

You Get What You Deserve

by Patrick J. McKenna

There are many occasions where you are responsible for selecting, instructing, and supervising outside counsel. You know that you need to select the very best counsel and you often need lawyers who add value not just by being good legal technicians, but through having lawyers who constructively help apply the law to your real world business needs. Of course, that requires outside lawyers that understand your business and are capable of providing exceptional service.

That said, surveys of in-house counsel continue to reveal that for the most part, you merely tolerate the service levels of outside counsel and that few in-house are truly satisfied clients. Comments from corporate counsel in relation to their outside law firms are instructive:

We got invited to one firm to hear a 'pitch' on what they do and why we should use them more. I've never been asked to come explain to these lawyers what we do or how they could help us more.

So how do you as in-house counsel find the means to bring about a reversal of any dissatisfaction with outside counsel? Quite simply, you need to help your external lawyers truly understand what you want. Imagine this scenario:

Step One: You identify, from the list below, those actions that you expect your outside counsel to deliver upon (if they wish to continue receiving your work)

- On every major matter (and we can determine together what constitutes “major”) we will identify three ways in which you can add more value, beyond simply doing the legal work.
- You will prepare a written budget or estimate of your fees, including a breakdown for each phase of the work on major matters.
- We will determine with you, in writing, a simple ‘Preferred Communications Protocol’ laying out under what circumstances we would prefer a face-to-face meeting, versus a telephone conversation, e-mail or other mode of communication. That protocol, will then be communicated to every professional and support staff member serving our organization.
- We expect you to staff our legal matters with those lawyers that have the legal expertise and experience appropriate to the nature and complexity of our matter, but never overstaff the matter or use it as a training ground for inexperienced juniors.
- With each new matter we will invite you to identify alternatives to billing on an hourly basis such as a blended rate, contingent fee, fixed fee, retainer agreement or discount for an agreed upon volume of work.
- At least once per year we will expect you to schedule some non-billable, offsite meeting time with our legal department to brainstorm about our business and what it is that is “keeping us awake at night.”

- You will make every effort to understand our business, our industry and the competitive market in which we operate. To that end, you will without fee, read and review our organization's strategic plan, organizational chart, management policies, and any pertinent clippings from trade publications that we choose to share with the team of lawyers serving us.
- You will make it a regular habit to initiate an appointment to solicit specific feedback from our legal department mid-way through a major matter - when the feedback might be of real value to enhancing both the work product outcome and our expectations.
- Working together, you will allow us to design the format of our invoices – by showing us a menu of options, offering alternatives, and inviting us to design something that meets our needs for transparency, clarity, and detail.
- We will expect your IT people to approach their counterparts within our organization to explore how technology could be employed for cost savings and to our mutual advantage.
- You will provide us with a monthly overview of all pending matters and their status and progress (preferred day of the month to be discussed).
- At the conclusion of all major matters we will expect your lawyers to conduct a post-mortem process wherein you analyze the file and brief us on what preventative actions can be taken and what can be learned with respect to:
 - future impacts of current business practices
 - ways to avoid litigation and liability
 - ways to accelerate the closing of deals and transactions.

Step Two: You proactively communicate, in writing, whichever of these actions (above) correspond with your wishes, to your outside law firms and inform them that you will be measuring their performance based on these criteria.

You may be dealing with lawyers who genuinely believe that they meet your needs. But if your perception differs from that of your primary legal service providers, you have two options. You continue to tolerate the level of service you are receiving (thus, you get what you deserve) or you take proactive measures to outline for your outside counsel precisely what your expectations are.

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