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Pet Peeves of Dealing with Outside Counsel

By Mike Whitehead

Does your office have five sides? From my desk, it appears that my office has the traditional four walls, but if I squint my eyes a little, I can see that fifth wall looming, making my office look like . . . well, a pentagon instead of a rectangle. As I adjust my glasses, I realize that the article I set out to write—about the persistent top complaints I have about the services of outside counsel—also needs to address the process we have grown accustomed to using in procuring such services and the problems that occur after hiring.

Think about how the process for hiring and using outside counsel resembles the processes the Department of Defense or your state department of transportation often uses to procure \$800 toilet seats or \$30 million bridges—you know, those processes that make us scratch our heads at our government’s acceptance of cost overruns, delayed projects, and unresponsive contractors. Imagine a system that pays only for time, expenses, and materials and that does not provide incentives for performance, responsiveness, and cost containment. Alas, even the Department of Defense is moving to fixed-price contracts to improve cost, schedule, and performance outcomes. Nevertheless, these same often-criticized processes are replicated in many

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If Clients Want Lower Legal Bills, They Hold the Cards

By Stewart Weltman

We all hear about it: more and more clients—particularly the general counsel of the largest companies—complaining about their outside legal costs. Yet, rarely a day passes without some large firm proudly announcing that it increased its “profits per partner” over the past year.

You would think that, in today’s climate, these law firms would not want their clients to see that they are actually making more money off their clients and that once the clients did see this, they would be on the phone asking for a reduction in their bills.

But we all know that this does not happen. In the perverse world that the practice now finds itself in, bragging about profits per partner appears to be the marketing badge of honor for every firm. It attracts lateral rainmakers who want to make more money—carpetbaggers of the legal profession. Moreover, the very same clients who bemoan paying too much for legal services wrongly transplant an important business paradigm—that the most profitable businesses are the best-run businesses—into their hiring decisions when it comes to law firms.

Don’t get me wrong. I have no problem with anyone—including lawyers—making large amounts of money, but only if

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Message from the Chairs

Managing Client Expectations

One of the most challenging aspects of pretrial practice can be managing the client's expectations. You have probably seen it happen yourself. The client comes to you impassioned about the case, looking to you to embrace a specific view of the facts and to obtain a successful result. You naturally want to believe in your client and do the best you can for your client. But your job is to see both sides of the story, to question the facts, and to counsel your client as to the realistic expectations for the case. You need to be careful not to promise more than you can deliver simply because you are eager to please, or afraid to contradict, the client.

Yielding to such pressures sets you up for failure because no result—no matter how great—can compare with what you have led your client to expect by promising too much. On the other hand, if you take too critical a view of the case and are always the voice of “doom and gloom,” the client may lose confidence in you and feel as if you are not on his or her side. How do you find the middle ground? There are several effective ways to manage client expectations.

First, set the tone regarding expectations at the first meeting. Let the client know what should be expected from you, what your rates are, how the client will be billed, and what the client can expect in terms of fees for the case. Review with the client the work you foresee for the project, what your own role will be

on the project, and whom you expect to have working on the matter. Also, discuss your expectations of the client: that you expect the client to tell the truth—you will deal with the facts as they are—and to cooperate in providing you the information you need for the matter. You also expect the client to be responsive when decisions need to be made and to pay bills in a timely fashion. Put these expectations in writing in the form of an engagement letter, but also discuss your expectations at the beginning of the matter.

Second, once you have a handle on the facts and the law of the particular case, discuss with your client the various potential outcomes for the case, the range of potential damages, and opportunities for alternative dispute resolution or settlement. Communicate your analysis of the case in writing so that the client can understand precisely what you are saying and can refer back to your analysis. (Oral reports have a way of being misconstrued or even viewed through rose-colored glasses.) Update your analysis as needed.

Third, if the case takes unpredicted twists and turns and the client's likelihood of success changes or the budget changes, let the client know as soon as you can. Clients may not like to hear bad news, but they can handle it better when it does not come as a last-minute surprise.

Message from the Editors

Clients: the focus, quest, and pride of all lawyers. The attorney-client relationship is an art, and simply having the privilege of providing legal services to clients is an honor. But that is only the beginning. The theme of this edition of *PP&D* is “Clients.” We are delighted to present some particularly thought-provoking articles, from various perspectives and about various aspects of serving clients.

We begin with two articles on the relationship between clients and outside counsel. Mike Whitehead, in “Pet Peeves of Dealing with Outside Counsel,” provides thoughtful and, at times, provocative perspective into that relationship from a client's perspective. We follow with “If Clients Want Lower Legal Bills, They Hold the Cards” by Stewart Weltman, who shares additional insight into the lawyer-client relationship and advocates how it should evolve.

Comparing the differing roles of in-house and outside counsel, Julianne Montville provides very helpful insight through more than a dozen dos and don'ts in “When a Lawyer Goes In-House.” Next, “A Little Client Service Goes a Long Way,” by Joseph Siprut, helps us all to remember (or learn) ways in which we can fully satisfy our clients.

We then turn to a topic all attorneys will eventually face and none relish: mistakes. Maurice Grant and Eileen M. Letts—in “Yikes! How to Deliver Bad News and Disclose Mistakes”—provide wise advice in dealing with the topic. Although a difficult problem to address, Maurice and Eileen give us all help and hope, adding that sometimes it is more painful for the lawyer to deliver bad news than it is for clients to hear bad news.

We end with two helpful articles on how we can each continue to impress others in client development efforts. Our own Committee Cochair Erica Calderas provides useful tips for local counsel—where opportunities to impress other allied attorneys in distant states and countries abound—in “Tips for Being a Good Local Counsel.” We conclude with a wonderful article about doing well by doing good: “Pro Bono Plus: How Pro Bono Work Can Enhance Your For-Profit Career” by Janet H. Moore.

We are proud to be able to offer this outstanding lineup of articles, and we are grateful to the authors for allowing us to publish (and in some cases republish) their works. We commend their wisdom to you.

With this edition, we bring volume 16 of *PP&D* to a close and begin our work on volume 17. The Fall 2008 edition of the

PP&D Editorial Board

Finally, if the client has unrealistic expectations, refuses to follow your recommendations, and seeks to act against your sound legal advice, consider seeking the aid of the court or another person in your client's organization. For example, if you are in a settlement conference at the court and the client refuses to budge because of an unrealistic view of what the jury may do with the case, the judge can often provide a neutral reality check for the client. Similarly, if the business manager of the company wants to continue to litigate long past the point where a matter should have settled, that neutral reality check may come from someone like the chief financial officer—who cares more about reaching a good business solution than litigating the principle of the matter to a Pyrrhic victory. If, despite your best efforts, you reach a point of irreconcilable differences, you may find that you need to “fire” the client. If you find yourself in that situation, don't act rashly and be sure to review and follow your ethical obligations with respect to terminating a client relationship.

Managing clients' expectations in these ways will help further productive relationships. We commend to you to the articles in this edition of *PP&D* for additional insight, guidance, and perspectives on clients.

