

CORPORATE COUNSEL

FROM THE EXPERTS

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WORKING IN TANDEM

What outside counsel should look for in relationships with clients.

BY PHILIP FLINK, CHRISTOPHER HAGAN, AND EDWIN PEASE

THE EMAIL FROM THE GENERAL COUNSEL OF your most important client arrives late Friday afternoon, and it is disarmingly terse: “We’ve reached an agreement with X Co. to amend our agreement, the three key terms are below, please prepare something we can deliver first thing Monday.” If your gut reaction is to grab your pen and start drafting an agreement, you are probably making a mistake.

Before you do anything else, get on the phone and discuss the matter with the client. Even a brief discussion will help you get a better grasp of the scope of the assignment and the client’s underlying business purpose. You will invariably glean some detail from that conversation that was missing from an email.

Open communication is where it all begins. Often the most important element of initial contact between in-house and outside counsel is a frank discussion of the potential fees involved in the assignment. If your client suffers sticker shock on receipt of an invoice from your firm later on, you simply haven’t communicated with him effectively. In a healthy relationship, outside counsel



understand exactly what they are being asked to do, and in-house counsel understand the likely cost of involving outside lawyers. Ideally, expectations regarding fees are aligned from the outset, and both sides firmly grasp the value, scope—and cost—of an assignment.

No one needs to be told that in-house legal departments are being told to do more with less in this era of increased scrutiny on spending. By the time you have to be called in, your client’s top lawyer has already switched roles from lawyer to manager. Companies struggle

to contain costs, while knowing only too well that law firms will relentlessly drive partner profitability and aggressively pressure their lawyers to focus on their firms’ bottom lines. So your crucial relationship with the client is situated right at the intersection of two seemingly conflicting objectives.

To properly function over the long term, this cannot become a zero-sum game. In-house and outside counsel must work collaboratively to achieve mutually satisfactory goals. To help both sides navigate the often delicate dynamic underlying

these relationships, we draw on our collective experience to identify some key elements of a successful in-house/outside counsel relationship. And we cite three in-house lawyers we have worked with whose methods of communication and management exemplify the type of leadership that we feel makes for optimal teamwork.

One top in-house lawyer we have worked with who provides successful guidance for outside lawyers is Michael Brennan, the general counsel of Way Service Ltd. in Houston. Brennan always begins by providing outside counsel with a clear outline of what he needs assistance with. He then makes a call to explain the task and the timing and asks for a rough estimate of the cost. After retaining outside counsel, Brennan often conducts a “kick-off” call to introduce everyone involved. As a project progresses, he asks to be kept informed of key developments and provided with periodic status updates. Brennan carefully monitors and participates in the project as a leader, but without getting bogged down in the minutiae and specialized work better delegated to outside counsel.

It is crucial that you understand your client’s capabilities. The ideal client knows exactly what his legal department is capable of and when the resources of an outside firm are needed. But outside counsel cannot automatically assume that their in-house counterparts can always make such determinations. Outside counsel need to stay abreast of the changing capabilities of their clients’ legal departments. They should know the key players and their strengths, weaknesses,

and experience levels. Outside counsel who can help recognize and fill the holes in a client’s in-house expertise, and in-house counsel who can honestly assess their own teams’ limitations, work most effectively together.

Mark Casey, the general counsel of Hologic Inc. in Bedford, Massachusetts, has overseen the growth of his company’s legal department from two lawyers and a paralegal five years ago to 17 lawyers and nine paralegals today. Hologic has been a client of our firm since shortly after the company’s incorporation in 1986. As Hologic’s legal department has expanded, we have adapted our approach to representing the company. When particular issues first come to our attention, we are able to route them to appropriate contacts within Hologic’s legal department and work collaboratively with Casey and his team to resolve issues efficiently. By educating us on his department’s inner workings, Casey helps ensure that we are positioned to deliver the right legal services, and deliver them at the right level of his department.

The only way to get these relationships right is by understanding both the big picture and the case-by-case details. We are sometimes asked to advise our clients on only a discrete aspect of a transaction. But unless in-house counsel are willing to take the time to present the full picture, we may not be aware of certain details that are highly pertinent to the assignment. Lawrence Paine, the former general counsel of Global Imaging Systems Inc. in Tampa, always strongly encouraged outside corporate or real estate counsel to become closely

involved with Global Imaging’s business team. Paine gave outside counsel clear instructions and armed them with the resources and information needed to do the particular job. In so doing, he helped ensure that outside counsel understood exactly what Global Imaging wanted out of each transaction.

By helping their outside counsel see both the big picture and the nuances involved in each matter, in-house lawyers who follow the practices outlined above will help enable outside counsel to deliver work product that meets their needs and expectations. For optimal results, your team needs the best possible information, not only about the matter at issue, but also about your client generally, and about the capabilities of your collaborators on the other side of the in-house/outside counsel divide. After all, in the end, it’s all about the teamwork.

Philip Flink and Edwin Pease are partners in Brown Rudnick’s corporate and capital markets department in Boston. Pease is cochair of the firm’s emerging technologies and venture capital practice. Christopher Hagan, a partner in the corporate and capital markets department, is in the firm’s Washington, D.C., and New York offices.