

What a Firm Needs to be Doing Now to be the “Go To” Firm for that Next Big Case from its Client

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Virtually every firm with a significant client is hopeful that its phone will ring when that client has special legal needs. Often this work will relate to a positive event. Perhaps the client has involved itself in M&A activity or is seeking to go public or is otherwise making a major financing or investment decision.

But sometimes, the reason for the call is that the company is facing major litigation, needs to complete an independent investigation of some magnitude or is otherwise dealing with a problem for which it needs legal assistance, and it needs it now!

There is a long list of reasons why your law firm will be selected for this newest adversarial assignment. For certain, however, the current relationship between the firm and the client is going to be a significant factor as to whether the firm gets that phone call when the problems arise.

This paper is not intended to provide a checklist for the firm as to what it takes to get the phone call. Rather it highlights four critical aspects of the firm/client relationship that must be in place well before a need arises.

While these four ongoing and current relationship aspects seem obvious, the truth is that they are rarely discussed between the client and the firm and often are the point where the relationship is weakest.

1. The Most Important Case
2. R-E-S-P-E-C-T
3. Style Counts
4. Your Best Marketing Tool

THE MOST IMPORTANT CASE

Is your firm operating under the premise that the most important case you have for this client is the one for which you have not yet been retained?

The assumption here is that you were doing work for this client, perhaps across the spectrum of legal needs. Everything you are now doing in that relationship counts. Certainly, you need to do good legal work on those matters. Clearly the fees must be reasonable. And, of course, you need to make a profit and the client has to be comfortable with the representation and outcomes.

These are all important issues with regard to the cases you're already working. But if the firm is thinking long-term, it needs always to have its eye on what it takes with the particular client to get the call for the next case.

Once a firm has this mantra in its collective head – that the most important case is the one for which it has yet to be retained – as an operating principle, all of its interactions with the client take on a new perspective for the firm. Never is a dispute with a client a good thing for a law firm. Imaginative and quick resolution is always in the best interest of the firm, even if that means the fees stop for a particular case. Outcomes matter.

Remember that promoting the next-case-principle as a paramount rule means everything that a firm is doing in any one of its cases already should be understood in the broader context of the long-term relationship.

R-E-S-P-E-C-T

There are two aspects to this point of advice: 1. Remember what your in-house counsel's reputation is on the line whenever you are selected to handle a case; and 2. understand that your in-house counsel is an equal, and perhaps even a superior, lawyer who is merely working in a different role than you.

Consistently making the right decision as to which firm to retain for a matter is one of the key elements upon which in-house counsel is judged. Always keep in mind that if you have been retained for a matter, the reputation of an in-house lawyer is on the line.

It is not enough for your firm to have a good relationship with the attorney working the case. Your firm has an obligation to make certain that the retention decision by that lawyer will always be perceived as an excellent choice by those with whom the in-house counsel is working and to whom the in-house counsel is reporting.

Do - Make the retaining lawyer look good. Accept WITH the in-house counsel any positive recognition you or your firm may receive. Pass along good comments to superiors about the in-house manager when deserved. Do all you can to validate the original decision on retention.

Don't - Never go around the managing in-house lawyer. If contacted directly, for instance, by a colleague or superior of an in-house counsel, try to include the managing inside-counsel in the conversation or, at least, contact that attorney immediately about that meeting or conversation. Don't openly criticize the in-house attorney (this should be obvious) particularly with the team at the firm. Allowing criticism of the in-house attorney within the firm leads to even the youngest lawyer on the team viewing the in-house attorney as an impediment rather than a critical piece in the representation.

If there are problems with the in-house attorney, deal with those issues directly with the attorney. If it is critical to take the issues up the chain to superiors, do so openly. Never get the reputation of being someone who will go around the managing in-house lawyer.

The second point to always remember is that the brightest, most accomplished lawyer working on the case just might be the in-house lawyer managing the matter. Whether or not this is true, act like it is. No longer in business today are most in-house attorneys merely the ones “who couldn’t make it in private practice.” Actually, that has never been true, but the premise was pervasive among many outside counsel for a number of years. In-house lawyers are working under pressures of being both a business person and a lawyer that are simply not equivalent to what an outside litigation counsel faces. In litigation they are servicing their internal clients. While you may think of them as your “client” or client-contact it is better to understand they are serving a complex dual role where they are making both business decisions and legal decisions on the cases they manage.

It’s all about respect! R-E-S-P-E-C-T! Thank you, Aretha.

STYLE COUNTS

Pay attention to the role the in-house lawyer has chosen to play in any specific matter, understanding that role may change case-to-case. Knowing the role the in-house counsel chooses will define your role as outside counsel.

Simplistically, there really are only five different roles that an in-house counsel will play in litigation. These are:

1. Assign-and-watch
2. Monitor
3. Manage
4. Partner
5. Handle in-house

Many routine matters are dealt with in an assign-and-watch manner. In these cases, the in-house lawyer is only making two decisions: who to hire and whether to try or settle (and what that number will be). A very few companies will handle some types of litigation in-house. This could include everything from routine matters, to collections, to pre-litigation employment claims, to more complex matters. But in any case, in both assign-and-watch and handle-in-house scenarios there won’t be much interaction between in-house counsel and the firm.

The trick is to understand the difference between an in-house lawyer who wants truly to manage the case and one who is only really monitoring the case. And in situations where the attorney wants to manage the case, will there be a task taken on by the client away from the counsel and what is that?

For the purposes of distinguishing monitoring and managing, consider that for a high percentage of the attorneys who will tell you they are managing litigation, their role is primarily to watch (closely) the progression of the case and review legal fees — in what is really a monitoring role. An attorney who is managing cases in-house will be active in the case. The attorney will be known to the judge, known to the adversary and in attendance at the critical events of the case, including depositions and hearings.

An attorney managing a case will want to see drafts of the Summary Judgment Motion, while an attorney monitoring a case will want to review and sign off on the final version. An attorney who is managing a case will be in the prep-process and at the key deposition. The attorney who is monitoring a case will review it when it's complete.

Both approaches are fundamentally sound and often driven by the case as well as the personality, greater role and schedule of the in-house attorney. The critical point for the firm wanting to get that next big case is to understand for all cases exactly what is being expected of them by the in-house counsel....and honor it. Style matters.

YOUR BEST MARKETING TOOL

The question at hand is how a firm gets that BIG matter from its regular client and what it can do in the current retentions to make that more likely. Having covered the firm's obligation to appreciate the importance of getting that next case, to respect the role of in-house counsel and to acknowledge and accommodate the style of the in-house manager, the final step is marketing.

If asked about marketing strategy, some outside counsel would point to a great WEB page, great CLE offered to their clients, strong roles in the community and the bar and maybe even their box at the local stadium (although that is less likely in today's world of in-house counsel). All are nice. But there is only one marketing tool that you can be certain will be read, reviewed and digested completely. That marketing tool is the invoice.

The only piece of paper you can be certain will be read each month by the client is the invoice. Approaching the invoice as a firm's best marketing tool is the best marketing decision any firm can make. Obviously, there are complications to using your invoice as a marketing tool, and those aren't within the scope of this paper. Just keep the general premise in mind and the rest will play out nicely – no surprises, appropriate descriptions, adherence to the guidelines and a follow-up call to the client are elements of good invoicing, will get you paid and will keep you in the game for that next case.

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