—Erica L. Calderas
—Craig C. Martin

newsletter will have as its theme “Discovery Fundamentals,” and we look forward to sharing another lineup of thoughtful, timely, and helpful articles for your review.

In closing volume 16, we thank outgoing coeditor Louis Kempinsky for his work on the newsletter over the years and are thankful to have him as a friend. At the same time, we welcome Gregory M. Boyle as a coeditor and look forward to continuing to work with Greg in coming editions.

If you are interested in writing an article or practice tips, or if you have other information to share with *PP&D*, please contact Ian Fisher at (312) 701-9316 or fisher@sw.com, Sam Thumma at (602) 372-2018 or thummas@superiorcourt.maricopa.gov, or Greg Boyle at (312) 923-2651 or gboyle@jenner.com. Please also be sure to visit the PP&D Committee's webpage at www.abanet.org/litigation/committees/pretrial for past newsletters, practice pointers, and periodic updates on cutting-edge legal developments as well as general information about the committee.

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PP&D is published quarterly by the Pretrial Practice & Discovery Committee, Section of Litigation, American Bar Association, 321 N. Clark Street, Chicago, IL 60654; www.abanet.org/litigation. The views expressed within do not necessarily reflect the views or policies of the American Bar Association, the Section of Litigation, or the Pretrial Practice & Discovery Committee.

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When a Lawyer Goes In-House

By Julianne Montville

When I moved in-house from a large firm in Cleveland, I was prepared for a big change, both in responsibilities and in perspective. I was not disappointed. I was surprised, however, by how different the experience of being in-house counsel is compared with that of outside counsel. Here is my advice to outside counsel for developing business with in-house counsel, based on my personal experience. I assume, of course, that you are already providing good work in a timely manner at reasonable prices.

Things You Can Do to Be Hired by In-House Counsel

1. **Do Keep In Touch.** In-house lawyers are immersed in a sea of businesspeople, many of whom do not understand the law and do not care to. (That's why they have lawyers.) So, a friendly email or invitation for coffee is almost always welcome, even if your in-house colleague cannot take you up on it.
2. **Do Keep Your Eye Out for News about the Company.** Even the most dedicated in-house lawyer does not know what all of his or her people are doing all of the time. If the company is mentioned in the news, let him or her know. If it's good news, send congratulations.
3. **Do Use the Products.** Now, obviously, an in-house lawyer does not expect friends and colleagues to go out and buy a new car, or boat, or computer whenever he or she switches jobs, but to the extent that you can, support the company of the in-house lawyer. I, for example, work for a greeting card company. I do not expect my outside colleagues to change their firm holiday cards to our brand (although they can if they want to), but when someone sends a card to me personally for my birthday or as a thank-you, using my company's brand is a nice added touch.
4. **Do Think about the Businesspeople When Providing Your Advice.** There are two parts to this advice: (a) Form and (b) Function.

Form. Sometimes firm lawyers forget that their legal advice to in-house counsel will be passed to the businesspeople. So, ask your in-house colleague whether there is some form in which the advice would be more useful to him or her. For example, businesspeople tend to like PowerPoint slides instead of Word memos. Why? I can't explain it, but they do. Perhaps your in-house colleague would appreciate a slide or two explaining the beautiful memo you put together. It does not hurt to ask.

Function. Lawyers are famous for the "it depends" answer,

and rightly so. Much in the law depends on the particular circumstances at issue. Businesspeople are famous for hating that answer, and rightly so. They are trying to assess risk, and "it depends" does not really help. When providing advice to an in-house colleague, make sure to highlight the things that can mitigate the risk, the things that increase the risk, and the consequences of the worst-case scenario, especially if incarceration is a possibility. Nothing pricks up a businessperson's ears like the words "orange jumpsuit."

5. **Do Meet the Businesspeople.** There are often opportunities for you to get in front of the businesspeople at a company by providing "lunch and learn" seminars or other presentations on legal topics. I know this sounds like in-house counsel asking for free services, which it is, but it is much more than that. If the businesspeople know and trust you, it is much easier for your in-house colleague to get your fees approved. Think of it as a networking activity similar to writing an article, but live and in person.
6. **Do Introduce Us to Your Relevant People.** I do not mean "send us newsletters about people we've never heard of getting promoted." Instead, when you have coffee or lunch or go to a game with your in-house colleague, bring along one of your law firm colleagues. Introduce him or her. Mention his or her areas of expertise. And do not forget the younger associates, who can benefit from seeing "The Client" up close and personal.
7. **Do Send Us Relevant Information.** I cannot count the number of times I have used a bulletin from outside counsel as the jumping-off point for my own research, or the number of times I have used the phone numbers on those bulletins as the beginning of an attorney-client relationship.
8. **Do Remind Us Who You Are.** When reaching out to in-house counsel whom you have met but do not know well, remind him or her who you are and how you know each other. "I'm Bob; we met at the alumni event" will save me a lot of embarrassment later.

Things You Should Not Do

1. **Don't Drop Off the Face of the Earth.** If you knew the in-house lawyer in his or her prior job, keep in touch. This does not mean an email a day, or even a week, but every month or two, drop a line.
2. **Don't Pander.** There is nothing wrong with getting back in touch with an old school friend or former law firm colleague once he or she moves in-house—in fact, a job announcement is a perfect reason to send a note of congratulations. But "getting back in touch" is a gradual process, and your congratulatory email is not the place for the hard sell.

Julianne Montville is corporate counsel for American Greetings Corporation. The opinions in this article are hers alone and do not reflect the position of American Greetings Corporation, its affiliates, or subsidiaries.

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NUTS AND BOLTS

A Little Client Service Goes a Long Way

By Joseph Siprut

There are many exceptional attorneys in the legal marketplace, but not all of them are fully satisfying their clients. Why? The answer is that the same skill set that equates to legal or courtroom victories does not always equate to excellent customer-service (or “client-service”) skills. For example, it is a well-known fact that the most frequent complaint clients have about their lawyers is their failure to return phone calls. It is astonishing, however, that so many lawyers do not seem to take this complaint to heart. This is exactly the wrong attitude, because a little client service goes a long way.

Be the lawyer your client wants you to be.

Clients are like snowflakes; no client is exactly like another. A large part of successful client service is being the lawyer your client wants you to be. For example, some clients—at least at times—need for you to be a good listener and to sit there patiently while the client vents about his or her awful business partner. Fine. Sit there and listen patiently; if they need someone to talk to, just listen to them. Other clients may be exactly the opposite, wanting to spend as little time as possible dealing with the minutia of discovery strategy or the like. So be it. Keep the conversations brief, and tell them a draft will be sent over for their review. Examples are myriad, but the point is that lawyers who keep their clients happy do so in part by reading the client and adapting, instead of forcing their own personalities on their clients. As no less a lawyer than Abraham Lincoln once said, *If you understand what people want, you can do a better job for them.*

Explain whether the law actually offers the remedy the client seeks.

At the earliest possible opportunity, ask the client what his or her goals are and what he or she hopes to accomplish through litigation. The time to discover that the client may be seeking a remedy that the law does not supply is not on the eve of trial. Failing to ascertain the client’s true objective—and failing to explain how and why such remedies may be impossible to attain—is a surefire way to leave the client disappointed at the end of the day, even if you “prevail” in the underlying litigation.

