

## **The Inside-Out Game: How In-House and Outside Counsel Build a Successful Relationship**

### **2024 IADC Meeting**

A key component to a successful relationship between in-house counsel and their outside advisers is simple—a strong trusting relationship. As in sports, communication, accepting constructive criticism, and collaboration are critical. This article will set forth winning gameplans for inhouse counsel to forge a successful relationship with their outside advisers.

#### **Tip Off: Retaining Outside Counsel**

**Suzanne Meredith**, Assistant General Counsel for Toyota Material Handling, Inc. explains what she looks for when retaining outside counsel. “Our legal team is lean, so if we’re hiring someone, appropriate experience and depth of bench is essential. I tend to start my search for outside counsel based on a direct relationship or recommendation from those I know and trust. Also, while never fun to admit; budgets are tight. Billing rates must be appropriate for the work needed.”

**Schuyler Analise Smith**, Partner from Hamilton, Miller, and Birthisel handles commercial and personal injury matters for her clients and explains the evolution of the relationship between inhouse and outside counsel, “I don’t particularly look for attributes in new clients. As outside counsel, we often have no clue who the client will be when we land new clients and the client sometimes evolves over the life of the relationship. The person who interviews or hires me may not be the person I report to. I report to in-house lawyers, adjusters, or business people depending on the client.”

**Amy M. Stewart**, Founding Partner of Dallas-based litigation and trial boutique, Stewart Law Group, provides how in-house and outside counsel forge a strong relationship. It is important that we are on the same page from the beginning of the assignment, especially if this is the first matter with this in-house counsel. As I share with my mentees, young partners, and associates, the underlying relationship dynamic is we as outside counsel should approach the interaction as a servant leader. That means we need to listen to not only the basic facts of the case when it comes in, but inquire about the impact of this case on the business, and understanding how your client

initially believes the case should be handled, i.e. is this a settlement for nuisance value or will this go the distance?

### **Outside Counsel Must Learn the Rules of the Litigation Game**

In-house counsel rely on outside counsel to understand the industry, the practice area, and their needs. However, in-house counsel must not hide the ball. For example, in-house counsel should advise outside counsel when they want periodic updates on the status of matters at the frequency the in-house counsel wants. Meredith admits that she discusses her expectations when she makes the assignment. “I support a number of different ‘clients’ within my company, and each assignment comes with a different set of risks and internal expectations. I always aim to share not only the internal pressures and expectations I have related to an assignment, but also set expectations on what I need from counsel in terms of reporting. Both sets of information are essential for counsel to ensure I’m appropriately up-to-speed and providing internal updates as needed by my team.” Meredith also explains that the use of common sense is sometimes not as common as you think. Meredith stresses that her expectations are simple - follow instructions, understand the business and its pressure points.

Outside counsel should know that it is imperative to be responsive to her client’s requests. Stewart stresses that understanding the client’s timeline can help with workload management. “My folks get tired of me using this one directive, “Be proactive.” For example, when the Motion for Summary Judgment deadline is 5 p.m. on Thursday, outside counsel sending the first draft only two days earlier at 5 p.m. on Tuesday puts unnecessary pressure on inhouse counsel who have a lot of other tasks on deck or may be out of the office. “Additionally, being proactive relieves anxiety and stress on the entire team—including in-house counsel and their internal clients,” Stewart explains. “We are all Type A personalities who like to be in control. Being proactive is a ‘win-win-win’ for everyone—you, your inhouse legal counsel, and her business partners.”

Smith explains that just being up to speed on the law is not enough to meet inhouse counsel’s needs: “Being competent at the job is a given. Next, you need to be liked by your client. It may seem basic but some people are simply not personable or likeable which I think puts you lower on the totem pole with someone equally yoked who people like. Finally, being able to get to “yes” through creative solutions and ideas in difficult situations or in other words being able to get

others on your side of the fence and fostering the environment to allow compromise. Business people and some clients hate to hear no so its important to be able to communicate to get buy in for whatever the problem may be is critical.”

