. While the entire foundation of delivering legal service has changed fundamentally over the past five years, it is clear that regardless of the innovations that characterize the legal industry of the future, client service remains a cornerstone.

One of the more striking aspects of talking with clients about these issues is that while each company lawyer has his or her own approach, style and process, the best practices in client service are remarkably consistent. This article provides practical advice from clients on actions that outside counsel should need in building trusted advisor relationships with in-house counsel.

One Thing Remains: Understanding the Clients' Business And Objectives

Outside counsel must be excellent lawyers, have specialized expertise in the

matter at hand, provide good advocacy, be efficient, and add value. These requirements are a foundation to get in the door to handle their matters. Equally important, however, is for outside counsel to know and understand the client's business, the company's risks and its strategic plan. It is important to see the big picture and know the client's business objectives. The particular strategies may change how you handle the case once you have a clear understanding of the business objectives.

By way of example, winning a case at trial is not necessarily viewed as a victory for the client if its business objective is to expeditiously resolve matters. A quick settlement a year before incurring the cost and expense of a trial may be the best outcome for the client. Therefore, it is critical to ask clients (and listen to them) about their objectives for a particular matter.

Likewise, knowing the companies' business is critical if you expect the client to hire you for new business. In-house counsel uniformly disdain lawyers who waste time at a valuable business meeting or lunch simply to find out the basics about the company. Do your homework about this business *before* you attend the meeting so that the meeting can focus on the client's legal needs and trends it has encountered (which, hopefully, you also learned about in conducting your research).



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Clarity: Effective Communication Is Critical

Communication is an important element that you must proactively discuss with the client at the beginning of a matter. You must understand the in-house counsel's preferred method of communication and what items need to be communicated on what basis. Some clients prefer telephone calls for routine updates, while others choose emails. It is important to ask and listen to the client in developing a communication strategy for each individual client representative and matter. The style and preference of the client can vary from one in-house counsel to another, even if they are on the same team. Likewise, it can vary by matter depending on the internal profile of the matter.

Most clients do not want to receive a call on their cell phone to grant a seven-day extension to answer discovery. Similarly, counsel does not want an email with an urgent request that has to be addressed immediately, since the email may be lost in the shuffle of the day. You must use good judgment based on a clear understanding of the client's preferred method of communication in handling these types of issues.

A corollary of this communication plan is written reports. It is important to understand the in-house perspective on the volume of reporting that they have to monitor and produce. You can provide significant value by helping in-house counsel provide concise statements of updates and information that they need to complete their reports. Some clients request monthly status updates through the use of spreadsheets or other electronic communication. Some like bi-weekly, monthly or quarterly reports providing an overview of all cases that the particular firm is handling. Others only want updates on meaningful developments in the case. The critical point is to make sure that you understand how your client wants to receive and process information. In-house counsel expects you to let her know what she needs to know about the matter.

In-house counsel do not want you to send "CYA communication" to them. They do not want to hear that whatever

problem or delay has occurred is not your fault, nor do they want an elaborate message trying to justify actions. Rather, they want to know what the plan is to fix it. You need to be proactive in communicating the proposed action plan to address the situation. In-house counsel want lawyers who will admit mistakes and identify the plan to fix the mistake. Don't make your problem the client's problem.

It is important to be attentive to clients, including promptly returning phone calls and emails. If you are going to be out of town, let the client know in advance and set up a bounce-back out-of-office message with details on who they can contact. When you are out of town set up the infrastructure so that matters will continue in your absence.

One in-house counsel noted that he has been surprised by outside lawyers who get contentious and argumentative with the client. Often, outside counsel lose sight of who the audience is and that they need to view in-house counsel with respect and as a partner in the process. In-house counsel do not want lawyers who are arrogant and who only focus on telling in-house counsel what they know. Rather, they want someone who can listen and help them strategize to reach an objective.