When the client calls you, do not act burdened.

Remember: You are there to serve the client, not the other way around. Answer your clients’ questions patiently and thoroughly.

Return messages!

As noted above, there is simply no excuse for failing to return a client’s phone calls or emails. Even if you are in trial all day, return your calls at 1:00 A.M. if you have to; at least leave a message letting the client know that you tried to respond, that you are currently in trial, but that you will try to reach him or her again the next day. If the client has a simple question that can be answered in a quick voice mail or email, then do so; don’t spend a week trying to schedule a call just to address a question that can be answered in 10 seconds.

You are there to serve the client, not the other way around. Answer your clients’ questions patiently and thoroughly.

Don’t be all business, all the time.

Ask the client how his family is, who won his son’s baseball game the night before, and spend the time to get to know him—and do not bill the client for that time.

Delivering strong work product is only part of what it takes to serve your clients well. Because so many lawyers inexplicably fail to master the client-relations side of the practice of law, however, the good news is that there is a tremendous competitive advantage for those lawyers who possess both legal acumen and client-relations skills.

“A Little Client Service Goes a Long Way” by Joseph Siprut, published in Second Chair, September 2005. Copyright © 2005 by the American Bar Association. Reprinted with permission.

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Yikes! How to Deliver Bad News and Disclose Mistakes

By Maurice Grant and Eileen M. Letts

Like most professionals, we lawyers have a difficult time accepting anything less than excellence in whatever we endeavor to do, especially concerning our professional work. We tend to think highly of ourselves, and that self-confidence has helped us get where we are and achieve all that we have accomplished professionally.

Unfortunately, this same self-confidence also makes us reluctant to deal with the fact that at some point in our careers, we will either have to deliver bad news or disclose mistakes to a client. This fact is true regardless of our practice area. A lawyer presented with this daunting task can face it with integrity and professionalism by bearing in mind the guiding principles outlined below.

Understanding Your Role

Often lawyers seem to take the client's existence for granted. This is an error. A lawyer must understand first that the interaction between an attorney and client is a relationship. You have to work at it. Like all relationships, the attorney/client relationship must be determined and defined—ideally, at its inception. The lawyer should establish the appropriate expectations in the initial interview or after the initial assignment with the client, no matter the area of law. In all circumstances, the lawyer should make sure that the client knows there are no “guarantees” of a particular outcome. Under no circumstances should lawyers make any promises except that they will endeavor to do their best work for the client and that they will attempt to do things with the highest degree of professionalism and the highest quality possible.

At the beginning of the relationship, the lawyer should also develop proper reporting channels of communication for the client. The lawyer should endeavor to educate the client early and often, concerning not only the law and the facts but also procedures. Office procedures should be explained thoroughly and should be understood by all parties so that the client can fully understand the operation of the lawyer. Likewise, the lawyer should educate himself or herself about the client's preferred methods of communication and should become familiar with any guidelines, handbooks, or regulations that the client might provide for reporting procedures. We should never forget that we are in a service profession—we are there to serve the client, not the other way around.

The most important attribute a lawyer can have is the ability to listen. There is an old saying that “God gave us two ears and one mouth for a good reason.” We should listen twice as much as we talk. However, we lawyers sometimes tend not to follow that old

adage. Experience teaches that a lawyer's ability to listen increases that lawyer's ability to understand and be more responsive to client needs, ensuring more accurate communication and a more successful relationship with the client.

When establishing a new client relationship, lawyers also should remember not to ignore their gut instincts and intuition. If you suspect that a particular client will have unrealistic expectations, chances are he or she will. Lawyers should listen to these warning signs and act on them accordingly. If not dealt with early, they could lead to a potentially bad situation. Or a disaster.

Etiquette for Bad Tidings

In this section, we will discuss the etiquette of delivering bad news and disclosing mistakes.

**Deal with mistakes
up front and accept
full responsibility.**

Delivering Bad News

If you have bad news to deliver, make sure you personally are the one to do it. Under no circumstances should clients be allowed to hear bad news via the media, other lawyers, or other sources; it is your job to represent your clients and to be their agent. Do it up front. Sometimes it's more painful for the lawyer to deliver bad news than it is for the client to hear it. The client may actually be expecting it. Regardless, always be forthright when delivering bad news.

Be aware that the form of delivering bad news is also critical. Do not deliver bad news via email or voice mail. Always make the personal call or arrange for a meeting to deliver the news personally, and make sure you will not be interrupted. Verify in advance that the client will have the time to listen to the news. If not, find out when the client can have the time to meet with you, make the arrangements, and call back when you have the client's undivided attention. Whatever you do, be very flexible so that you can be completely responsive.

When delivering bad news, always offer the client possible alternatives or options. For example, the client may have an opportunity to appeal a matter or take subsequent remedial actions. The client should believe you always have a plan. Don't simply deliver the bad news and end the conversation without creating some optimism about going forward.

Finally, be compassionate and understanding. Make the client feel that you are on the same team. Whatever you do, resist any

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urge to blame the client or anyone else, even if the client withheld information or failed to provide certain documents. The way you handle this situation could be the key to keeping this client or receiving possible referrals from the client in the future.

Disclosing Mistakes

Really, this is just a more acute example of delivering bad news, and the advice above applies here as well. Whenever you have to disclose mistakes, do not cover them up or deny them. Deal with mistakes up front and accept full responsibility. In instances where it is not your fault or there were insufficient client instructions, the client usually knows this. Now is not the time to point out anyone's shortcomings or focus on them. Do not blame your staff, even if it is their mistake. Remember, they work for you, and you, the lawyer, are the one with the ultimate responsibility. Accept it. You have the law license, and it's your name on the door.

Furthermore, do not compound the problem with deception. The initial shock of realizing a mistake can quickly lead to an attempted cover-up. Resist this impulse. Instead, deal with the mistake forthrightly and offer the client possible options. Having a game plan is critical in this situation. It demonstrates that you are adaptable when things do not turn out exactly as you expected.

Confidence Building

You will find yourself in a much better position to deliver bad news if your relationship with the client is strong to begin with. Below are some additional rules of thumb to help you develop credibility with the client before negative situations arise.

The first principle is communication: Be responsive. Statistics from the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois show that the number-one complaint about lawyers is that they do not return calls. With the advent of computers, BlackBerrys, email, and cell phones, there is no excuse for being unresponsive to a client. Even if you can't talk to the client at that point in time, respond in the briefest way via an agreed-upon method of communication and let the client know when you will be able to discuss the matter at length.

Lawyers should always keep their clients abreast of all pertinent factual and legal developments concerning the matter they are handling for them. For example, if you have to go to court, always have status letters prepared shortly thereafter to explain to the client what just happened there. If it's a transaction, let the client know what stage it is in and what is to come. Many times, keeping the client abreast of all pertinent developments requires not only proper documentation but also a discussion with the client for clarification. Actually, the flow of communication should begin with the engagement letter, which gives a clear overview of your expectations. Conversely, if the client has written expectations of outside counsel (frequently the case with business clients), get those documents so that you will know what is expected of you. As in all relationships, expectations must be properly aligned to ensure success.

