



Building Trust with In-House Counsel

Best Practices for Outside Counsel

BY THOMAS W. CODEVILLA

In-house attorneys talk about outside counsel as often as Coloradans fret over snowpack. Putting aside ethical considerations, in-house attorneys quibble with outside counsel on, among other things, business development, billing, matter management, and termination. These tasks might seem inconsequential, but how they are performed conveys a great deal about outside counsel's integrity. Effective outside counsel understand this golden rule. They develop relationships with in-house counsel years before the possibility of financial gain. Their bills are intelligible, detailed, and devoid of dreaded ".1" charges. They pitch work as a calculated risk and take responsibility when

a strategy fails. After termination, they are as gracious and cordial as they were before the representation. Showing integrity in the shark tank of the legal market can be thankless, but reputation is important in a legal community as small as Colorado's.

Business Development

After I moved in-house, big-firm attorneys I had never met began cold-emailing me, buying me drinks, and laughing at things I said that were definitely not funny. Other attempts to garner my business included implying there could be a lateral position at their firm if my current job did not pan out, an invite to dinner when two partners "happened" to be in town,

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and a friendly lunch that turned into a hard sell. Flattery is no way to build a relationship.

Just as the best time to look for a job is while still employed, the best time to build a relationship is long before you need it. Outside counsel should cultivate shared interests with in-house counsel years before the possibility of work. Especially if the client used to be in private practice, he or she will see through repeated networking attempts. At the very least, when meeting a potential client, outside counsel should know beforehand what the in-house counsel does and how their business works.

One of my big-firm friends knows that she will never represent my company because it is too small, but is building a relationship for my next position or the one after that. Another attorney knew me for years and never asked for business. He spoke passionately about his subject area and recommended reading to me, trying to help me at my job without him. Providing ad-hoc advice for free is a delicate balance, but he was clear about the line between free advice and representation. Firm-sponsored CLEs are useful in this regard.

With the continued decline of national legal referral services, personal referrals are still the gold standard because they give the potential client a chance to ask its hot-button questions about responsiveness, billing, and attention to detail. In the absence of a referral, responses to

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RFQs are crucial. For example, a startup likely does not need the full scope of a firm's services. If the RFQ asks for prices, at least provide a range. In-house counsel wants to know less about a firm's large clients and more about whether and how that firm will make the effort to understand the client's business. Take an office or plant tour, or attend a business meeting with in-house counsel and their clients at a client site. Get some idea of how in-house counsels' work arises and why they need help. Do this before engagement, because no general counsel

wants to pay thousands for partner time before legal work starts.

No one expects outside counsel to become best friends with clients, and expensive dinners pale in comparison to intellectual curiosity (though a well-timed scotch never hurts). But when developing business, outside counsel should make a genuine attempt to understand their potential clients' legal needs long before actually asking for their business.

Billing

My father loves the story of a restaurant bill he received in Italy. All the food was on the bill, plus an item marked "SP." When asked about "SP," the waiter scratched the item out saying "se passa, passa, non e passato," or "if it passes, it passes; it didn't pass." Each time I catch a questionable ".1" or impossibly round time increment on a bill, the law firm starts to resemble that Italian waiter.

Billing is about compromise and building trust. Charging premium rates for questionable work is a quick way to destroy this trust; outside counsel who sticks his own neck out to write off time billed for such work can regain trust. There is nothing wrong with displaying written-off time on a bill, just as one should make concessions explicit in a negotiation.

However, "preparing" .8 for a .2 call, "conferencing" with other attorneys, or "attention"



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to a matter without explaining what legal work actually occurred will draw scrutiny. Deciding to not perform legal work is not billable; by the same token, little actions like checking in when the scope of a project expands unexpectedly or realizing that a client may not want to pay a firm to forward emails to the other side show self-awareness. “One line of explanation per hour billed” is a good rule of thumb.

Finally, at the end of the representation, do not charge thousands to summarize issues or take one last look at closed files. This means non-billable time, but charging for trivial items only creates resentment.

Billing is neither an art nor a science. Writing a good bill requires knowledge of the client’s expectations and communication style, but is also a test of integrity for the biller. Take clients by the hand through billing entries and walk them through the work performed. If done properly over the years, good billing ironically increases the odds that clients will not read the bill before paying it.

Matter Management

Many firms fail to manage matters in a way that other service industries have mastered. For example, even bartenders know the first step in service is learning the client’s communication style. Outside counsel should present and quantify options to achieve a client’s goals as another service provider might. Considering options is good business, requiring creativity and admitting the possible flaws in each legal approach. Whichever communication or management method a firm chooses, setting expectations up front is key.

Learning a client’s communication style helps build trust, and most in-house counsels I know prize responsiveness. While a full response may not be possible within 48 hours (or a business day, depending on client expectations), an acknowledgement of in-house counsel’s email is. A general counsel I know has stuck with the same firm for years because it figured out how to vary email length in proportion to the issue’s importance, when a call was appropriate versus a memo, and how the general counsel perceived value in legal work. If a client always responds to your calls with emails, take the hint.

When delivering work product to a client, ask if in-house counsel could forward it to internal clients; if not, consider reworking and cutting any “academic” or otherwise impractical advice. If a client prefers memoranda, write them (and recognize that the client’s attorney is probably over 40).

As in other service industries, people ultimately pay lawyers for results. When the result is not certain, it is helpful to frame a course of action as a calculated risk: a client pays \$X for a Y% chance of \$Z outcome. As in-house counsel, my next questions will always be: “What do my other options look like? What happens if your

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approach doesn’t work?” Outside counsel can score major points by anticipating this question and preparing responses, just like a doctor with a difficult patient.

When a matter involves opposing parties, consider which side has the incentive to slow-roll the issue or not respond. If it is the other side, develop strategies with the client on how to deal with opportunistic opposing counsel. If outside counsel shrugs their shoulders at an unresponsive opposing counsel while a deadline approaches, in-house counsel will be inclined to scrutinize the bill. Would you want to pay a


plumber if he took a long lunch break halfway through fixing a leak?

If outside counsel’s tack is not working, regroup with the client and strategize. In-house counsel should not have to follow up every month to poke the other side. Many lawyers are linear thinkers, and left unchecked will repeatedly bang against the wall like a wind-up toy. Do not be a wind-up toy.

Finally, after a matter concludes, ask in-house counsel for unfiltered feedback. Did the matter go as the client expected—why or why not? Did stakeholders feel informed—if not, why? Could in-house counsel have taken a larger role, or would they like to next time? Clients will appreciate the ask even if they have no comments.

Practically, outside counsel can address the above by providing status reports, setting expectations early about the pace of a matter, and cultivating the creativity to change strategies when necessary. Whatever the strategy, set (and re-set) communication expectations.

Conclusion

In-house counsel know that outside counsel who prepare for years and learn the potential client’s business are more likely to be thorough in legal work. Outside counsel should prepare thorough but reasonable bills; this shows in-house counsel that they view the representation as a partnership. Further, outside counsel who pitch legal work as a calculated risk show that they think about costs in the same way the client’s business must. And developing clear communication methods ties everything else together. Business education and development, billing, and client management are mostly thankless, non-billable tasks. But these tasks are also a great way to build trust and credibility with in-house counsel. 



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