

3 Tips To Avoid Being On The Outs With In-House Counsel

By **Matthew P. Whitley, Beck Redden LLP** (December 13, 2016, 12:15 AM EST)

A common misunderstanding among trial lawyers is that the life of in-house counsel is "easy." Being married to an in-house lawyer, I can assure you it is not. Companies today are demanding more and more from their in-house lawyers. That is especially true for in-house litigators, who are often tasked with handling a nationwide docket of cases. "You have to be where next week?" is a standard question in our home (followed closely by "Whose turn is it to go to soccer practice?").



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Managing a large docket is not all that makes the job of an in-house litigator so complex. While outside counsel usually has the luxury of a clear objective (win the case!), in-house counsel often have to juggle competing goals. Winning is certainly important, but so too are keeping litigation costs under budget, managing publicity, minimizing distractions to the business units, and establishing policies that will reduce future litigation. To make matters more complicated, different people in the company will inevitably view these goals differently. An impugned business manager named throughout a complaint may wish to clear his name at all costs, while a CFO looking at a huge law firm bill may prefer that certain stones be left unturned. In-house counsel has the thankless job of trying to balance these competing interests.

So what does this mean for outside trial counsel? We have a unique opportunity to make in-house counsel's life much easier. To do that, however, we have to be mindful of the various hats that in-house counsel are forced to wear. This is much easier said than done — if you need a reminder, just run a Google search for "dissatisfied with outside counsel." Fortunately, there are some simple strategies trial lawyers can use to avoid being on the outs with in-house counsel.

Understand the Client's Objective

Regardless of the subject matter of the case, or whether the company is a plaintiff or defendant, it is critical to have early discussions with in-house counsel about the client's objectives for the litigation. Sometimes those goals will be obvious. Other times, they may be more nuanced. Either way, trial counsel needs to understand what in-house counsel hopes to accomplish so that the litigation strategy can be modified accordingly.

In some cases, a quick resolution may be the client's priority. Such a desire is often driven by economic concerns. For example, the client may wish to settle a case early to avoid the expense of prolonged litigation. Or perhaps in-house counsel is under pressure to wrap up a matter quietly, before there is any

negative publicity. Avoiding a public relations nightmare or a distraction to the business unit may be more valuable than any savings caused by vigorously defending the case through trial.

In many other situations, however, the company needs to take the opposite approach and proceed to the courthouse. The company may need to secure a precedent that will assist in future cases, or it may want to send a message that the company will not settle frivolous claims. And sometimes, no matter how reasonable the client may be, it is impossible to reach a settlement with the other side. In those cases, it is the job of trial counsel to put the company in the best possible position before the judge and jury.

No matter what the client's goals are, it is critical for trial counsel to maintain a dialogue with in-house counsel about those objectives throughout the litigation process. Only then can we provide the guidance that the company needs.

Manage the Legal Team

Outside counsel can also establish rapport with in-house counsel by making smart choices when it comes to staffing a case. Just because a case is important or carries the potential for large damages does not mean an army of lawyers is required. Much of the time, a small team can produce the same or better results — and it can do so more efficiently. When only two or three attorneys are on the file, there is no need to rehash the history of the case to bring multiple lawyers up to speed. Nor is there an information gap where certain lawyers only know certain parts of the case, rather than the full picture.

But perhaps most important, smaller legal teams offer stability. In-house counsel often juggle relationships with many outside firms all over the country. It is very helpful for in-house counsel to look at the same names on emails, to hear the same voices on phone calls, and to see the same faces in meetings. Stable legal teams over the (usually) short lifespan of a single case will often lead to stable long-term relationships between trial counsel and in-house counsel.

Communicate

No one likes surprises. That is especially true for in-house counsel. As outside counsel, we must communicate challenges or new developments as they arise. If it appears that a case is going over budget, we must let in-house know well before the bills arrive. If we find unfavorable case law, or a witness performs poorly in a deposition, we must tell in-house counsel before the litigation goes off the rails. It is critical that we quickly communicate both the good news and the bad, so that outside and in-house counsel can address them both head-on and formulate a strategy together.

Outside counsel should take a similar approach to communicating about deadlines, motion practice and other litigation activities. Ask in-house counsel's preferences at the outset. How far in advance of deadlines does she prefer to receive drafts of motions or briefs? Does she want to be present for witness preparation or expert meetings? Does she want written case evaluations (and if so, how often would she like them updated)? Whatever in-house counsel tells you about her preferences, make sure to set your firm's internal deadlines accordingly.

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When trial lawyers fail to recognize the unique challenges faced by in-house counsel, it jeopardizes not only the outcome of the case, but also the opportunities for future representation. These simple

strategies are hardly rocket science, but they are too often neglected. As trial counsel, we must always remember these simple concepts. Little things go a long way to building lasting relationships.

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