Part of your proper documentation is efficient, effective billing practices. Many times a lawyer does a good job on a matter, but when the bill arrives, the client considers it bad news because the client is unfamiliar with the lawyer's billing practices. This scenario should never happen, and it is up to the lawyer to alle-

viate any client concerns about billing.

During the process of representing the client, the lawyer should routinely analyze both the client matter and the client. We should do something that we call "maintenance checks"—akin to the routine testing you schedule for your automobile. You take it for granted that at certain intervals you must check your car's oil and fluid levels to keep it in good running order. So why don't you treat your clients with the same care? It is wise to schedule periodic maintenance checks to make sure that you are meeting client objectives and that the client understands that there is an open flow of communication.

Another principle that lawyers seem to forget, but that should be obvious, is to always do an excellent job. Even though this sounds like a given, most lawyers should realize that they can't always operate at peak efficiency at all times. Nevertheless, it is our responsibility and a requirement of the high standards of our profession that we not only do a good job but also that we do the best job possible.

The Worst News

Despite all our efforts, sometimes the relationship is not salvageable, and the decision is made to terminate. When this happens, attorneys should keep in mind the procedures that govern the termination of the attorney-client relationship. In Illinois, these rules are usually governed by Illinois Supreme Court Rule 1.16. There are also core opinions concerning these procedures. Be sure to check the applicable rules for your governing jurisdiction.

These rules and procedures mainly involve turning over files to the client and possibly the client's new counsel and making sure that the court is properly notified. In litigation matters, you must make sure that proper notification is sent to the other side. In transactional matters, certainly there is a duty of reporting to all parties involved and a duty of turning over files in an expeditious manner so as not to hinder the proper closure of the matter. It is each lawyer's responsibility to familiarize himself or herself with the particular rules of the jurisdiction and follow them to the letter so that the transition can be seamless. In the process of doing so, the lawyer should always be professional, even if the file is removed by the client without apparent justification. There may come a time when you may need a reference, and you do not want to be given a reference with malice. Sometimes an attorney-client relationship can be repaired later, but that will not happen if it ends with the lawyer blaming others and refusing to accept responsibility.

Conclusion

It is every lawyer's desire never to deliver bad news or disclose mistakes to the client. In reality, at some point in time, every lawyer must do so. Although we understand that each situation provides unique scenarios, following the general principles and suggestions given in this article will help you handle this difficult challenge successfully.

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YOUNG LAWYER

Tips for Being a Good Local Counsel

By Erica L. Calderas

What makes someone a “good” local counsel? Having served as local counsel and having worked with many local counsel, there are certainly several hallmarks of what makes someone a “good” local counsel.

Know What Lead Counsel Expects from the Relationship

Not sure if you are expected to have only a minimal role in filing documents and appearing at routine court appearances or if lead counsel is looking for more of a cocounsel relationship? Don’t assume the answer. Ask lead counsel what his or her expectations are for the relationship. By getting the expectations on the table early in the relationship, you have a much better chance of satisfying those expectations.

You should be intimately familiar with your own local rules and practice, and you should plan ahead so that lead counsel is well advised.

Find out, for example, how lead counsel prefers to communicate and to receive filings. Find out whether lead counsel prefers time-stamped copies of filings you make for them. Are you to handle service of the filings or are they? If you are dealing with a team of lead counsel, understand what each person’s role is and who the point person for communication is. Once you have a handle on what is expected, make sure that everyone on your legal team—whether legal staff or support staff—is aware of those expectations.

Similarly, be sure to advise lead counsel of the roles of your team members and any particular expectations that you have for

the relationship. For example, if your court closes at 4:30 P.M. and you have to have all filings in hand by 2:00 P.M. to make that deadline, make that clear to lead counsel well in advance of the deadline so there are no surprises.

Recognize That You Are the Eyes and Ears for Lead Counsel

If you will be communicating with opposing counsel and the court in the absence of lead counsel, make sure that you properly advise lead counsel as to the substance of those communications. For example, rather than just reporting to lead counsel regarding the discovery schedule set by the court, advise lead counsel regarding what was discussed. Were any commitments made that discovery would be completed quickly or that certain documents would be produced? Did opposing counsel appear desperate and raise the possibility of discussing settlement? Did the judge encourage the parties to consider mediation? If lead counsel cannot be there, then you have to give lead counsel not just a bare bones report but the “flavor” of what happened.

Advise Lead Counsel Regarding the Court and Opposing Counsel

Lead counsel is often looking for someone who “knows the players.” Seek out information from your colleagues regarding your judge’s practices and regarding opposing counsel. Give lead counsel the lay of the land for what to expect from the players on the case.

Know Your Local Rules and Practice

It should go without saying that you should be intimately familiar with your own local rules and practice, and you should plan ahead so that lead counsel is well advised. For example, if your court requires certain forms or case reports to be filed in advance of a pretrial, then advise lead counsel well in advance so they are not surprised or facing an “emergency” filing. If your court requires the presence of lead counsel or the parties at certain conferences, then plan ahead to have them appear or have their attendance excused. When you transmit a motion to lead counsel, be helpful in also providing the response deadline and stating whether a reply brief is permitted. If the court enters an order, be prepared to advise lead counsel regarding whether it is immediately appealable and what the appeal process is.

Plan Ahead

Keep lead counsel reminded of upcoming deadlines and plan ahead for what will be needed from you. Are you going to be away on a vacation or at a trial? Give your team and lead counsel the heads-up so that they are not caught by surprise when

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The Pro Bono Plus: How Pro Bono Work Can Enhance Your For-Profit Career

By Janet H. Moore

Why do most lawyers go to law school? Perhaps they want a career with intellectual challenge, excitement, and a good income. Chances are that, at least in part, they also want to help other people.

Most lawyers take on pro bono assignments because they genuinely want to help others who need, but cannot afford, good legal services. However, once the notorious “golden handcuffs” of legal practice take hold, many attorneys find it increasingly hard to make time for pro bono work. They feel consumed by the pressure to bill hours, develop clients, and keep up with legal trends. As a result, despite good intentions, many lawyers gradually abandon their pro bono projects.

Yet, pro bono work is critically important—to society, to the legal profession, and to lawyers. If your pro bono work has eroded with time, try to reframe the way you think about it. Focusing on the many ways that pro bono work can enhance your career may encourage you to carve out some enriching pro bono time.

Develop New Skills

Pro bono work helps attorneys develop new skills and stay professionally challenged. For example, litigators can gain coveted courtroom experience through pro bono assignments or hone collaborative skills by representing parties pro bono in collaborative divorces.

Lawyers can also learn trademark and copyright law by representing starving artists through organizations such as the Texas Accountants and Lawyers for the Arts.¹ As the Internal Revenue Service increasingly scrutinizes nonprofit organizations, some attorneys have become volunteer ethics advisors to nonprofits; by developing this skill, they are better positioned for future paid employment as ethics advisors for other nonprofits and charitable foundations.

