



Expectations, budgets and what you should expect outside counsel to do without even asking

The most productive and efficacious relationships are both more nuanced and more participatory than a one-way full court press on inside counsel's expectations

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When the legal economy slowed in recent years, and outside counsel opportunities shrank, many firms and lawyers became monolithic devotees to "whatever the client wants." From wide-ranging alternative fee arrangements to extraordinary efforts to impress and please inside counsel, many legal relationships became a one-way full court press on inside counsel's expectations. What we know from real life, however, is that the most productive and efficacious relationships are both more nuanced and more participatory. Inside counsel is obviously the client and undeniably "the boss," but here is a more refined look at what you should expect from your outside counsel's approach to her relationship with you.

1. Expectations are a two-way street: Outside counsel should meet your expectations, but also help you set them

You know your problem inside and out, and you know what success looks like from a business perspective. You also know the law and the legal direction that would ideally match business objectives to achieve a "win." On the other hand, your outside counsel should be the expert at the complexities and pitfalls associated with that path to success. Outside counsel should help you navigate the proverbial "rocks in the road" to determine the likely outcome in each situation and offer the best perspective to maximize the business outcome.

2. Regular and periodic updates: Outside counsel should map a predictable course of the case but also notify you immediately when game-changing possibilities arise

Some lawyers are wired to do weekly or monthly updates. Some are subscribers to the worldview that "no news should be good news" and only think to pick up the phone or send an email at event-critical moments. Both styles get it partially right, but also inherently wrong. Presumably, when discovery uncovers a key admission by the opposing party or, less happily, when your marketing vice president performs poorly in a deposition, your outside counsel should update you immediately. Layered over that, however, your outside counsel should have you on some regular reporting schedule that

is tailored to your preferences and realities. Such scheduled reporting facilitates thorough and considered reflection on your case and even raises new considerations to address.

3. Budget realities: Some matters, particularly litigation, can be unpredictable, but outside attorneys can manage the situation to minimize surprises

A well-meaning analogy has circulated among outside counsel to justify the necessity of accurate budgeting. "You wouldn't let your contractor start your new house without a budget" goes the start of a rationale that ends with "and inside counsel needs a budget too." Inside counsel absolutely need a budget. But where this analogy misses is that litigation is more often like a remodel than a brand new house. Asbestos in the attic, rotten floor boards, and infested walls all make metaphoric appearances after the first exchange of pleadings. Such surprises do not mean that outside attorneys cannot meet budget expectations, particularly if they are communicating regularly to in-house attorneys. Outside counsel should seek firms that have developed tools to provide real-time access to the status of their monthly or quarterly spend and provide a level of transparency that, combined with regular communication, keeps the focus where it should be: getting the best result with a predictable budget that counsel may adjust through careful management.

4. Who's the boss? Yes, that's you — but on some issues you should expect your outside counsel to drop the deference and tell you what they really think

If your outside counsel agrees with you at every turn, then you should consider it a red flag. Outside counsel's desire to serve and please a client may compete with a frank assessment of the case. In the long-view, your outside counsel should be just that: counsel. A counselor's job is to inform you about the unpleasant realities in litigation, such as the fact that the judge assigned to your case has been known to take months to rule on perfunctory motions — and no one can change that without the risk of irritating your most important audience. A counselor's job is to explain when a legal business

decision will nonetheless prove distasteful to a state court jury. Like a trusted confidante, if your outside counsel's view does not ruffle you once in a while, then she is not doing her job.

5. Embrace the devil: If the team your outside counsel has assembled does not include a "devil's advocate," then the case assessment is incomplete

The large litigation team experience is thrilling when the team develops its path to success. That energy motivates the lawyers to work long and hard on your case, but human nature works against embracing a naysayer amidst all of this energy. The obvious problem is that the lawyers in another conference room at another law firm feel precisely the same way — energized, excited, and entranced by the team's case strategy. Without someone dedicated to seeing the other side, your outside counsel may be hindered in their ability to both provide a meaningful case assessment and to identify risks and vulnerabilities.

From budgets, communication, advocacy and frank advice, outside attorneys should provide counseling that serves the business's ultimate goals. When selected carefully, outside attorneys are the experts on whom inside counsel can rely, and inside counsel should expect a sophisticated level of representation without even asking.

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