

## Simple Steps to Success

*Thirteen things that in-house lawyers wish their outside partners knew.*

BY BOB GANS

As we all know, law firms are constantly courting in-house counsel, in search of new business. Unfortunately for most of them, we in-house counsel usually have a favorite firm (or firms) with which we like to work. Thus, getting a foot in the door is not easy.

That is why it is essential to succeed consistently once we've retained you. And by succeed, I don't mean winning every case every time—**IN-HOUSE COUNSEL** although that would be nice for us both, right? But we do expect certain things from you in order to maintain a long and successful relationship. After all, we like to think of outside counsel as partners.

As a member of the Washington Metropolitan Area Corporate Counsel Association, I've had the advantage of hearing war stories over the years from numerous in-house colleagues about their good and bad experiences with outside counsel. Yes, we do talk about you behind your back, but, believe it or not, the praise far outweighs the criticism (we can only hope the feeling is somewhat mutual). Based on those informal discussions, unscientific surveys, and idle cocktail-party banter, I've gathered a list of the top 13 (I'm not superstitious) things my colleagues and I want and expect from our partners.

### 1. Communicate with me.

There are a lot of smart lawyers out there, but not all of them communicate well. Regular and sustained contact with me is a necessity. If you succeed on this point, the other points below will fall into line. You should be able to quickly gauge how frequently I want you to communicate with me. Cultivating a relationship through quarterly letters or e-mail is not sufficient.

At the other extreme, hourly phone calls to me on every minor issue are way too much. Getting so caught up in the fine points of litigating the case (which is your primary role) should not distract you from coordinating with your client on those fine points and, perhaps more important, on the bigger picture in a consistent way. Dialogue and understanding of each other are necessary ingredients for a sustained relationship.

### 2. Pay attention to your billing.

Give me monthly, easy-to-read, accurate billing, please. Make it easy for me to know who did what and when, and how much it cost. Talk to me about how much detail I want or need in the bills. Review your bills to discover any errors, overcharges, or other issues before I do. And sometimes my client and I may need to know how much our current attorney fees are, so enter your time promptly. I remember once seeing a lawyer on the Metro, writing down his billable hours for the past two weeks. He explained to me—with a straight face—that he “diligently” tracked his billable time like that and gave it to his secretary to enter at the end of each month. I wouldn't put his firm on my short-list for hire. Oh, and if you don't nickel-and-dime me, I won't nickel-and-dime you.

### 3. Use efficient technology.

We are in the 21st century. If I'm tech savvy, make sure you are, as well. If I'm not, bring me up to speed if I'm willing to learn. Don't confuse me if I'm not. Use technologies that will help me communicate with you. For example, for better or worse, many of us rely on e-mail more than “snail mail” and faxes. So if I want a “soft copy” of everything, don't send another hard copy by mail later—save some trees. At the same time, don't get carried away. Conducting all of your business with me from your cell phone is a bit annoying; I prefer keeping our discussions privileged, rather than sharing them with everyone within earshot of the boarding area for Flight 151.

### 4. Don't just say yes.

I didn't hire you to agree with me all the time. I hired you for your legal savvy, and I want and respect your opinion and advice. So speak up. If I don't agree with you, I'll let you know. And if you think I'm wrong, I need you to tell me why. The words “neutral” and “lawyer” don't go together. I once had an outside counsel diligently report the procedural aspects of a case to me, without ever giving me suggestions on what to do next. Again, this is not a firm I'd put on my short-list anymore. Without your opinion, we're just wasting each other's time.

### 5. Know my business, or learn it quickly.

You have hundreds of clients; they're all different. I can

appreciate that, but you still need to take the time to understand my company, the business I'm in, and the nuances that come with that business. Just because something worked for another client of yours does not mean it will work for my company. There is something unique about every company and organization—the people, the product, the service, and the financial, legal, or political environment. It's never the same. Recognize that.