Marcy Kurtz, a partner at Bracewell Giuliani LLP who also serves as her firm’s pro bono coordinator, explained that pro bono work often gives attorneys invaluable “responsibility they might not get as quickly or frequently when representing ‘for-profit’ clients.” Pro bono work also gives a lawyer a taste of “the risks and rewards attendant to the role of being the attorney in charge.”

J. Bruce McDonald, a partner in the Washington office of Jones Day and former deputy assistant attorney general for the Antitrust Division of the Department of Justice, feels that pro bono work enhanced his trial skills. As a young associate in the Houston office of Baker Botts LLP, McDonald wanted more time in the courtroom. So he took on pro bono cases in the Harris County courts, representing a new range of clients, his first “a well-meaning but little-educated and unemployed former drug addict.”

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McDonald got to prepare witnesses, pick a jury, and proceed with trial. He gained not only important courtroom savvy but also valuable insight: “Pro bono work highlighted for me what a different legal world most litigants, judges, and juries experience than that in which antitrust defendants and their big firm lawyers live.”

Explore Career Transition

Perhaps you are dissatisfied with your current legal work and long to make the transition to a new practice area. If so, consider learning about a new practice area through pro bono work. Attorneys who think that they want to represent foreign clients on international matters could take on pro bono immigration cases; doing so will teach the lawyer whether he or she really enjoys working with clients from other cultures. Similarly, litigators who want to explore a business practice can get some practical experience through pro bono projects.

Sometimes volunteer work can lead an attorney to make a significant change in career path. Many years ago, John Meredith began working with at-risk youth through a Houston Young Lawyers Association project known as the Aspiring Youth Program—a program that Meredith and Texas Supreme Court Justice Dale Wainwright had started. Meredith became so motivated to help at-risk youth that he founded and became the president and general counsel of Aspiring Youth of Houston. After leading this nonprofit for almost 10 years, he wanted to return to law—but not to a traditional practice. Meredith now combines his business acumen and legal experience as the business director for the Houston office of Greenberg Traurig, LLP.

Distinguish Yourself

How do you distinguish yourself in a crowded legal field? You might ask yourself what your clients think of you, in other words, what your “personal brand” is. Perhaps your personal brand includes characteristics such as punctuality or thoroughness. Do these traits really set you apart from other attorneys? What if your personal brand included characteristics such as selflessness, dedication to serving others, or servant leadership? If those appeal to you, then pro bono work can help.

Find a pro bono niche that matches your interests and skills. If you find the right niche, you will feel energized and fulfilled—and you will be more likely to stick with it.

Thomas Kline, a partner in Andrews Kurth LLP’s Washington office, was motivated to help families recover artwork stolen from them during the Holocaust. The book *Goldberg’s Angel* and other media coverage memorialized his efforts. Kline’s work in the stolen art market has also helped to “brand” him as a determined trial lawyer—and an interesting person—who takes on challenges (especially in the stolen art field) against tough odds.

Distinguishing oneself through pro bono work can also enhance a lawyer's career path. For example, Ben Pruett, former counsel in the tax practice group at King & Spalding LLP's Atlanta office (and husband to former Baker Botts Houston associate Molly Rice Pruett), created a training program to help volunteer attorneys draft wills and related documents. Pruett's training program for the Atlanta Volunteer Lawyers Foundation became a model for similar programs benefiting Habitat for Humanity homeowners and in-house pro bono initiatives by The Coca-Cola Company and UPS. The training program and materials have since been "exported" to bar groups in Florida, New York, and other areas.

Pro bono projects let attorneys polish their client communication skills and gain confidence.

Pruett's volunteer efforts helped to brand him as an estate planning expert, and as a result, several private family wealth management groups began to court him. He now helps affluent clients of Bessemer Trust structure their estates.

Make Contacts

Many lawyers build their practices through referrals from other lawyers. However, any lawyer chained to a desk finds it hard to network with other attorneys. Pro bono opportunities, such as the Houston Bar Association's LegalLine, allow lawyers to connect with one another while providing pro bono assistance. This networking can help an attorney obtain referrals, build rapport with peers, and even look for a new job.

Some attorneys, including those aspiring to positions in the bar's leadership or on the bench, have made invaluable contacts through pro bono interests. Many of Houston's most prominent chief executive officers, chief financial officers, and general counsels volunteer for local charities that serve the poor. Many attorneys have enjoyed and benefited from knowing such executives through their pro bono work.

Increase Personal Satisfaction and Obtain Perspective

When an attorney begins to feel disillusioned by the practice of law, pro bono work often restores meaning to the attorney's practice. Because the legal system and legal jargon can intimidate disenfranchised citizens, even simple and easy pro bono efforts can make a huge difference. For example, calling an uncooperative landlord or credit agency on behalf of a low-income client can improve a client's life in a matter of minutes.

Shawn Raymond, a partner with Susman Godfrey LLP, has always derived great personal satisfaction from helping others. Raymond described one dramatic case in which his litigation experience significantly helped a foster family. Child Protective Services (CPS) had taken custody of a boy after his parents sent him to school with notes to his teacher physically stapled to his back. CPS placed the child in foster care, and although the foster family had custody of the boy for only 48 hours, the birth parents sued the foster family in addition to CPS and other agencies.

The distraught foster parents feared that they would be prevented from being foster parents in the future—their life mission for 20 years. They had even drafted and filed their own answer in an attempt to protect themselves. Raymond and others from his firm had to battle with opposing counsel to get the suit against the foster parents dismissed, but ultimately he rejoiced in his victory for the foster parents: "You can't replicate that feeling," he noted.

Pro bono work also puts lawyers' professional woes in perspective. Somehow not making partner or having a case thrown out does not seem quite so important when an attorney has kept a family from eviction, saved the life of someone on death row, or obtained a protective order for a battered spouse.

Please Judges, Juries, and Clients

Harry Reasoner, the former managing partner of Vinson & Elkins LLP, explained that Judge Singleton appointed him many years ago to represent prison inmates in a class action against the Texas Department of Corrections. The suit raised a variety of First Amendment issues because the department (allegedly) improperly read inmates' correspondence to their lawyers, among other infractions. Over a 20-year period, Vinson & Elkins attorneys tried three related cases, giving the attorneys valuable courtroom experience and creating goodwill with the judiciary. As Reasoner noted, "Judges appreciate lawyers and law firms that are willing to contribute to the social good."

All attorneys can get valuable experience interacting with clients through pro bono projects. Pro bono projects let them polish their client communication skills and gain confidence. Teaming up with more seasoned attorneys on a pro bono project is also a great way to get performance feedback without directly affecting an attorney's career.

Marcy Kurtz explained that many corporate clients are pleased by her firm's significant pro bono commitment. "Most of our corporate clients are excellent corporate citizens, giving back to the communities in which they do business both with dollars and with human resources. They expect the same of their inner circle of service providers. We deliver."

Kurtz also noted that many corporate clients ask their outside law firm for help with the clients' pro bono assignments, perceiving that they will do a better job if an outside law firm assists them. "It's a win-win situation for everyone: the corporate client of the firm, the law firm, the individuals from both the corporate client and the law firm who get to work together on the project, and, most importantly, the person receiving legal services."