### **When the Relationship Can Take a Turn for the Worst**

In sports, when a play breaks down and you look at the tape, you usually can determine why it happened. Post player failed to set the screen properly so point guard turned the ball over. In other words, someone did not fulfill his role. Here is Meredith’s list of what *not* to do:

1. **Don’t assume your priority is my priority.** What you need from me is probably at the bottom 5% of what I’m being pressured to deliver to the business.
2. **Communication is key.** Likely #1. If you’ve appropriately communicated with me, it’s unlikely we will or will have an issue. Most issues stem from bad communication.
3. **If you make a mistake, own it.** Most of us in-house counsel are reasonable and get that mistakes can be made. We were outside counsel too and remember the pressure and waking up at 3:00 a.m. thinking we’ve blown a deadline. If you do it, the best thing you can do is *quickly* research what your mistake may mean for the client, owning the mistake, advising client of how you’re going to fix it, and what impact it may have on the client. Oh, and be careful how you bill for boo-boos. Messing up added to failing to timely and appropriately communicate added to billing for cleanup is an excellent way to get fired, blacklisted, and get in-house talking amongst themselves.

Open and transparent communication is the key to a highly functioning in-house/outside counsel relationship. Stewart explains outside counsel should ask the necessary questions to understand *how* and the *frequency* in which the client wants to communicate. “There is nothing worse than having a disconnect in communications. For new clients, I ask them specifically what they want—weekly, monthly or as necessary updates, who to copy on the communications, how much lead time they want to review discovery responses, pleadings, and motions so we can set internal deadlines to meet those expectations, and when they are going to be on vacation during summer and holiday seasons. I have some clients who want me to email them and text on critical matters. I would not know that preference if I did not ask. While this preparation should create an

open line of communication and more importantly manage the team's expectations, it brings sense of peace and control for me and my SLG team. We are juggling a lot of cases, and this sets measurable expectations.”

Despite the adage “the client is always right,” **Schuyler Analise Smith**, Partner from Hamilton, Miller, and Birthisel who handles commercial and personal injury matters potential behaviors that can sabotage their team efforts:

1. Unresponsiveness which results in unnecessary emergencies in a world which is very deadline driven.
2. In-house counsel being unappreciative of the work that we do to get the results that we get. The best clients are those that take the time to send a note after a win or even a loss that was hard fought expressing their gratitude or awareness of the effort made by the members of the team.
3. Unnecessary roadblocks created by in-house counsel who have no understanding of the area of law or the type of matter they are managing.

Another situation that in-house counsel need to be wary of is making sure they are managing outside counsel's interaction and engagement with their internal clients. Meredith stresses that outside counsel should not contact her internal clients without express permission, even if they have worked together before. Additionally, outside counsel need to be empathetic so they do not underestimate how nervous someone may be meeting with outside counsel. It is the job of outside counsel to disarm them and make them comfortable. Finally, it feels like it is easier said than done, but her advice is to be a real person and treat them like one. Smith explains she relates to internal business clients by forgetting all the legalese and being able to speak to them in plain practical terms.

### **Ending on a High Note**

To close out with a winning strategy, the following pointers will lead you in building longstanding relationships with outside counsel to make your life easier. Meredith enjoys working with counsel who are quick, efficient, and provide the right level of information. “When making strategic decisions, my typical formula for excellent outside counsel is to be provided with my

options and a recommendation that explains the endorsement based on the attorney knowing my business and our risk tolerance. It is not uncommon for the business to have to buy in to decisions being made, so having options available for the business helps us in-house look good to our internal clients. And when we look good, we want to keep hiring you!”

Finally, from the perspective of outside counsel who has longstanding clients, Smith analyzes how she has become the “go to resource” for her clients. “My clients and colleagues who are not clients often call me for issues on Florida Law in my area of practice or to get things done with difficult opposing counsel or judges.” She explains, “I am not only a subject matter expert, but I also have wide ranging professional relationships within the legal community. If I don’t know the answer or have a solution to the problem, I can likely figure it out in a phone call or two. I am pretty accessible, so I am known to be “Responsive” which again is half the battle in my experience.”