

How to Become and Stay the Lawyer Clients Want to Call and Work With

IADC 2020 Winter Meeting

When disaster strikes (literally or figuratively) or the bet-the-company case must be defended, or you just like doing a particular type of work for particular clients, do you want your firm to be that go-to firm, pre-identified by the client and ready to roll? If so, the groundwork must be laid early and your firm needs to understand the many internal pressures in-house lawyers are facing as they react to their situation, and plan developed too address those pressures as well as succeed in the case. The fact that you are a great lawyer is assumed because you got the call. Developing a reputation through groups like the IADC will help you get noticed. But once you get noticed is when the real work of landing, and keeping the client begins.

This short paper will provide some suggested approaches to developing client relationships that will keep you top of mind for an existing or potential client, one or two of which might turn out to be gamechangers for your practice.

1. Understanding the dual role of in-house counsel and how outside counsel fit into the business.

Companies hire in-house lawyers to provide both legal and business advice to the company. The goal being to have as much work done in-house as possible where the cost is fixed, and company knowledge is readily accessible. Companies typically hire and promote experienced attorneys with significant experience in private practice. Because companies have deals, claims and lawsuits outside their home cities, they have to hire outside counsel to partner with, not supplant, the in-house legal team. When this happens, the in-house lawyer becomes tasked with monitoring and managing the litigation or project. In effect, while the company is the ethical and nominal client, that in-house lawyer becomes the outside lawyer's "client." They will be looking over outside counsel's shoulder on strategy and will be reviewing legal bills. They will do that not because they are micro managers, but because their dual role requires it.

The in-house lawyer has her own internal clients that she has to update and report to about the matter outside counsel is handling. Those internal clients are typically business unit leaders and finance departments. Outside counsel does not typically have access to or deal directly with the internal clients, but rest assured, the internal client is paying attention to what outside counsel is doing, primarily through the legal bills that are being submitted. Outside lawyers are a direct cost to a business that can impact net operating profit as much as a settlement or adverse verdict. If outside counsel provides inaccurate budgets or valuations that result in under reserving by the business unit, the in-house lawyer will hear about it and then so will outside counsel, and if it is egregious, then a client might be lost, and in-house counsel may suffer as well.

Outside counsel's role, then, is to provide the best available information and analysis that can be passed on to the internal corporate client by in-house counsel with her own recommendations and analysis. And remember, if you help the in-house lawyer look good to the internal client, they will go to bat for you, and will be more likely to send you the next case.

2. Having the right answers from the outset to set yourself apart from other counsel.

There is basic information that outside counsel should be able to provide for every new matter. Having and providing this information before being asked will go a long way to showing the client that you are a partner that they want to work with over and over. The client is an expert in their business. They are not expert in key lawsuit variables that outside counsel knows (or can easily find out). The information that you should provide as soon as possible after getting the assignment should include:

- A. Jurisdiction Information
 - a. Demographics of venue from which jury pool will be pulled
 - b. How jury pool selected – drivers licenses, voter rolls etc.
 - c. Verdict history
 - i. Generally
 - ii. Specific cases akin to the new matter
- B. Judge Information
 - a. How many times have you/firm appeared before judge?
 - i. Types of cases
 - ii. Outcomes
 - b. Judge's experience with the type of case you have been asked to handle
 - i. Types of cases – any similar to what is alleged in the new matter
 - c. Noteworthy verdicts
 - d. Rulings on Personal Jurisdiction motions (if we have an argument)
 - e. Approach to discovery and motions to compel
 - f. Approach to Motions for Summary Judgment
 - g. Rulings on Daubert motions
 - h. Mandatory mediation
 - i. Unique standing orders
- C. Plaintiff's Counsel (and other counsel) Information
 - a. How many times have you/firm been adverse to that lawyer or firm?
 - i. Types of cases
 - ii. Outcomes
 - b. How many times has other counsel tried a case with the judge?
 - i. Types of cases
 - ii. Outcomes
 - c. What is counsel's reputation on discovery?
 - i. What they produce
 - ii. What they ask
 - iii. Discovery fights

While you have received the assignment because the client thinks you are the right lawyer/firm for the job, do not simply accept that fact. Explain your experience with the type of matter you just received. Discuss how similar cases have generally played out, and how you generally approach strategy and tactics in that type of matter. Show the client that you are mindful that you are a bottom-line cost in how you plan and execute the representation - provide data to support your plan and your budget, remembering that while rate is important, total case cost is more important.