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Pet Peeves of Dealing with Outside Counsel

(Continued from page 1)

of our customs in hiring and using outside counsel.

If you are reading this article, hoping to learn about some revolutionary new pet peeve that in-house attorneys have, you are probably going to be disappointed. Their current pet peeves are essentially the same pet peeves that they had 10 years ago. Despite the same complaints by in-house counsel, outside counsel generally have taken baby steps (at best) to try to address them, not because they are unaware of these complaints, but because the current law firm model is so fundamentally different from the business model of the customers they serve. In fact, the law firm model is fundamentally different from every successful corporate or business model. It is similar to one entity: the government.

The law firm model works in many ways like the government, and thus the model itself restricts the ability of outside counsel to cure the long-lasting problems experienced by in-house counsel. As discussed in more detail below, like a government agency, outside counsel have very little incentive to be efficient. In fact, outside counsel often are “rewarded” for inefficiencies. An outside attorney who takes two hours to research an issue makes more money than by doing only one hour of research. The rest of the “real business world” is punished with lower margins (or, worse yet, a loss) if they are inefficient. But not so for the government and outside counsel. As a result, the list below sets out what have been and will continue to be pet peeves of in-house counsel.

Poor Responsiveness

My nonscientific survey of in-house attorneys’ pet peeves over the past 10 years shows that the lack of responsiveness of outside counsel has been and continues to be one of the biggest problems. Despite this, outside counsel have failed to cure this problem. Why? One theory comes to mind.

Outside counsel’s idea of what is responsive appears to be different from what in-house counsel believe is responsive. Outside counsel seem to rely on the fact that they have technology (e.g., BlackBerry, cell phone, email) as proof that they can be responsive. One private attorney told me that she has six different “technological” ways to get in touch with her. Simply possessing the ability to be reached is not being responsive.

In the corporate world, in-house counsel are asked for answers they often need in minutes, not days or even hours. Rarely do in-house counsel have the time or patience to try six methods to reach outside counsel. If forced to send an email or leave a voice mail, in-house counsel are then left to wonder if they are going to get an answer. In-house counsel understand (because many in-house counsel were previously outside counsel) that outside counsel serve many clients and are not always available to be responsive. Regardless, a quick answer is often needed. A call returned by outside counsel later in the day may appear to be “responsive” to outside counsel, but in-house counsel may consider this “nonresponsive.”

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The problem is not new, but quite frankly, few outside counsel have figured out a way to fix it. Until they do, poor responsiveness will continue to be a pet peeve of in-house counsel.

No Accountability for Estimates

Outside counsel are often asked how much a legal task or lawsuit will cost. Outside counsel will start squirming and hedging the minute the request is made. In fact, I can hear outside counsel starting to say to themselves, as they read this article, “it is hard to predict—many different things can happen . . .” This is terribly frustrating for in-house counsel who are not given the luxury of unaccountability for estimates. We are held to budgets. Why can’t outside counsel be held accountable for their estimates? I have a theory on this too.

The law firm model rewards inefficiency (the more you bill, the greater your profitability), and, accordingly, being efficient lowers profitability. Therefore, why would a law firm cap its profitability, especially when there is little risk of being removed from a matter once the estimate is exceeded? The system is set up to encourage law firms to give low estimates—resulting in the firm being selected to represent the client and encouraging the client to file the lawsuit because the estimate is low—and then blowing the estimate with little fear of subsequent repercussions.

The rest of the corporate world is accountable for estimates. Corporations make estimates and take risks every day. If those estimates are wrong, a corporation is less profitable. The law firm model attempts to eliminate risk by never holding law firms to their estimates.

I know that outside counsel are thinking “if we blow our estimates, then clients would stop hiring us.” Although repeat offenders probably are terminated, many times cases settle before reaching the estimate, and, therefore, compliance is often overlooked. In other words, in-house counsel rarely study whether or not the estimate would have been exceeded if the case had not settled. Some firms have tried to solve this by offering alternative fee arrangements, which are slowly becoming more popular and will continue to grow in frequency. Even then, more times than not, alternative fee arrangements are proffered by the client and not “suggested” by outside counsel. When suggested by outside counsel, such arrangements attempt to avoid all risk by outside counsel.

In short, trying to partner with outside counsel who will not be bound by estimates or assume any risk is most frustrating to in-house counsel.

Cookie-Cutter Pitches for Business

Let’s say my company just got sued and we need outside counsel to represent us. We send a request for proposals (RFP) to several outside counsel. Before the first proposal is received, I know what each of them will say:

- Each firm has the best attorneys, and they have never lost a case.
- Each firm has tons of experience in the very nature of my lawsuit.
- Each firm has the resources to do the work and knows the courts and judges better than anyone.

It’s that predictable. Honest.

My response is “of course you do, which is why we sent you

the RFP.” However, outside counsel do not seem to understand that all of the competing proposals will say the same thing. What interests me is how your firm is different. Every—and I mean every—in-house counsel I have spoken with on this point talks about how similar the proposals are that they receive and how each misses the opportunity to bring something different to the table. Most proposals talk about estimated costs for trying the case—don’t get me started on this again—and their respective hourly rates. Rarely do in-house counsel see something different. Each proposal looks the same.

Outside counsel should be very clear at the beginning of a lawsuit about how many people will be needed, who, and why.

This is true as well for cold calls and simple pitches for business. In-house counsel use outside counsel whom they know, trust, and like. This fact is ignored by outside counsel who are trying to get some of that business. Most cold calls or pitches are simply requests for in-house counsel to change counsel for no other reason than “your firm is great and you want some work.” Why would in-house counsel replace the outside counsel they know, trust, and like for the uncertainty of an unknown entity?

Whether responding to an RFP or simply making a pitch for new business, outside counsel must bring something different to the table to get in-house counsel to switch from counsel with whom they are comfortable. What do I mean by “something different”? Well, for starters, take a lesson from how the rest of the business world tries to sell something to someone who does not currently use their products or services. Consider discounted rates, a free trial period, half price off your first litigation, and the like. Be creative. At the very least, you will get in-house counsel’s attention in a positive way, which is a very good thing.

Not Knowing My Industry

Outside counsel can only provide so much legal advice without knowing and understanding in-house counsel’s corporate industry. If the corporation is, for example, in the computer business, outside counsel needs to get to know that industry. This means more than reading an article about computers in the *Wall Street Journal*. It means studying the industry, buying and using computer products, taking classes in computer design, finding out what trade magazines the CEO reads, and reading those monthly. Nothing frustrates in-house counsel more than having to explain the industry—over and over and over again. In-house counsel

are looking to partner with outside counsel. Outside counsel effectively insist on in-house counsel knowing the law firm industry (so that we can understand why they cannot be held to their estimates), but rarely do outside counsel take the time to truly understand the industry of the clients they serve. Unfortunately, that means the “counseling” that in-house counsel can get from their outside counsel is limited by the outside attorneys’ knowledge of their industry.