#### **6. Know my litigation style.**

Many of us were in law firms before moving in house, and have developed particular views on litigation strategy. Learn these views upfront, and understand the business factors that could affect these views. Is it to our benefit to have an extension of time to respond to a pleading, based on internal company matters of which you are unaware? Do we want to depose the plaintiff immediately, or should we complete written discovery matters first? Do I want to negotiate now, later, or never? And at what point do I want to send that message to the opposing party?

The answers to these questions certainly vary by case, but there are some underlying philosophies we can share with each other by discussing them upfront. Plus, if our philosophies differ, it doesn't mean I don't want you as my outside counsel. I can learn from your experience, just as you can learn from mine.

#### **7. Create a budget for all options.**

"Tell me, How much is this going to cost?" Yes, I know it's one of the two worst questions you get from in-house counsel. The other one is, "What percentage chance do we have if this goes to a jury trial?" At least try to give me a rough cost estimate—best- and worst-case scenarios—as soon as possible. I promise not to hold you to your exact budget, and, yes, I realize there are unforeseen circumstances. I need this information for my client's understanding, risk analysis, and budgetary-planning purposes. Oh, and as soon as you think your budget may be substantially off, communicate this to me.

#### **8. Plan ahead.**

Understand my comfort level with your work. Some of us want to review every letter, brief, and research memo you produce, while others may trust you to handle most of this without oversight. Usually, you will find that we are somewhere in between.

Also, if you helped me litigate a case for months and months, you should have a pretty good head start on the motion for summary judgment we've always known we were going to file. Since you know I want to review the draft before it is filed (we always do), don't give it to me the day before it's due. As you know, the law is about telling a compelling story. You should work with me in preparing it from day one—we will revisit it, modify it, and finalize it over time.

#### **9. Help me practice everywhere.**

I have litigation matters all over the place; no, I'm not talking about my desk. It's hard enough to master the state-law issues in one state, but I need to know how a law or decision in one juris-

diction might affect my company's business in another. That's why I hired your firm. Help me practice nation- or worldwide. I may not hire you for all of the "out-of-state" cases, but I will appreciate your help in pointing me in the right direction. And in your newsletters, if the news could affect my business, let me know how.

#### **10. Recognize that I have "clients," too.**

I may be able to read and understand the intricacies of your fifth-year associate's eight-page legal memorandum, complete with citations and footnotes. But I need to advise my clients in a way they will understand, so don't make me translate your work into layperson's terms. Some of the best legal briefings I've gotten from outside counsel were simple PowerPoint presentations prepared with my client in mind.

#### **11. Be cost-efficient.**

I'm usually not out to make new law; my job is to resolve matters in a cost-efficient manner. I'm willing to pay your firm's astronomical rates if your people get the job done more efficiently than a less-expensive firm. I'm open to considering alternative billing methods beyond the "six-minute-increment" method.

Also, don't raise your rates on me without telling me first. And I don't want to pay for you to train a new associate on the Federal Rules of Civil Procedure or on how to prepare for their first deposition, or for the 10 hours it took to draft that two-page memo that sort of answers a question that a senior partner could have answered in minutes. I want efficient knowledge at my disposal. That's why I hired you.

#### **12. Pretend I'm your only client.**

OK, I know I'm not. But that shouldn't stop you from pretending. I know I contact you on a Friday afternoon sometimes and want you to do something for me by Monday morning. I'm sorry about that. But I'll make an effort to curtail those phone calls, as long as you stop calling me from the airport on your way to some other client's deposition or trial, and try to sound like your full attention is on my case.

Staff my cases efficiently, so if you're out of pocket for a while, I'll barely even notice. While you are gone, I don't mind being referred to associates assigned to my case, as long as they know what they are doing (let's face it, the case documents will probably be in their offices, anyway).

#### **13. Make me look good.**

If you can remember only two of the points on this list, remember the first one and this last one. Recognize that while you are a revenue-generating star in your firm, I am just another cost center in a business operation—meaning, I need to justify my existence on an annual, if not daily, basis, so your job is to make me look good. And if I look good, you look good.

Thanks, partner.

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