

How to Optimize Today's Inside/Outside Counsel Relationship: A View from the Inside

Pick up a newspaper today or turn on your smartphone or laptop. The headlines or downloads flash some kind of ongoing criminal investigation, a corporate scandal, alleged personal wrongdoing, attempted cover ups, breach of attorney-client privilege, or other legal risk.

For inside counsel today, no misstep can be taken lightly. A chief legal officer alone or running a small or large law department faces multiple stakeholders insisting on transparency, accountability, and instant results. **Most importantly, how a legal risk is addressed is as important as solving it.** Whether you are a profit or non-profit entity in the private or public sectors, there is no room for error. And, one of the greatest challenges for inside counsel is identifying the best outside attorneys to assist them when the challenge is often the greatest to the organization.

So, I thought I would share how the relationship between inside and outside counsel can best be optimized. Here are a few characteristics of great outside counsel that can make a positive difference:

1. **Be a trust builder.** Whenever outside counsel is called into a tough legal battle, fear is everywhere. Employees fear for their jobs. Most are behind the sandbags. Getting the facts is close to impossible. If an attorney comes in as the outside expert (dare I say a legal consultant), the shields usually go up and wrong decisions based upon incomplete or wrong facts result. Essential is the need for outside counsel to be a good listener with inside counsel and all in the organization that may be on the firing line. By fostering trust, creativity will follow and might be critical to solving the legal risk at hand.
2. **See the issue from the client's perspective.** I call this talent "going on the other side of the chessboard." Outside counsel that makes every effort to see the problem as their own from the viewpoint of the client are the most productive and successful in turning things around. Simply put, your goal is to build and maintain empathy while remaining objective. No small task, but the good ones can do this every time. If you come into the room with your litigator hat on asking nasty questions, things will go south fast and likely replacement counsel is already being interviewed.
3. **No surprises.** Most law departments live or die by meeting their budgets. Since most tough legal matters have both controllable and uncontrollable factors, staying within the budget is tough. This said, we can stay current in knowing what our costs are so we can make sure management and other stakeholders are fully informed. Great outside counsel do not surprise their clients with legal bills that blow either a law firm's early budget projection or a law department's own internal reporting. For major matters, we would often employ the use of a "credit card" authorization of an agreed upon amount. Say, for a major piece of litigation, the increment might be \$25,000. Once outside counsel approached that limit, an additional authorization from inside counsel would be

needed or the unauthorized amount was not paid. This placed a discipline on outside counsel that required them to stay on top of the law firm's billing, not load up on unnecessary personnel, stay lean and mean, and mind the shop so to speak. The good ones did this and surprises were kept to a minimum. In effect, the goal was that outside counsel – whether an individual or a team – became a seamless extension of the client.

4. **Be practical.** Great legal opinions, theory, case law, research, and strategy memos are nice but largely unread. Inside counsel selected you based upon your track record as a top professional. You don't have to prove that again and again. The key is to get the job done efficiently. Writings should be down to earth, easy to read, short and to the point. Realism is essential. Tell the whole story but when the disclaimers are longer than the meat of the matter, things are bulking up and in today's world only increasing the legal risk not diminishing it. If your writing only raises more issues than it addresses, it is likely not constructively moving the needle and not useful for internal distribution and proactive action to bring the legal matter to a speedy and successful conclusion.

On a final note, top outside counsel never forget that they are human and that makes all the difference in the heat of a legal battle.

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