



# The Top Ten Things Your In-House Counsel Wants from You

BY ALLISON D. GARRETT

Few companies have enough in-house lawyers to handle all of the company's legal work. Working as outside counsel for these companies can be lucrative and, through networking with professionals outside the local practice area, can enhance a firm's reputation and skills. For nine years, I worked with law firms all over the United States and around the world while I was in Wal-Mart's legal department. As my in-house colleagues and I developed professional relationships with these law firms, we also developed appreciation of factors that influenced our selection—and continued employment—of outside counsel. This article outlines some important things to keep in mind when working with in-house counsel.<sup>1</sup>

## 1. Be prompt.

Wal-Mart called this a “sense of urgency.” Recognize that in-house attorneys have clients, too. If counsel leaves a voice mail message for you or sends you an e-mail message, they would like an acknowledgement within an hour or two.<sup>2</sup> If you wait until the next day to respond, they may have found someone else to handle the matter. The “crackberry” and voice mail are your friends; use them often.

Of course, in-house counsel understands that if we call with a knotty question, you may need to do some research. We are not seeking an instant answer, but the ability to report to our clients that outside counsel is researching the matter and will have an answer by the end of the day tomorrow.

If you promise counsel a memorandum by the close of business the next day, make sure you deliver. In-house counsel have deadlines, too. Just like you, we want to impress the people with whom we work. If you provide the information a couple of days late, the next time a project requires a quick turn time, another firm may well get the project.

## 2. Be attentive to detail.

You are paid to handle the company's work in a professional manner. Details matter. If your letters, memoranda or e-mail messages consistently contain typographical or grammatical

errors, in-house counsel may conclude that it is representative of your other work product.<sup>3</sup> In addition, these types of errors require in-house counsel to waste valuable time proofreading your work. In-house attorneys are not copy editors, and it is not their responsibility to proofread your work. At the rates you are paid, your work should be error free.

## 3. Hire a great assistant.

Your assistant should know in-house counsel. When in-house counsel calls, an offer to interrupt you or find you is greatly appreciated. In-house counsel will try not to abuse the privilege of interrupting you unless it is an emergency, but they appreciate the offer. If you are out of town, let in-house counsel know, and have your assistant monitor your voice mail and email. Your assistant should feel free to respond to a message to let in-house counsel know that you are out of town. Your assistant should ask whether it is an emergency, whether someone else can help and whether the matter can wait until you return.

## 4. Staff projects with the right amount of expertise.

Some projects require outside attorneys who have a great deal more specialized knowledge than their in-house counterparts. Even though I had SEC experience and an LL.M. in securities law, I still relied on outside securities law attorneys with a substantial amount of experience in particular matters. Make certain that the engagement partner on a particular matter is a genuine expert in his or her field. In-house counsel will lose confidence in your abilities when they have to point out too many issues that you overlooked.

In many instances, in-house attorneys send out what they describe as “commodity work.” Commodity work is boring, redundant work that can and should be performed by junior associates or law clerks. General counsels know that an easy way to boost the morale of their in-house staff is to allow the staff attorneys to work on interesting projects in-house and farm out the boring work.<sup>4</sup>

## 5. Be cost effective.

If your firm is assigned routine legal work, managing billings to minimize client costs is extremely important. There is a lot of competition within the legal community for this bread-and-butter kind of legal work, so it is crucial that the work be handled efficiently and by the lowest hourly billing attorney capable of competently completing the work. Do not overstaff the commodity work with a partner when a junior associate will do.

## 6. Provide close air support.

Expect in-house counsel to call you for what amounts to a second opinion. It may be that counsel has already explained the law to the company executive, and the executive did not like the advice. Recognize that in some instances in-house counsel is looking for support for their position. If your legal analysis supports the position of the in-house counsel, say so. That is not a license to rubber stamp in-house counsel's advice. But if you disagree with in-house counsel, try not to embarrass him or her in front of company executives.

## 7. Increase your firm's bench strength.

If the engagement partner is out of town or unavailable, a firm that has other attorneys who can handle the work has a significant advantage over a firm that is out of commission when the partner is tied up. Expect prudent in-house counsel to ask you what will happen if you are hit by a bus tomorrow and be prepared to discuss your firm's contingency plans. Although in-house counsel is reluctant to pay for your firm to train young associates by double-staffing the work, it is comforting to know that other attorneys at your firm can help us in a pinch. Lateral hires might be needed to fill gaps in your firm's bench strength.

## 8. Avoid unpleasant surprises.

Like all clients, in-house attorneys expect consistently excellent work from you. They also expect predictability in billing. If counsel negotiates a flat or capped fee on a particular project, unpleasant billing surprises will prompt them to look elsewhere for future legal work. If the project is more complicated than expected, call counsel well before you hit the cap to discuss changes to the fee agreement.

In addition to excellent work product and good billing practices, predictability of results is important. Business people make decisions on the basis of the most likely outcome. For example, negotiations over indemnification provisions should focus on realistic contingencies. The company does not want to pay you to negotiate what happens if an asteroid hits the company's office building. Similarly, if you win 95 percent of the company's cases that you take to trial, you may be too focused on risk avoidance. Maybe you should recommend trying more cases. Because in-house attorneys are business people in addition to being lawyers, they focus on acceptable risks. Predictability is good, but acceptable risk is part of business. Help identify what is acceptable risk and avoid risks that are unacceptable and predictable.

## 9. Give in-house counsel some breathing room.

It may be counterintuitive, but visiting in-house counsel's office might actually harm your relationship, even if you do a fair amount of ego stroking in the process. Like all clients, in-house attorneys like it when you pretend that we are the smartest people in the room and act as if our pronouncements are inspired. But, in-house attorneys are extremely busy. When we have to drop our work to hold an audience without side counsel, it can be annoying, especially if we did not request the meeting.

So give in-house counsel some breathing room. Occasional messages about a recent case, a new law or our competitors' activities are helpful. Unless requested, meetings are not usually helpful.

## 10. Be fun.

Several years ago, Wal-Mart's Finance Department gave a special award to a law firm that had done a tremendous amount of high quality work for the company for several years. In praising the firm, the executives in the Finance Department noted that these attorneys were professional, hard working and—above all—fun.

Humor goes a long way in business. It is far easier to negotiate a 50-page document in the wee hours of the morning if you like the people with whom you are working. Given a choice between hiring competent, pedantic and boring attorneys, or competent, pleasant and fun attorneys, in-house counsel will hire the fun attorneys every time.

## ENDNOTES

1. As you review this list, you may feel that in-house lawyers are too picky. Worse, you might conclude that in-house lawyers are petulant and demanding. Perhaps these are valid criticisms. Yet, because in-house counsel makes the hiring—and firing—decisions when it comes to outside counsel, it may be worth a few minutes to consider what pleases them.
2. Admittedly, in-house attorneys do not always reciprocate. Many of you have probably been frustrated trying to get in-house attorneys to return your calls as you prepare responses to discovery.
3. As with return of phone calls, there is a double standard here, too. There may be errors in the work product of in-house counsel, but that does not excuse errors in your work.
4. Or, perhaps, in-house attorneys simply kept the project long enough to bungle it before sending it to you. It happens.

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