



Eight Ways to Create a Great Relationship with Outside Counsel

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The general counsel survey we conducted in 2009 revealed that many general counsel complain about the poor performance by their attorneys in establishing “strategic partnerships” with them. Lack of availability and commitment by partners, no investment in the relationship, and focus on the next billable hour without consideration for the larger picture are the top-of-the-list factors that these general counsel mention to explain their frustration. But when we presented our survey results to law firms, we got a very different perspective on that same issue. Quite a few attorneys were pretty much irritated by the general counsel comments: “We keep proposing them to come to their office for a free in-house, customized seminar, but they don’t even answer”; “We are regularly suggesting debriefing meetings, but they never have the time”; “We are seriously researching and following up their business and their sector, but they don’t seem to have taken notice”; etc.

Many of these general counsel expect attorneys to act differently, but we might also suggest that, if their relationship with outside counsel is frustrating, maybe the general counsel are part of the solution, not just the attorneys. And indeed, many seem to expect that a “strategic partnership” will come with the package, without the need for them to do anything. Aren’t they forgetting that it takes two parties to create, maintain and develop a relationship? Don’t they overlook their own power in designing the relationship? If the relationship isn’t working, maybe the general counsel themselves should take the initiative of acting differently, rather than complaining and waiting. In this article, we propose eight tips for general counsel to improve their relationships with outside counsel.

Don’t pursue a strategic partnership if you don’t need one

Are you sure you want a “strategic partnership” with your law firms, whatever that means? Maybe you only need technical assistance every now and then? Maybe what you need are commoditized legal services, and then why should you bother about the idea of a strategic partnership? It is useful for general counsel to segment their legal needs and decide what type of interaction with outside counsel they need for each segment. Strategic partnership is just one of the options.

Make sure you are their top darling

Top tiers firms are increasingly picky about clients. They know the type of clients they want to have and those they don't. If you are among their "key clients", good for you: may expect first class treatment. But if you aren't, you should consider switching to a lower tier firm where you will a top client. Many general counsel have moved from a first tier firm to a second or third tier, and are very happy with the move: the bills are 40% down, and they get first class treatment and all the partners' attention they may wish for. Maybe you have to keep the first tier law firm because you need their brand name, or their international network, or whatever else you think you need from them, but do you really? Working with attorneys that are eager to have you as a client may lead to good surprises.

Plan meta-meetings

Most of the time, when in-house lawyers and attorneys are talking together, it is about a legal issue or a project. Not much attention is left for addressing "how" to work together. This "how" issue is too often limited to getting an agreement on a hourly rate. But there is much more in a relationship than the hourly rate! General counsel should take the habit of engaging with their attorneys not just on legal problems and legal projects, but also on project management, communication, reporting, team work, etc.

Tell outside counsel what you want

You should not expect outside counsel to know the relationship you want to have with them. They may have an idea, or believe they have, but it is safer to clarify it yourself and to explicitly explain it to them. What exactly do you expect from the relationship? What exactly do you expect from that relationship? Some general counsel are quick to call for a "strategic partnership" with outside counsel, but remain vague and hesitant when requested to specify what they actually expect. Translating the concept of "strategic partnership" into down-to-earth, practical definitions of behaviors is a very useful exercise, and I recommend to any general counsel who is not happy with the state of the relationship with outside counsel to start by making such a list.

Don't bombard them with RFPs

General counsel (sometimes pushed in the back by the procurement department) are sending out at an increasing rate requests for proposals to law firms. It may be to set up a panel, but also to select one of the firms in the panel for a particular transaction, or more generally to let law firms feel the breeze of competition and keep them on their toes. At some point, however, if the purpose is to establish a strategic partnership, general counsel must refrain from "RFPing" the relationship. A RFP is always perceived as a threat. If you keep threatening the relationship with your key lawyers, you will get defensive and protective behaviors in return. On the contrary, if you show real commitment, loyalty and engagement, you may expect the same in return.

Keep them busy

A strategic partnership does not make sense if your attorneys are working for you once in a while. There must be a certain degree of intensity in the relationship and therefore in the workflow. Concentrating a sufficient volume of assignments to one or to a few firms is a pre-requisite for effective strategic relationships. A consequence is that, in certain cases, a strategic relationship is not possible, simply because most of the work is dealt with in-house and there's no volume to justify a closer, more intense relationship.

Assess the relationship together

A structured, regular assessment of the relationship is a very healthy discipline. Even if the relationship isn't impaired by big problems, it is always interesting, once a year, to sit down and think on how to make the relationship more productive. However, formal assessment of relationship with outside counsel is rarely carried out. Not many law departments have the habit to do it systematically. When they do, they often proceed to the exercise within the legal department: in-house lawyers talk together and exchange their experience with outside counsel. Opening the assessment exercise to the attorneys is an option that several general counsel have found to be very useful and effective. The assessment, instead of unilateral, becomes a win-win creative meeting where both parties (in-house counsel and attorneys) are together looking for ways to make the relationship more productive for all.

Move beyond billable hours

It is very difficult to align your attorneys on your strategic objectives if you pay them by the hour. It will keep them incentivized to maximize the time spent, irrespective of the value it creates for you and your company. In a strategic partnership, the fees should better be calculated as a lump-sum amount related to the achievement of certain milestones and objectives. It is critical to send the message that your attorneys will not be paid for the time they spent, but for the value they deliver. This of course requires you to spell out your definition of the "value" that you expect from your attorneys. That is what is making alternative billing arrangements so interesting: it forces both parties to think more strategically about objectives, priorities, expectations, and how to make the relationship truly productive and valuable.

As a conclusion, all these tips are about moving from a passive a reactive mode to a proactive mode, where the general counsel are taking the leadership in figuring out the type of relationship they want and in modeling the relationship accordingly. In our survey, we have met a few general counsel who were enthusiastic about their relationships with attorneys. What they had in common was exactly that: a clear idea of how they want their attorneys to work with them, and decisive action to make it happen.