

4 In-House Preferences For Better Outside Counsel

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The best outside counsel change their optics to think like the client. For these lawyers, client service is not just doing top-notch legal work; it is about making life easier for the entire in-house team. This article suggests four ways that outside counsel can better serve clients, analyzing each from the perspective of Lisa Dunkin, litigation counsel at Zimmer and Patrick Reilly, associate at Faegre Baker Daniels.



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Get To The Point

In-house lawyers are extremely busy. They have internal and external pressures. They have hundreds, if not thousands, of emails, calls and letters to review daily. If they ask their outside counsel a question, they likely just want a simple answer, not a dissertation or legal history on a particular topic. When calling or emailing in-house counsel, keep it short and direct.

In-House Counsel:

Always be brief when providing legal advice, unless directed otherwise. I'll let you know if I need a memorandum for my file. Usually, I have made a gut decision, and I just want to know if I am right. For instance, if I email you asking if we have a statute of limitations defense, I don't want an email response that has four paragraphs before the answer. I simply don't have the time to read it. Likewise, if I call you for a quick update on a case, don't take 10 minutes to first recite the case history. Give me a sentence to jog my memory, and then get to the heart of the issue. I'll let you know if I don't remember the case or have follow-up questions.

Ultimately, you want to be the one I call if I need a quick answer on a legal question. If you are not consistently concise, I'll call someone else.

Outside Counsel:

Some of us are so used to showing our work that we form a bad habit of thinking that clients want a memorandum for every issue. They don't. Know what information your client wants and how she wants to receive it. Ask if she has time for a brief (15 minutes or less) call on an issue, and preview in several sentences what the topic will be. She may prefer to respond with a decision by email. If you find that she

doesn't want three- or four-paragraph emails but you believe the information is necessary, send a two sentence summary and note that your reasoning is below for her reference.

Be flexible enough to adapt to her style of communication, and when you do communicate with her, get to the point.

Make Your Recommendations, But Remember Who Is Boss

No matter how important or well-respected the outside lawyer is in his firm or field, he should remember who is giving him the work. The client is the boss, and she should have the option of making the final decision on strategy. If she doesn't like the outside counsel's recommended course, he should be prepared to suggest alternatives and discuss the pros and cons.

In-House Counsel:

The client has the final say on all major, strategic decisions. I encourage you to provide recommendations and to push back where you disagree, to a point. I recognize that you are likely more experienced in your field than I am, which is why I hire you in the first place. I also realize that you have put countless hours researching and briefing this decision. However, I also understand the business better than you. Oftentimes there are other factors that weigh into a decision besides just the legal ramifications. For instance, I may not want to settle a case, even if you think it is good value, because it might negatively impact the business going forward.

I view my outside counsel as a partner who works with me to solve legal issues and provide the best possible representation of the business. If we disagree on the proper course, he adapts and provides a different solution that satisfies us both. Ultimately, he understands that his role is to advise, problem-solve and vigorously represent my interests.

Outside Counsel:

More often than not, there is more than one approach to a legal problem. Use your familiarity with the law and experience to give your client different approaches for resolving her legal problem. Briefly note the benefits and potential downfalls of each approach, and make your recommendation as to your preferred course (stating the reasons why). If the client elects not to implement your recommendations, make your concerns known, but don't harp on them. Instead, be prepared to have a plan of attack for any option so that the client views you as flexible, creative and, most importantly, on her side.

Be Responsive

The most reliable outside counsel also tend to be the most responsive. Waiting days (or sometimes even hours) to return phone calls or emails is often simply not good enough. In client service, if the outside counsel doesn't make the client believe that she is his top priority, then she will find someone else who will.

In-House Counsel:

Dependability and responsiveness are keys to good client service. Many times projects are time-sensitive, and I don't have the luxury of waiting days for a response to my questions. I have my own internal clients who are often waiting on me for a response, so the sooner I get the information I need

from you, the sooner I can assist my clients. I need someone who is consistently responsive to my calls or emails, and if it appears as though my issues are not a priority, I will find someone who will make my issues a priority. Depending on the request, I typically expect a full response to my question, or at a bare minimum, an acknowledgment and timeframe for a full response, within one business day. If you are out of the office or on vacation, out of the office notifications are a good idea. I would rather know at the outset that I need to seek out the information from someone else than waste valuable time waiting, only to find out later that you are unavailable.

Outside Counsel:

Your job is to make the in-house lawyer believe she is your top priority, even if she sometimes isn't. If she calls or emails, then her request becomes the most important item on your to-do list. Cancel lunch. Hold your phone calls. If you aren't available and reliable, she will find someone else who is. This means that you'll need to be accessible wherever you are (within reason). If you are not one to check your email regularly outside of business hours, then perhaps come up with a distinctive ring to alert you of her communication. If you are handling matters for another client, and she needs an answer to a legal question, then be creative to make it work. For instance, respond to her that you will look into the matter right away, and find a colleague who can handle that matter immediately. If you are planning on taking a vacation, think ahead and have a colleague standing by, ready to do her work on short notice.

If your client consistently relies on you, that is a good thing. However, it also means that you need to come through regularly. If you do, it will pay long-term dividends.

Think Big Picture

The best outside counsel are able to think on a macro level, like the client. They invest in the client and take ownership of her issues. They understand the client's business, so that solutions to legal problems also fit the business's needs. Good lawyers also realize that giving the client the best legal advice is the most important thing, even if that isn't reflected in the next bill.

In-House Counsel:

As a client, I often view litigation from a broader perspective. For instance, I may not necessarily be focused on the result of an individual case as I am on the overall business implications. I need you to put yourself in my shoes and understand the impact my decisions make on the company. If you understand my business, for instance, you might advise me to settle a case before trial because of the impact a bad verdict could have on the company, even if that strategy could cost you the chance to keep billing hours on the case.

The more you think like me and value my business, the more I will trust you with additional work.

Outside Counsel:

Make sure you put yourself in the in-house lawyer's shoes, which includes taking the time to learn the business. That means an investment of your own time and money, including understanding how the business operates.

Thinking like a client will also help you minimize short-term gratification, or thinking always about the next bill. You want to be her outside counsel for a long time, not just counsel on one project. Proving to

her that you aren't always on the clock will help. For instance, if she calls you for a quick gut-check on a legal issue, don't send her a bill. She will know that she can rely on you to provide quick, reliable answers to her questions without the fear of creating a new matter each time she calls. That will earn her trust and keep her coming back to you more often, eventually with a bigger assignment.

Conclusion

Today's market for legal services is highly competitive. To attract and retain clients, it is often not enough for outside counsel simply to rely on doing top-notch legal work. That is mandatory. The outside counsel who takes steps to think like the client, such as the examples discussed above, can differentiate himself from his peers and provide the most effective client service.

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