A final piece of practical communication advice is to provide specific information in reference lines of emails to alert the client as to what the subject of the communication is. Do not merely put the name of the client in the email. Be specific about the matter the email involves and the topic contained in it. Do not send lengthy emails to the client with an action point buried at the end. Emails need to be succinct. Highlight any response or action items that the in-house counsel needs to take.

Radioactive: Surprises Are a Quick Way to Damage Relationships

It is important to manage the matter and client expectations during the engagement so that there are no surprises along the way. This includes effective

budgeting, as well as communication. The in-house counsel is managing expectations and risks within the company, and the worst possible scenario for her is for a surprise in expense, outcome or strategy to arise about which they are unaware.

In-house counsel also wants no surprises on invoices. If you anticipate a significant amount of research will be performed, check with the client in advance to performing the research. It is possible that the in-house department already has research on the topic. In-house counsel is managing files based on internal budgets. If your matter is about to incur increasing fees, let them know what is coming up and your expectations on increased fees. That helps the lawyer manage budgets. If a particular invoice on a matter is going to be significant in a given month, give the counsel a heads-up as to the anticipated up-tick in fees and the expectations moving forward.

In-house counsel looks to outside lawyers to help them manage risk. You need to understand the client's appetite for risk and to alert them to problems about their case at the outset of the engagement and along the way as other factors come to light. When counsel gets a new matter, their risk scale is \$0 to the maximum exposure. The client ultimately judges the efficiency of the matter by how far the lawyer can move the client toward paying \$0 on the scale without risking too much in time and expense and liability. By way of example, a client gets sued for \$2 million. At that point, the client's exposure runs from \$0 to \$2 million (plus fees and expenses incurred). If the client determines they can settle the case immediately for \$500,000, but based on counsel's recommendation, it proceeds to litigation and ultimately receives a defense verdict but pays the lawyer \$750,000 in fees, the lawyer has not helped the counsel limit liability.

The Way: Providing Proactive Recommendations

When in-house counsel asks you a question, they want you to give an answer and recommendation. They do not want a lengthy memo that concludes with "the answer could be A, B or C." They want to know what you think the answer is, along

with a recommendation on how to proceed. They understand that ultimately the court may rule differently or the negotiations on the deal may veer sideways, but if you have outlined the possible scenarios and given your recommendation, the in-house counsel understands the risk. In-house counsel expect outside counsel to "know what I need to know" and will rely on your recommendation based on the facts presented.

In-house counsel want advocates, not scribes. An effective counsel is one who analyzes the facts and law governing the matter, considers the clients' business objectives and provides informed recommendations. Ultimately, the best practice for an outside attorney is to give practical advice about how to solve their problems, including taking a position on how best to achieve that result.

Suit and Tie: Following the Clients' Policies And Billing Procedures

It is critical to follow all client policies and procedures during your representation. If you do not make it a priority to understand and follow the client's procedure, the in-house counsel has no reason to continue using you.

A lack of respect for process and procedures is one of the easiest ways to get terminated by a client. You may not be told that you are terminated, however you will get no more work in the future. One client mentioned an example where an outside attorney failed to get the signature block accurate for the client. This was viewed as a significant issue.

Feel the Moment: Timeliness and Responsiveness Matter a Lot

In-house counsel hate to be "jammed up," editing pleadings at the last minute. You have to build in significant time before the pleadings or documents are

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due, to give counsel the ability to manage and review all the pleadings in a timely manner. Be timely in getting documents to the client. Do not send a rough draft of the document; send a final version that is client-ready.

Responsiveness means that clients want to hear back from you with an acknowledgement the day that they leave the message. It is fine if you cannot answer substantively that day, but let them know when you will get back to them with an answer.

