

BIGLAW REDEFINED

Building Better In-House and Outside Counsel Relationships:

Industry Best Practices
and Ethical
Considerations

With you today




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Agenda

- Outside Counsel's Top 5 Tips for an Effective Partnership
- In-House Counsel's Top Five Tips for an Effective Partnership
- Balancing Budget Pressures Ethically with Internal Clients and Outside Counsel
- Crafting Effective Budgets with Outside Counsel
- Alternative and Ethical Fee Arrangements That Work
- Key Takeaways

The background of the slide is a dark, almost black, space filled with numerous bright, golden-yellow light trails. These trails are curved and flow from the left side towards the right, creating a sense of motion and depth. The trails vary in thickness and brightness, with some appearing as thin lines and others as thick, glowing bands.

Outside Counsel's Top 5 Tips for an Effective Partnership

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From outside counsel's perspective ...

- 1. Communication.** Clear, direct, honest, candid, and forthright communication. If there is a business purpose or pressure facing you when assigning a project, please share. We are better partners when we know the whole story.
- 2. Let's have dinner.** Please call if you have a question and do not automatically assume that we will immediately open a new file or turn on the clock. If you do not want a billable event attached to the inquiry, say so and we can visit over coffee, lunch, or dinner.

Outside Counsel's Top 5 Tips for an Effective Partnership

From outside counsel's perspective ...

- 3. In office conferences.** On legal work that is billed by the hour, please do not assume that in-office communications between lawyers are a way to inflate the bill. We often do our best work by collaborating and talking aloud about your legal issues.
- 4. Can I have access?** Open the lines of communication for us with the involved stakeholders. We need to hear the story from their viewpoint to avoid surprises down the line.

Outside Counsel's Top 5 Tips for an Effective Partnership

From outside counsel's perspective ...

- 5. Other Client Matters.** Keep us abreast of matters affecting your Company that do not directly bear on legal assignments. It is helpful to us when we have the whole picture of the Company's activities since it may bear on our comprehensive legal advice.

In-House Counsel's Top 5 Tips for an Effective Partnership

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“In the absence of clear indicators of what it means to be productive and valuable in their jobs, many knowledge workers turn back toward an industrial indicator of productivity: doing lots of stuff in a visible manner.”

Newport, Cal (2016) *Deep Work*. Grand Central Publishing

In-House Counsel's Top 5 Tips for an Effective Partnership

From in-house counsel's perspective ...

- 1. Communication.** Clear, direct, honest, candid, timely, and forthright communication. Keep me informed and please do not give me your intended work product (legal opinion, intended brief, contract) with only minutes before the deadline.
- 2. Let's have dinner.** I do want to get together to discuss legal matters, without having to worry about the legal bill. I value this time to tell you about me, learn more about you, and collaborate on ways to be more efficient together.

In-House Counsel's Top 5 Tips for an Effective Partnership

From in-house counsel's perspective ...

- 3. In office conferences.** I recognize the value of in-office conferences, but only if you take time to show me the outcome. All work should advance resolution of the issues. Make that apparent from descriptions on the legal bills.
- 4. Can I have access?** Keep the lines of communication open. To the extent you want to talk to my people, I want to listen in. If you have concerns about something, I want to hear it.

In-House Counsel's Top 5 Tips for an Effective Partnership

From in-house counsel's perspective ...

- 5. Other Client Matters.** Keep me abreast of what you have accomplished for other clients. It is helpful to know not only your core competencies, but other areas in which you have had success. You may be able to help in other facets of the business. Share with me major legal developments that may be of interest.

Balancing Budget Pressures Ethically with Internal Client and Outside Counsel

"Lawyers are a cost, a resource to be utilized-or not-by the business, i.e., those who make the company money. Accordingly, in-house counsel must demonstrate their value every day they draw a paycheck, which are funds the business would otherwise happily deploy elsewhere if given the chance."

In Brief. A Legal Career Blog. No Network, No work, No Work-Business Development Doesn't Stop Once You Go In-House.

