

**PRACTICAL ADVICE FOR BUILDING RELATIONSHIPS AND
COMMUNICATING WITH IN-HOUSE COUNSEL**

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Introduction

In life, personal and professional success are often the result of good relationships. And, the key to most good relationships is communication. This is particularly true in the relationship between in-house and outside counsel. But, it's almost too easy to say that the key to a good relationship with your in-house is communication. The devil is in the details. How do you communicate? When? What do you communicate about? Who do you include in communications? In many cases, the answers to these types of questions will vary based on your in-house counsel and/or the company you are working for. Nevertheless, in these materials, we hope to highlight some key issues for outside counsel to consider when communicating with in-house counsel at any stage of a case.

Discussion

I. Know the Business

If you want to help a client, you need to know their business. Relatedly, if you want to help in-house counsel, you need to know their organization. As a result, it is vital for outside counsel to ask questions about the client's business. Frequently, asking for an organizational chart can provide great clarity to outside counsel. It gives you an understanding of the structure

of the business and the chain-of-command in decision making. It also lets you know who is reviewing your work and making final decisions on your relationship with the company.

Also, the more you know about the business itself, the better. By understanding the organization's core values or mission statement, you gain a better understanding of what's important to the client. As a result, you can incorporate those core values into any analysis that you provide.

II. Establish Expectations

At every stage of the relationship, outside counsel needs to clearly understand and establish the client's expectations. Some in-house counsel want to be involved in every filing every decision. Others, just want to be kept in the loop with big-picture communications. Ask questions on the front-end to establish what the client wants and needs. Relatedly, make sure to understand the types of decisions that you are authorized to make on your own without input from outside counsel. For example, do they want to be involved in every decision or are they willing to allow you to make decisions on routine matters like extension of time?

No matter what, you have to keep the client informed and get their input on crucial decisions. If you are going to move for summary judgment (or not), let the client know and let them know the reason for your decision. If you want to abandon a claim or defense, make sure the client knows and approves.

This decision-making process is important because in-house counsel is an integral part of your legal team – even if they are not an employee of your law firm. You need to understand the importance of their input. To that end, don't just ignore in-house counsel's input on a matter. Sometimes, your client is going to give zany suggestions in the course of a case. And, you might be tempted to scoff at those suggestions and move-on. Be more pragmatic. If an in-house

lawyer makes a suggestion on strategy or edits to a brief, you need to take one of two actions: (1) incorporate the suggestion; or, (2) provide a detailed explanation for why you disagree with the suggestion.

Client input is also important for internal scheduling requirements. If an in-house attorney lets you know that they want input on a brief, don't wait until filing-day to send them a draft! On the front-end, you need to you in-house counsel's time constraints and requirements. Sometimes, they are part of a larger in-house legal team and have obtain approval before strategic decisions can be made. So, just remember to ask about these issues when you get involved in a case.

You also need to know how frequently the client wants updates about the case. Also, you need to know the format. That meeting or telephone call you scheduled could easily be an e-mail. It's important to remember that many in-house counsel are overseeing a case load larger than yours. Be respectful of their time.

III. The Good the Bad and the Ugly

Don't sugar-coat the truth. Particularly in the beginning of a new relationship with in-house counsel, you might be tempted to paint a rosy picture of any situation. You want them to think you can win any case and that they've chosen the "right" lawyer for the job. But, if the case falls apart down the road, you can look like an idiot. And, you can make in-house counsel look bad if they have relayed your optimistic view to their supervisors.

If there's bad news, tell the client immediately. If it's a bad case, tell the client. They want to know if full-blown litigation will ultimately be a waste of their money.

IV. Don't Say: "It Depends!!!"

Everybody knows that a lawyer's favorite answer to any question is: "It depends." But, that's the worst answer you can provide to in-house counsel. They are coming to you because of your expertise and decision-making ability. In-house counsel know that the law is full of vagaries. But, they want you to provide a path forward and clear direction on how to get there. Nothing is ever certain, but you can use your experience and expertise to provide a concrete answer to almost any question – based on the facts that you currently possess. Moreover, in-house counsel know that facts and strategy change as a case develops. They want you best judgment at the time of the question.