Daylight: Invoices Tell the “Story of The Case”

An area of fertile discussion is invoices. The invoice is the road map of the case for in-house counsel. They need to see a detailed description about what is going on and what value they are getting for the

money they are being asked to. They do not want to see “internal chattering” unless there is a detailed description about what the internal meeting accomplished for the client. One counsel noted that they often get billed for research and preparation of legal memos or other documents, but they never see the draft or final product of the memo. That is the client’s property once the bill is paid, so they need to see copies of all memos prepared on their behalf.

Just because the client is huge, or the matter is large, does not mean that it is a dumping ground to which lawyers should bill time. In-house counsel review all invoices and are regularly looking at fees. Clients like to see “no charge” on invoices for junior lawyers getting experience on matters. This shows the client that they are not paying for this time.

Avoid invoice irritants such as too many lawyers on a bill. Also, do not take an unproductive lawyer in a different practice area and try to pass them off as having

expertise on a matter since they need work. In-house counsel see right through these attempts. Clients want people who understand and have expertise in the particular matter to handle their matters.

Wanted: Adding Value beyond the Billable Hour

The best outside counsel look for opportunities to provide value to the client above and beyond the billable hour. This includes doing in-house training seminars, forwarding recent developments in the particular industry and providing regular status reports on the matters being handled.

The clients expect that you understand the basics of the particular area of law that you are handling. You need to focus on adding increased value above the basic legal work. Keep your eyes open for new cases or trends in the law that will help

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— Henry Ford.



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counsel in their work. Pass along industry updates so that they have knowledge about trends or issues if asked internally.

Online capabilities are crucial in today's legal environment. The ability for the client to access basic data regarding the status of a matter, expense and fees incurred to date, as well as particular documents and pleadings in a matter, are very helpful for the client. Legal project management is an effective tool to facilitate these efforts.

The A Team: Effective Staffing For Projects

It is important to have consistency in handling the matter from “cradle to grave.” There is significant benefit in having a lawyer with the full deal history that can help with strategy down the line. One irritant to in-house counsel is a lead lawyer who lacks knowledge of a particular deal or transaction. They want the comfort of knowing that when they call you about a particular matter, you will be up to speed on the case.

Do not delegate matters on a particular deal to other attorneys without getting in-house counsel's buy-in. They do not want to be contacted by a lawyer they have never heard of about a matter they assume that you are handling. Most in-house counsel do not tell the lawyer when they are “firing” them from future deals. They just stop calling.

Just Give Me a Reason: Identify Opportunities to Build Relationships With the Client

Get to know the client outside the office. Dinners and lunches are good ways to get to know clients. Do whatever helps in building personal relationships with the client. This depends on the person. Some prefer eating meals together, while others would rather have a “lunch and learn” program. However, do not make in-house counsel “babysit” you when you

visit by having to show you around the office for several hours.

Thrift Shop: The Importance of Budgeting

For planning purposes, there is little an attorney can do that is more valuable to clients than effective budgeting of matters. In-house counsel consistently rate effectively budgeting, and consistent and regular updating of the budget, as crucial elements in client service. In-house counsel is trying to manage legal budgets and, therefore, outside counsel's budget is a key component in meeting the company's legal budgets.

In-house counsel understand that often matters go in directions not previously contemplated at the outset of the case. The important note here is not only to prepare a budget at the outset of the case, but also to update the budget based on actual expenditures and increased responsibilities as the case proceeds. The ability to budget and effectively update budgets turns on clear communication with the client.

Some in-house counsel will have a view on whether she wants monthly updates to the budget, quarterly updates or periodic updates when significant portions of the budget are expended or new issues have arisen in the case or transaction. Some clients have particular budget forms they request outside counsel to use. Others leave it to the outside counsel to develop an effective budget metric. Some leading firms are effectively incorporating legal project management implementation to provide clients with real-time tracking of legal expenditures.

Cruise: Building Trusted Client Relationships

Effective client service ultimately depends on building trusted client relationships. Listening to the client's needs is vital in building this relationship. Successful implementation of these strategies will help you cement long-term client relationships. | AL



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