3. Communication really is what it is all about.

Developing a “go-to” relationship with a client is, at bottom, all about communication. Clients do not want surprises and want relevant/important information conveyed concisely and in a timely manner. A rule of thumb is: Bad news immediately, Good news often.

So how do you know what the client wants to know about? Simple – just ask! Here are a few things to ask your client contact, but remember, just asking is not enough. You must still execute:

- a. How does the client deal with conflicts of interest and waiver requests? Understand what the client considers a business conflict – Adverse legal positions? Competitors?
- b. What is the client’s overall philosophy about litigation?
- c. When does your client want reports? [*Pro tip* – find out when your client contact has to make reports to her boss or the business unit and then beat that deadline by a week]
- d. How does your client want the reports formatted – in an email, in a separate document, by PowerPoint?
- e. What information is crucial to the client?
- f. What does a “win” look like for the client on this matter? It might not be what you think it is:
 - i. Early resolution?
 - ii. Accurate budget and coming in under budget?
 - iii. Accurate Reserves? [*Pro tip* -- learn what goes into client setting reserves and give them what they need]
 - iv. Successfully defending brand?
 - v. Creating precedent for use in other similar litigation?

Find out what else matters to the client and determine if you can touch those bases too:

- a. Diversity?
- b. Pro-Bono work?
- c. Community Activities?
- d. Professional involvement?
- e. Free CLE for in-house law departments?

Use your bills as a marketing tool. Your bill is your monthly description of activities and should stand on its own as a report that addresses achievements during the billing period and preview what is coming up next. Spend time reviewing the bill as if it was a memo, not a bunch of litigation code set descriptions. You should avoid ambiguities that might create questions about time spent. For example, don’t say “review medical records 1.8” – say “*reviewed 267 pages of medical records from XYZ Hospital relating to plaintiff’s ingrown toenail (1.8).*” And if possible, show that you recognize that you or an associate/paralegal may have spent too much time on a task by describing the reduction, not just making the reduction, e.g. *Review co-defendant’s objection to pro hac vice motion (.5 billed; .3 no charge).* These small things show your client that you are helping them better understand what is going on in the matter through your bill, and that you truly are their partner, not just a cost.

4. What else can set you apart.

Some of the following are included above or easily extrapolated, but all serve as a reminder that how you perform for your client contact can make or break your “go-to” status.

a. The Good.

- i. Developing a personal relationship with the client contact. Learn about their professional path and show interest in how they got to where they are. Learn about their families, hobbies and interests. Don't overdue it, but find a way to weave something personal into your conversations so that they feel that you are interested them as a person, not just a revenue stream.
- ii. Prompt response to inquiries.
- iii. Compliance with guidelines and requirements without being reminded.
- iv. Detailed reporting, including well-outlined early evaluations.
- v. Thinking outside the box using creative problem solving.
- vi. Finding early exit ramps on the litigation highway.
- vii. Strong preparation and proactive work in mediations.
- viii. Use of technology tools provided by the client or ones of your own choosing to help the client better understand the case and your plans.
- ix. *See also*, [How to Superplease Clients](#), a handout from Cleary Gottlieb partner Michael McDonald in 2013.

b. The Bad.

- i. Not including your phone number in your email signature block.
- ii. Not following billing Guidelines and being slow to submit final billing.
- iii. Providing redundant information and over reporting.
- iv. Painting by numbers rather than thinking outside the box.
- v. Not referencing claim number on email.
- vi. Using snail mail.

c. The Ugly.

- i. Failure to provide timely insight on new developments that impact the evaluation.
- ii. Drastic change in evaluation with no new discovery or as trial date approaches. Underselling the validity of plaintiff's position.
- iii. Misspelling the client's or in-house counsel's name.