Major Lindsey & Africa, Ryan B. Whitacre, January 4, 2016

Balancing Budget Pressures Ethically with Internal Client and Outside Counsel

There is an inherent tension between in-house counsel and outside counsel

- Outside counsel wants direct access to people, information...unfiltered, faster, and for purposes of deepening the business relationship and achieving resolution.
- In-house counsel wants to protect the business people from the burdens of litigation or legal process, control the spend, and to have equal knowledge of the information.

Balancing Budget Pressures Ethically with Internal Client and Outside Counsel

Model Rule 1.13: Organization as Client

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

Comment

[3] When constituents of the organization make decisions for it, the decisions ordinarily must be accepted by the lawyer even if their utility or prudence is doubtful. Decisions concerning policy and operations, including ones entailing serious risk, are not as such in the lawyer's province.

Balancing Budget Pressures Ethically with Internal Client and Outside Counsel


Model Rule 2.1: Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations, such as moral, economic, social and political factors, that may be relevant to the client's situation.

Comment

[1] A client is entitled to straightforward advice expressing the lawyer's honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront.

[5] ... [A] lawyer ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client's interest.

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Crafting Effective Budgets with Outside Counsel

Crafting Effective Budgets with Outside Counsel

Practical Pointers

- Both parties need to consider the scope of work. What are the contingencies, what could go wrong, what could completely alter the project.
- Outside counsel who understands both his/her business and yours (i.e. a true business partner) should be able to craft a budget (i.e. price legal work) in a manner that fairly compensates outside counsel and maintains a long term view of the relationship.
- Its not just about the billable rate, but also about time efficiency.

Crafting Effective Budgets with Outside Counsel

Model Rule 3.2: Expediting Litigation

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Comment

[1] Dilatory practices bring the administration of justice into disrepute.... The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay.

The background consists of several glowing, golden-yellow light trails that curve and swirl across a dark, almost black space, creating a sense of motion and depth.

Alternative and Ethical Fee Arrangements That Work

Alternative and Ethical Fee Arrangements That Work

A recent survey by the ACC found that 35 percent of respondents pursued alternative fee arrangements with outside counsel.

[Legal Depts. Move Work In-House to Cut Costs – Survey Says](#) Steven Lerner, Law360,
October 24, 2022

Alternative and Ethical Fee Arrangements That Work

Rule 1.1: Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Alternative and Ethical Fee Arrangements That Work

Comment

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question....

[4] A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation.....

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. ...

Alternative and Ethical Fee Arrangements That Work

Model Rule 1.5: Fees

(a) ... The factors to be considered in determining the reasonableness of a fee include the following:

(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

Alternative and Ethical Fee Arrangements That Work

Comment - Reasonableness of Fees and Expenses

[2] ... A written statement concerning the terms of the engagement reduces the possibility of misunderstanding.

[5] ... a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. ...

Alternative and Ethical Fee Arrangements That Work

- **Capped Fee:** A flat fee for a case that fits within a defined case characteristics
- **Retainer:** A flat monthly fee for regular, pooled work.
- **Budgeted hourly billing:** A fixed monthly payment amount, based on an hourly rate (or perhaps a discounted hourly rate), where there is a "true up" every quarter or six months.

Alternative and Ethical Fee Arrangements That Work

- **Fixed Fee:** A flat fee for a defined scope of work, whether a regulatory project or a defined piece of litigation.
- **"Chunking" of work:** Separate work into parts capable of fitting within another fee model.
- **Contingency**

Alternative and Ethical Fee Arrangements That Work

Model Rule 1.16 Declining or Terminating Representation

Comment

[1] A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion....

Key Takeaways

- **True Partners** - Outside counsel who add value to the in-house legal department by offering specialized skills and who understand their own business well enough to deliver legal services within budget.
- **Billing Arrangements** - Do not let the traditional hourly model ruin the in-house lawyer's budget and internal relationships. Try something that benefits the in-house legal department, as opposed to a financial arrangement that incentivizes the outside counsel to bill hours. Realize and accept the risk on both sides of the relationship.
- **Frank and open conversations** - ... over the economics of outside counsel's practice, and over in-house counsel's pressure (budget or otherwise) ... strengthen the attorney-client partnership.



Questions?