Miscellaneous Charges on Invoices

Paying for each copy or fax is a prime example of the problem with outside counsel’s system. Every time in-house counsel reviews an invoice, the copy charges glow like a neon sign in Las Vegas, saying “we will try to pass on every type of cost that we can and make a margin on it.” Copying charges again reward inefficiencies. Make a couple of extra copies? No problem: The client will pay for it. Spill coffee on your brief? No problem: The client will pay for another copy. Not only will the client pay for it, but the law firm most likely makes a profit from it. This irritates in-house counsel, especially because copying charges usually stand out from the other charges on the invoice, like a taunt that very little recourse is available. If outside counsel had to include all overhead in a fixed fee, fewer copies would be made because extra copies would eat into outside counsel’s profits. Outside counsel and their staff would be forced to be efficient in order to be profitable—novel concept, right?

New Attorneys Appearing on Invoices

New attorneys billing time to a matter without the prior knowledge of or communication with in-house counsel is annoying. When in-house counsel does not expect to see billable time from Attorney X on an invoice, immediate doubts arise. Why is this happening? Will this continue? Could any of the other attorneys already on the matter do what Attorney X did? Is outside counsel running up costs? These and other questions force in-house counsel to take time out of their day—remember, time is usually our most prized commodity—to call outside counsel for answers to their questions. Rarely are the answers—or, should I say, the excuses—satisfying. Invoices are never the time for surprises. Outside counsel should always take the time to set expectations so that surprises do not occur.

Too Many Attorneys Billing on a Single Matter

Question: How many attorneys does it take to win a lawsuit?

Answer: At least one more than you can afford.

In-house counsel are convinced, and rightly so, that the more attorneys who bill on a single matter, the more it ultimately costs. Therefore, when an in-house attorney sees billing by more outside attorneys than he or she is comfortable with, the in-house attorney presumes that the matter is being “over-lawyered” and will be upset. Outside counsel should be very clear at the beginning of a lawsuit (or any matter) about how many people will be needed, who, and why. There should also be a procedure to add attorneys if later needed. Situations change and attorneys sometimes need to be added. This does not, however, excuse outside counsel from justifying the additional bodies before they begin billing on a matter.

Rate Increases

It's New Year's Day, time for resolutions and for law firms around the country to increase their rates automatically. Not only do rates go up every year like clockwork despite the economic situation, but also the rates increase by large amounts. Many in-house counsel have changed outside counsel—or at least reduced the amount of work sent to outside counsel—in response to ever-increasing rates. Worse yet, in-house counsel who object to rate increases often meet with an “OK, then use someone else.” “Pet peeve” is not a strong enough term to describe in-house counsel's feeling toward automatic annual rate increases. Enough said.

Sending a Memo When an Answer Will Do

The unneeded memo sometimes falls in the “over-lawyering” category, but most often it falls into the “lack of listening to your client” category. Most in-house counsel rarely desire to read a memo on a particular issue. Instead, they want a concise answer to an issue or inquiry. When outside counsel put together a long, drawn-out memo explaining an issue that the in-house attorney has asked about, they are generally wasting the client's time and money. In-house counsel do not have the time to read long memos. They are required to give CEOs and other decision makers answers, not memos. Outside counsel's job is to provide those answers. Not knowing whether a client requires an answer or a memo is not an excuse. Proper communication prevents memos from showing up when an answer will do.

Along with the frustration of receiving a memo when an answer is needed, in-house counsel have the suspicion that their bills are being run up. Writing memos means more time spent, which means more profit to outside counsel (and more cost to the client). That is how in-house attorneys see it, whether that's right or wrong.

Above and beyond the frustration and cost, the simple message of providing a memo when an answer is needed is that outside counsel either look like they are running up the bill *or* are incompetent because they did not simply ask whether a memo was required. Regardless of the explanation, in-house counsel's view of this is not good.

Conclusion

The law firm model that has caused many of these pet peeves (and prevents their resolution) is slowly changing. The supply of competent outside counsel is growing, and in-house counsel continue to be squeezed by budgetary constraints. These and other reasons have forced outside counsel to begin changing the law firm model and to come up with different fee arrangements and other services to help retain current clients and acquire new clients. Firms that are ahead of this will replace the firms that are stuck in the ever-increasing billable ways. Until such time as outside counsel follow a system that rewards performance, responsiveness, and cost containment, these pet peeves will continue to dwell with in-house counsel.

When a Lawyer Goes In-House

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3. **Don't Be Shy.** If your law firm does something, say so. If you want the business, let me know.
4. **Don't Talk Only to the General Counsel.** Of course the general counsel is the queen bee, and it is a good idea to make her happy, but quite often the general counsel plays a management role, and the other attorneys in the department have the primary responsibility for working with outside counsel on certain issues. Get to know the other attorneys in the department; not only might you have an opportunity to do work for them at their present employer, but when they leave to become general counsels at other companies, you also already have a foot in the door.
5. **Don't Be Afraid to Talk about Money and Time Expectations.** If we have clarity up front, we do not have problems down the line.
6. **Don't Spam Us.** Like all lawyers, in-house counsel get a zillion emails a day. Do not put me on automated mailing lists without my permission, please. And do not take it personally if I ask to be removed from the list. It's not you; it's my in-box.
7. **Don't Leave Us off the List.** If your law firm loses a lawyer to an in-house position, put him or her on the invite list for your firm's activities that he or she might be interested in. For example, many of the firms in my area have been very good about inviting alumni to their ethics seminars, CLEs, and firm events. If your firm does not regularly invite in-house counsel to its events, change your firm's practice. In-house counsel are always pleased to be included in things, especially if it means an opportunity to talk about substantive issues their businesspeople face.

Basically, my advice boils down to this: Don't let in-house counsel slip into a black hole. Keep in touch with us, and we will keep you in mind.

If Clients Want Lower Legal Bills

(Continued from page 1)

they take the risks that any entrepreneur takes. For example, a lawyer who is willing to take on the risks of a result-oriented compensation package (i.e., contingency) should be entitled to the rewards if the lawyer produces results.

This, however, is not what the largest, most profitable firms do. They generate profits through greater hourly billings. There is nothing entrepreneurial about what they do. They are not getting paid based upon the results they obtain. They get paid based upon the number of hours they bill to a matter, regardless of outcome. Thus, most large law firm's profits are built upon marketing: getting clients to believe that they need to pay for these hours to obtain the best legal services.

Any client of a large, big-name firm who believes that the deal it has cut is special and that these ever-increasing profits have been generated off the backs of other less-sophisticated clients deserves to continue overpaying. One need only look to articles written by legal consulting firms about how law firms need to adopt the business practices of their accounting and management consulting counterparts and use business analysis techniques that determine which clients and which practice areas provide better "realization rates." The fact that law firms and their legal consultants are now considering management consulting firms as their counterparts should make everyone pause for a moment and wonder, how did we get here?

Most important, however, the articles about better realization rates are not about how to better serve clients; they are about which clients better serve law firms. So, if you are a client of a law firm that announces ever-increasing profits per partner, by definition, you are paying enough to provide the firm with its desired "realization rates," or ever-increasing profits. If you do not believe it, then quit complaining.

