



CLM 2019 Retail, Restaurant and Hospitality Conference
February 6-8, 2019
Grapevine, Texas

If You Could Read My Mind Love, What a Tale My Thoughts Could Tell

I. Introduction

In today's ever changing, instant information- world, both clients and attorneys are forced to keep current on constantly changing issues and problems that confront them every day. Both face pressures that are often for the other to forget. So, how do we best maximize that working relationship between each other? What does the client want from their attorney? What are some of the best practices that in-house counsel can relate to their law firm partners? What do law firms want from their in-house counsel? The pressure of litigation has differing effects on the interested parties. Friendships can be forged, and enemies can be made. We are in the business of protecting our clients' best interests. Our clients are in the business of protecting their brand and their company. Client interests are typically best served when communications and expectations are clear and understood. This presentation will take a deep-dive into four areas: Communication, Professional Partnerships, Personal Relationships, and Business Development, to investigate how clients and attorneys can become more valuable partners.

II. Communication

A. Make Your Objectives Clear.

It's critical for in-house and outside counsel to be on the same page, and that requires constant communication. It's important for in-house counsel and senior claims representatives to know their company goals for each legal issue and to communicate those goals to outside counsel. A company goal on one matter may be to keep costs to a minimum, while on another matter a client wants outside counsel to think more about the big picture. Whatever the client's goal may be, identify it and communicate about it. It's important for in-house clients to help outside counsel understand the business and business objectives and then creatively work with them to achieve those business objectives. In its best light, clients see their role as a liaison between outside counsel and the business to make certain outside counsel is adequately serving the business' needs.

B. Communicate Regularly

As basic as that sounds, it is the single most often complained about problem from in-house counsel, risk managers, and claims examiners. Regular and routine discussions, by phone, email or otherwise can be the difference between a long relationship and a one-off client. The best results are achieved when in-house teammates get to know their outside counsel, establish relationships and *speak as frequently as possible* to ensure everyone's on course—keeping the business objectives in mind at every step. If there's no communication typically that's where there are problems. The closer and more communicative outside counsel are with their clients, and vice-versa, the more clients can emphasize what the goals and objectives are, the more clients can stay attuned to legal strategy being developed, and the more they can contribute to the development of legal strategy with outside counsel, which ultimately leads to less stress and better results.

C. State and Understand Budget Expectations

One of the most stressful matters facing outside counsel is setting case by case Budget Plans. That said, it is one of the single most important tools a client needs when preparing case information for their superiors. It's a point of tension when all seems to be going smoothly with a law firm—until a bill is sent that turns out to be some multiple larger than what was expected. Situations like that arise from a failure on both sides to clarify budgets and the scope of work. Attorneys working on files often find themselves concluding phone conferences with their clients sending them work, only to wonder how much time they should be spending on the work and trying to strike a balance between thoroughness and budget-consciousness. It's incumbent on outside lawyers to press for crisp communication. Some law departments have invoked “internal triage processes” where they sit down with business people and go through the criticality of need, how much money they want to spend and what the return will be—all before they even call the outside firm. Thus, they often know what they desire to be spent on a case by case nature, before you as their outside counsel have put pen to paper. Call the client, discuss the setting of the budget. Ask if they have a certain ceiling that they must stay within. All this type of communication accomplishes two things- it pragmatically gives you, the outside counsel the substance you need, but it also continues to build trust that is essential for long term viability of the relationship.

D. Always Use Candor

Saying what you think isn't always easy. Talking about tough issues like money or a lawyer's role in a project can be complicated but necessary. Outside counsel want candor in a constructive context. It is essential to improvement in the client relationship. If a lawyer disappoints a client, the client ought to let him or her know what happened. Frank communication is the only way to let outside counsel know you received something other than what you were expecting. Lawyers and clients on both sides will avoid those conversations, and it's always a mistake. Many times, the issue is fixable. Often, if discussed during the course of a matter, it can be fixed before it is too late. This type of relationship is no different than any other relationship in your life: The things that are not talked about can create issues that become bigger than they should be. If a bill is being sent to a client that is larger than normal, counsel should pick up the phone, call the client and let them know that a larger-than-normal bill is coming, and explain why. Remember that it's a professional relationship and bite the bullet. On the other side, clients in reviewing legal bills should not hesitate to call outside counsel to inquire why a certain matter took so long, or to ask for in-depth explanations of what he or she's paying for. Mutual respect is built when constructive candor is implemented.

III. Professional Partnership

A. Form a True Partnership

It ought to be the goal of any outside counsel to make it difficult for an outsider to walk into a meeting room and be able to distinguish between the in-house and outside lawyers. The relationship should be one of peers, and fortunately, the evolving role of in-house counsel is making such equal partnerships increasingly common. An overwhelming, major change over the years has been the dramatic sea change in the context of the make-up of inside counsel. In recent years, in many respects, inside jobs have become increasingly more interesting, with more responsibility, than much of the mind-numbing work done by outside lawyers who rarely actually take a case to trial. Because in-house counsel and senior examiners are now more like peers in such relationships, the relationship is both more rewarding and more challenging. To be a true partner and peer in every respect, clients and in-house counsel are advised to say what you think so there are no inefficient, time-wasting miscommunications.”

