

PRACTICAL TIPS FOR WORKING WELL WITH IN-HOUSE COUNSEL

- Introduction of each of the speakers.
 - Describe what each does for their respective companies.
 - What type of attorneys are their companies using?
 - Litigation matters.
 - Corporate attorneys.

- Understanding the World of the In-House Counsel.
 - Unlike firms, companies do not revolve around the lawyers.
 - Likely wear multiple hats—working closely on important business decisions.
 - Work load is likely to involve a much greater breadth of issues and handling many more matters.
 - In-House lawyers must justify their importance as well. You should keep this in mind.
 - In-house counsel should receive *good* news and especially *bad* news first.

- Working on a matter with In-House/How to get the in-house lawyer to keep you.
 - Understand company philosophy on the role of in-house counsel.
 - Hands on or hands off?
 - Importance of communication—keeping the in-house attorney informed.
 - Why? (General Counsel)
 - How to communicate?
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- Billing/Budgeting Issues.
 - Importance of sticking to budgets.
 - Importance of communication (no surprises)
 - Knowing how undertaking a project will affect the budget.
 - Importance of knowing the spend at any particular moment (time sheets)
 - Importance of maintaining perspective (does this matter require “scorched earth”?)
 - Knowing the signing authority of the in-house counsel.
 - Danger signs
 - Surprises.
 - Too many attorneys on a file.
 - Disputes over the Bill
 - Discounts

- Doomed if you “win” the bill argument—never used again.

- Effective Marketing
 - What does a company look at when hiring outside counsel.
 - Expertise.
 - Experience with litigating the particular (up to trial)
 - The team (who will be day-to-day contact)
 - Billing rates
 - Conflicts
 - References
 - How do we hire?
 - Who do we hire?
 - Lawyers that have done a good job for us.
 - Lawyers who understand our business.
 - Effective Marketing?
 - Website (careful of representations)
 - Newsletters are not effective. A phone call would be better.
 - Understanding client’s business.

Suggested Topics

1. How to handle regime change

Q: When a new in-house counsel comes in, how should outside counsel treat him/her in order to retain business?

A: TAP response:

i. Large OC RE Firm v. Sole practitioner in SF Valley

- a. When I recently took this position, a large OC Firm was earning significant six figures in fees to handle a massive secured lending / lien / real estate project. They kept talking about coming 2 blocks to meet me, but never did. Several months later, the lead partner called to introduce herself and ask that we pay a remaining \$900 bill before year end.

Meanwhile, a sole practitioner in the San Fernando Valley drove 1.5 hours without an appointment to meet me face-to-face; he brought historical documents and educated me about the legal work he had done with the company for years, and gave me a detailed status report on every case he was handling.

Guess who still does work for us?

2. Billing Issues

Q: How should an outside counsel handle slow-pay / bill haggling with clients?

- A. With sensitivity. You need to understand the following about your client:
- i. What is their budget? Have you blown that?
 - ii. What is the signing authority of your contact? Does your bill exceed that?
 - a. Your contact (e.g. me), may have reviewed and signed your bill promptly, but now it is lost on the CEO's desk because it exceeds \$10K or \$50K.
 - iii. Call and warn and discuss for large bills.
 - iv. The in-house counsel may need a victory internally, so knocking 5-10% off makes everyone look good.

- B. Finally, you're doomed if you "win" the bill argument with the client. They will never use you again.

3. How can I get to know my client better?

- A. Get into their business and really understand it.

I have never had an attorney offer to work in one of our restaurants, or to (no charge) spend time in the back-of-the-house interviewing managers. That would be impressive.

At least use your client's product, ask for a tour of their facility (no charge), show an interest in the business.

- B. Don't market with a generic press release.

Example: Whenever there is a new court ruling on some employment issue, at least half-a-dozen firms send me newsletters and "updates." While it's fun to see who gets the newsletters out the fastest (and who is the slowest), it would be much more impressive if—instead of a newsletter—one of the many attorneys who purports to know our business would call and say, "Tim, there is a new ruling about using worker's compensation costs to calculate a manager's bonus plan. I'm concerned that Coco's and Carrows might be doing that, and wondered if you wanted us to look at your bonus plan and make some suggestions."

That would be helpful and targeted.

In short, market directly and specifically to your existing client, rather than sending generic updates to the entire client list.

- C. Visit their office to "pull teeth" and do employee interviews. Waiting for in-house counsel, who may be in meetings 60% of their life, to pull documents and files for litigation, HR, etc. will delay things. This way you keep the project moving, you develop face-to-face contact, and you shift the burden of gathering data from the in-house counsel or business person to you.

Day in the life

- Marketing – Bush & Kerrey look alike
- Research variable accounting so that I can try to broker the CEO's stock option re-pricing issue with the BOD.
 - Follow-up on a 1.5 hour conference call from the day before.
- Attend a standing meeting: one of four that I have each week; this one is strategic planning.
- Respond to e-mails regarding our pending UFOC registration, insurance renewal issues, etc.
- Our former parent and our former Japanese licensee need us to sign some documents to extricate ourselves from a licensing deal in Japan.
- We are trying to sell our mark in the Middle East, and I have to follow up on that, and two pending sales and acquisitions of units.
- We are trying to get out of a lease in Panorama City, and the file is 25 years old and about 1 foot thick, so I call up an out-of-work real estate attorney I know and ask him to take a look.
- Phone call from a GL attorney on a 6-figure slip-and-fall.
- Phone call from an outside counsel in OC about a MSJ we just won.
- Sign 15 liquor licenses and get finger-printed for an application.
- Bribe my secretary to go get me some Rubios.
- At 1:00 I have a conference call with our Chairman and outside counsel to explain the 7-figure liability we have on our worst pending lawsuit.
- At 2:00 I have a weekly update with the CEO.
- At about 3:00 I met with our VP Finance to get background on the documentation letter I am drafting for an accounting vendor.

There was more.

The point is: Variety, and very little time to spend on anything. I consider myself an expert on maybe one of the topics that I touched. So, I rely on outside counsel for a lot of help.