So, why do companies, as in the movie *Groundhog Day*, continue making the same mistake and pay too much for legal services? I see three primary reasons why a company or its in-house counsel would hire a large firm today: name recognition, for the difference it may make in court; better quality; and "CYB"—if something does go wrong, the person who did the hiring can deflect criticism by saying "Hey, I hired the biggest and best law firm out there."

The first and second items, which may have been valid 25 years ago, are just no longer important. Name recognition does very little these days in front of most judges and juries. Believe me—I co-tried a case with a nationally famous lawyer shortly after he had had significant exposure in the media, and it made no difference to the jury. What matters to the judge and jury is the quality and qualities of the lawyers who appear before them on a given case. The best lawyers may not even mention their firm's name when they appear in court, smartly preferring to establish that it is the lawyer, and not the firm, appearing before the court.

Moreover, at least when it comes to litigation matters, I believe law firm quality is slipping, and litigation boutiques are popping up to provide better and less expensive service. This is

not to say that you cannot find very fine litigators in the big firms, but precisely because these firms are driven by the holy grail of profits per partner, the partners who are most valued are the ones who make rain, and many skilled litigators and trial lawyers are being shown the door. Furthermore, the training of young litigators in the large firms is, quite frankly, almost nil. There is no time to train them. They must bill hours to pay for their ever-increasing salaries and to keep the profits flowing.

With greater frequency, you see "litigators"—even senior partners in big firms—who have never tried a case. They are what I like to call "paper lawyers." They try to win cases on the

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papers, and if they fail, they recommend settlement to the client. There is nothing wrong with trying to win on the papers. But, take it from someone who knows, if your litigator knows how to try a case, your papers are going to be stronger. When a company hires a law firm to represent it in litigation, its only criterion should be the quality of the individual lawyers that it hires for the matter. The firm name should be irrelevant.

There is another myth that clients must get over to obtain lower costs while ensuring that they receive top representation. When it comes to litigation matters, bigger is not better. A litigation team that is larger than five lawyers is generally a litigation team that is too large—regardless of the amount in dispute. I know from having worked on mega-cases throughout the better part of my almost 30 years of practice, and the best teams have always been within that five-lawyer range. One associate and I ran rings around a team of 10 lawyers from one of the country's top five law firms in a \$100 million matter for one of my clients. Why? Because we were agile, quick, and coordinated. The other firm's larger team was not.

The fact is that every client would do well if its most senior lawyer on a matter worked night and day on important cases. There is a reason—or, at least, there should be—why senior lawyers' rates are as high as they are. They are more experienced and more efficient. If more senior lawyers did this and used the assistance of a few carefully chosen subordinates, instead of acting as lords over hordes of inexperienced associates, their clients would pay less and get more. Moreover, the associates who have the chance to work closely with the partner would also get a real education on how to handle a matter. In short, a win-win for everyone. The client pays less; the client gets the best possible result; and younger lawyers obtain valuable experience, as opposed to merely logging hours. This is the team a client should hire, not a

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firm name and whomever the firm assigns to your case. Clients deserve no less than an experienced, efficient team, and they can demand this because they are paying the bills.

Which brings me to the last reason why big firms seem to get hired more often than their more nimble, smaller counterparts—"CYB." In-house counsel sometimes hire a big firm, regardless of who is assigned to the matter, because if something goes wrong, they will be able to say in their defense that they hired XYZ mega-firm, so what else could they have done? In turn, large firms have been exacting a premium price for this protection in higher rates, unnecessarily large staffing, or both. If clients expect lower litigation costs, general counsel and those to whom they are accountable must shed themselves of the "CYB" approach to hiring.

Although most in-house counsel might demur and claim that they are not hiring based upon "CYB" when they hire the "big name" firm, they still implicitly recognize the personal security of hiring a big firm when making many hiring decisions. Just ask any general counsel in private.

Young Lawyers

(Continued from page 8)

they have an emergency filing and find that you are out. In your absence, make clear who will be responsible for assisting lead counsel. Be sure to change your email and voice mail messages to indicate that you are out.

Acknowledge Communications from Lead Counsel

There is nothing worse than that feeling in the pit of your stomach when you call local counsel to make sure they got your email and took care of the filing you requested, and you hear back "what email?" If you receive a filing from lead counsel, then

But relying upon a firm's name is no assurance of quality. Litigation teams should be small, and they are only as good as the members who make up the team. Quality has never been uniform across every large firm, and it has only worsened in recent times—with lawyers moving between firms at an increased rate and intra-firm training on the wane as a result of pressures to make young associates bill more and more hours to pay for their ever-increasing salaries. Moreover, more small litigation departments or litigation boutiques now produce a better quality product than their large-firm counterparts and can ensure a more uniform quality because they are smaller.

Thus, those in the "C suite" and in-house counsel must realize that if they want lower litigation costs, they are going to have to allow their in-house counsel the latitude to hire on quality and not name.

The trade-offs are very simple: Either clients can start hiring lawyers based upon the individual lawyers who will handle their cases to obtain lower costs and better service, or they can continue to repeat the same mistakes.

acknowledge that you received it and will attend to filing it. Send lead counsel a quick email to let them know the filing was made. Such communications take minimal effort but signal to lead counsel that you are on top of things and that they can trust you to follow through.

In sum, you will make great strides toward being a good and trustworthy local counsel if you consider the golden rule of doing to others as you would have them do to you. Ask yourself what type of service you would expect from the relationship and then set out to exceed your own expectations.

"Tips for Being a Good Local Counsel" by Erica L. Calderas, published in Second Chair, June 2004. Copyright © 2005 by the American Bar Association. Reprinted with permission.

The Pro Bono Plus

(Continued from page 10)

Resources

Attorneys wanting to take on pro bono projects have a wealth of options available to them.¹ Under the Texas State Bar's guidelines, legal work for charitable or public service organizations qualifies as pro bono if it is "with respect to matters or projects designed predominantly to address the needs of poor persons."²

Why not take on some pro bono work? The benefits can be significant, and the personal satisfaction is priceless.

"The Pro Bono Plus: How Pro Bono Work Can Enhance Your For-Profit Career" by Janet H. Moore, published in Spreading Justice: The Newsletter of the Pro Bono and Public Interest Practice Committee 5:1, Fall/Winter 2008. Copyright © 2008 by the American Bar Association. Reprinted with permission.

Endnotes

1. Information about the organization is available at <http://www.talarts.org/>.
2. The Houston Bar Association ((713) 759-1133), State Bar of Texas (Texas Lawyer Care ((512) 427-1855)), and American Bar Association (1-800-285-2221) all have departments waiting to assign pro bono projects. TexasLawyersHelp.org also lists many pro bono matters.
3. State Bar of Texas Pro Bono Policy FAQ (2006).

Committee Information

Pretrial Practice & Discovery Committee's Home Page:

[www.abanet.org/litigation/
committees/pretrial](http://www.abanet.org/litigation/committees/pretrial)

Newsletter Archive:

[www.abanet.org/litigation/
committees/pretrial/
newsletter.html](http://www.abanet.org/litigation/committees/pretrial/newsletter.html)

Subcommittee Page:

[www.abanet.org/litigation/
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