B. Build Trust

For trust to truly exist, it must run both ways. Clients want to trust outside counsel to do the right thing, and outside counsel want to be able to them to trust their clients to give them the right information, to come to them when needed and to not be shopping around for other outside counsel. It is a known “elephant in the room” for outside counsel, that often clients are looking for less expensive legal work. The idea of trust as a centerpiece of a professional relationship therefore seems unreachable at times. However, if the elephant is acknowledged, and dealt with, the work can stay, the relationship can build, the costs can remain reasonable, and the client and attorney are both ultimately successful. The idea of trust is nothing new, and it’s eternally good for business. An essential point for overall trust is to be aware that trust must develop at all levels—not just at the top. Outside counsel employ entire teams of staff that are fighting with the attorneys for the clients’ needs and goals. It is imperative that outside counsel inform their clients of who is fighting for them, and who has their back. It is also imperative that clients acknowledge that some of the most important tasks that are accomplished on their behalf are not accomplished in a vacuum, but instead are completed by an invested team, on multiple levels. There should be trust at these bench levels as well. That’s a lot of what tends to go missing. When things go wrong, it’s often because there is a blind spot within the team. Often a single general counsel or managing lawyer is talking with a single lawyer. That’s a single-point-of-contact relationship, and trust isn’t built across the divide.

C. Hold a Post-Case Conference

Early Case Assessment is commonplace. Evaluations are expected within 30 days, when little is known about a case. But, how much more could be learned by a 30-day post case evaluation? Clients could benefit to an incredible degree by talking candidly with their attorneys following the conclusion of a legal case. Once it is over, much could be learned before heading into the next litigated matter. More so, litigation could be headed off for the client, if the things learned in the case are addressed ahead of time. Jurisdictional nuances that become clear can benefit a client immeasurably, when making decisions on venue transfers and removal issues. Not many legal teams sit down after a project for a look back. With so much to be gained, it is difficult to accept, though easy to understand the reasons why. Lawyers are busy—by the time they close one matter, they’re already three days behind on the next one. Though outside counsel tend to feel that each matter is distinct, it is important to do so, because for the client, post-gaming your legal matters can really pay off. Consider spending an hour of your time at the end of Matter X to talk about how it went. It can save you time and money next time. If you’re in-house, or a claims examiner, and your law firm doesn’t seem to want your feedback on a matter, clients ought to

give it anyways, particularly if something needs to change. Outside counsel will be grateful for the opportunity to change and do things better to meet your expectations.

D. Reset Expectations Periodically

No matter how long a working relationship has been in place, it's very important to reset expectations from time to time. It ought to be the goal of all outside counsel to get in front of their clients, sit down with them at least yearly to talk about how things are going and get a status report. As the client, or in-house lawyer, this is where you should make your assessment of the previous year, to review spends, and ensure the law firm understands your evolving expectations and needs.

IV. Personal Friendships.

A. Develop a Friendship

At the end of the day, the best law firm/client relationships are those that are built on a professional relationship but grow because the attorney becomes someone the client can trust as a friend. It is priceless for a client to be able to say: 'Let me tell you something in confidence about the pressures I'm facing.' That a client can inform the attorney of the pressures they are experiencing up their own "food chain" is an immeasurable benefit for the client. In addition, both clients and attorneys strive for and struggle to attain "work-life balance". The notion of have a true friendship with the persons with whom you professionally struggle every day, puts more balance in the "life" column in the equation. It can never be said that complete trust comes anywhere as easily as it does with a friend.

B. Always Remember Keep Work Product Professional

Though establishing and growing a friendship is important, it is equally important to always respect the position of your client, and your attorney. Conversation can be loosened in an informal environment, but professional communications should remain steadfast for the sake of the professional relationship.

V. Business Development

A. Make Time for Your Client

Clients expect their attorneys to spend time on their cases. What clients ought to have, but often don't, is a commitment of your time, regardless of whether there is financial benefit to you. In earlier sections, the post-case analysis was suggested. Being in front of your client once a year was also suggested. These activities ought to be undertaken as often as is necessary. However, of additional import is to be available for advice, counsel, research, or any other need your client has. If a client has a matter that is not yet in litigation, they ought to know that they can call on you for any question they might have-jurisdictional advice, statutes and codes in your state, experts you might know, etc. Always give of your time to assist a client with these needs. Your clients want you to be available. Often carriers have adjusters and GCs have staff counsel, that need CLE and CE training. Offer to run a program for them, at your cost. By assisting your Claims Supervisors and GCs you are making their job easier for them in ways that you will never see reflected in their work on one of your cases, but, it is internally invaluable to them.

B. Spend Time Getting to Know What Matters

Often attorneys are in professional networking environments with their clients. This is an opportunity to get to know your clients on a level not available over the phone. In efforts to create trust and relationship, take an interest in their personal lives, and keep up. At the same time, make sure to connect your clients to others that might be able to help them in matters that don't involve you. Give them an opportunity to troubleshoot with others in their industry that face the same issues that they

face. Be present with them, but be mindful of the overkill on “talking shop.” Professional CLE events facilitate much-needed education, but also afford an opportunity to re-charge. Be respectful and mindful of everyone’s needs.

VI. Conclusion

It is a constant, troublesome question: Is a partnership possible with competing pressures -caseload reductions, the pressure to reduce litigation costs, the pressure to bill hours and meet quotas, the ability to attract clients, develop and maintain professional and personal relationships. The goals of one are not the goals of the other. This is an outside counsel’s greatest and constant fear: Can counsel do quality a lawyering job, without adding greatly to my client’s bottom-line expense? And, while counsel can keep the costs down, in the process, is there a sacrifice of some time on a case that counsel should be spending? Clients recognize that there really is not a “Holy Grail” of answers to this issue. But, a satisfactory journey through these counter-intuitive goals, can be undertaken if counsel can re-discover the lost art of communication. To communicate in the way to meet of the client’s needs, there must be effort made to build trust that will ultimately build a professional relationship, that is capable of evolving into a personal trusting friendship. The more important “end” and the key to it all.