V. Provide the Right Team for the Case

Too often, the "relationship partner" dealing with in-house counsel wants to control any matter that is assigned to his or her law firm. They might think that's a good strategy for preserving their piece of business. But, it can be the absolute worst decision for the wellbeing of the client.

Thus, you should be honest if you get a call from in-house counsel seeking to give you work outside your area of expertise. If the matter is in your wheelhouse – great! But, don't be afraid to admit that you're not the person to handle a matter. If somebody else in your firm is the expert, let the client know and work to provide the best team to provide the best solution. More importantly, if you or your firm don't have the necessary expertise, let the client know. Then, use your network to get the client to the best attorney possible. Hint, Hint: The FDCC is great source for finding an expert in any field in any jurisdiction.

When selecting the right team, consider the importance of diversity on the team. Numerous studies show that diverse teams lead to better results. This makes sense because

different viewpoints and experiences lead to more creative thinking in any situation. But, if you are making a “pitch” for new work from a company, don’t include people on your pitch team if they are not actually going to do the work.

VI. Close the File!

Dan Kohane is one of the giants of the FDCC. He is a Past President and one of the nicest people you could ever meet. He is very willing to share his advice on the practice of law. To that end, he recently authored a post on LinkedIn that provides great insight to interactions with any client – but particularly in-house counsel. It is copied here verbatim:

Ask yourself this question, the next time you post one tenth of an hour to a file: “Did the work I just did, the phone call, the e-mail, etc., move this file closer to early resolution?” If the answer to the question is “no,” you have wasted your client’s money.

One of my partners sent around this message to all of the litigation team, yesterday.

“Just had a lengthy conversation with an [XXX] adjuster. He indicated that they are under intense pressure to reduce litigation costs. They are looking for early and efficient resolutions to their claims, and want to avoid defense costs, IMEs, etc. where possible.”

Someone, in response, commented that the insurer “should never interfere with our ethical handling of the file and protection of our clients”. That wasn’t the point of the message, although always a good reminder. The plea from the insurer can be translated into this:

“Just had a lengthy conversation with [XXX] adjuster. He indicated that law firms that recognize that we are spending lots of unnecessary money on litigation expenses that often do nothing to aid in claim resolution and, as a result, seek to resolve claims quickly and efficiently will be rewarded for their understanding of our business goals with more work. Those that do not, are destined for the dust bin.”

My late senior partner and mentor, Shelly Hurwitz, used to say: “Close one file quickly and two will follow.” How right he was! We, now, pass that message down to young lawyers. Clients

want files closed, efficiently, effectively and as soon as possible. That does not mean you should be unethical. That does mean you should act outside your client's best interests.

More than 95% of civil cases settle, certainly the "smaller" cases resolve, almost without fail, before the jury renders a verdict. So do the larger ones. Look to mediation, some of it is court annexed and free or low cost. Some cost more but surely, the investment may well be worth the litigation costs saved in the future.

So, if you can close the file this week rather than two years from now, you have truly protected your client and given him/her/it peace of mind (that lawsuit isn't hanging over my head anymore) and the insurer that has asked you to represent that insured has saved thousands of dollars in defense fees and expenses and has cleared it reserved.

It's truly a win-win situation.

Close the file. Be known as the lawyer who can close a file early and efficiently and you will become a file magnet.

VII. The Importance of Budgeting

In-house legal departments are simply one business unit in a larger organization. As a result, they have to provide a budget for their business unit and rationale for anticipated costs. And, they are relying on you, the outside attorney, to provide them the information for those budgets. Moreover, accuracy is important. Even if you win the case, if you don't stick to the budget, you can actually be getting your in-house attorney into trouble. Always be concerned with the value proposition of any work and provide detailed information on expected costs.

Whenever possible, provide a detailed list of assumptions behind your budget and include those assumptions when you submit the budget. Contextualize the basis for your budget by explaining what similar cases have cost.

Finally, keep track of your budget. If you are going to go over budget, pick up the phone and explain what changed. In-house counsel understand that facts and assumptions change.

They just don't want to be surprised.

Conclusion

Communication is the key to developing any good relationship. Ask questions early and often. In doing so, you will set expectations and develop a roadmap for future success. Once the relationship is successful, you and your in-house counsel will both benefit.