



Corporate Counsel Connections The Newsletter of the Corporate Counsel Committee

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The Relationship Between In House and Outside Defense Counsel - The Perspective from Outside

by Patricia J. Trombetta



Much has been written about what in house counsel wants and needs from outside defense counsel to build a partnership that will span a career. In fact I was one of the creators and editors, along with Katy Regier, a partner at Schlee, Huber, McMullen & Krause, P.C. in Kansas City, of a rainmaking book entitled *Women Rainmakers: Roadmap to Success*. We included an entire chapter on the insight from in house counsel as to what is

important to the relationship from their perspective. It is highly insightful and provides a reminder even to the most seasoned professionals of what they need to keep in mind when providing client service. Katy and I also partnered in writing an article for *The Voice* that provided defense counsel with a primer on what clients expect in this highly demanding legal environment to build a successful partnership. We focused on client service and how to provide in house counsel with what is needed to ensure of their success and in turn your own.

However, although I have been in the legal profession for over thirty years and started my career in house for an insurance carrier, I have not written about the relationship between in house counsel and outside defense counsel from the perspective of outside defense counsel. I have also read little written from this perspective, likely because in house counsel is the client and everyone is focused on building their client base and rainmaking. But it is important, if in house counsel is to obtain the best legal representation for the corporation, or in the case of an insurance carrier, for their insureds, that the relationship be a two way street. Any well founded relationship is never one sided or it will eventually break down—two way communication is a key to that relationship with outside defense counsel. If counsel doesn't know that you are unhappy with in the representation or that you want something different from it she won't have a chance to make it right.

Take for example a decade long relationship between a corporation and a law firm. Now add to it that one particular partner takes the lead on accepting the legal assignments from the corporation and makes certain that the work is being accomplished timely and in accordance with client guidelines, by associates and when necessary by the partner. But, now someone new has taken over in the corporation, or someone new at the law firm is assigned, or maybe both. Maybe someone is fired and someone new is hired. The relationship starts to die or abruptly ends. Something isn't right but both sides of the relationship aren't privy to why. There is no communication as to what set the death knell in motion. Was it a personality issue? Was there a mistake on a case, although remedied, that ruffled some feathers? Were there billing issues? Did someone not comply with the guidelines? Was it one incident or was there a straw that broke the camel's back? Or was it just a new person running the show wanted their own people handling the work?

From the outside defense counsel perspective the answers to these questions are relevant not just to the relationship with that client but to other clients of the firm and to their rainmaking efforts in the future. It may be a situation in which the relationship cannot be repaired, but it might just be a conversation that if accomplished might put the relationship back on track for many years to come. Outside defense counsel are human and make mistakes, they also have their own unique personalities and day to day pressures. Having a conversation at

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Upcoming Seminar

the outset of the relationship and at various intervals, almost like a report card, could assist in creating a lasting and meaningful partnership that will endure the bumps in the road.

As in house counsel you are overburdened with a myriad of issues on a daily basis. You do not have the luxury of managing one case or even just ten cases day to day. You have reports, meetings, bosses to answer to, and metrics to accomplish. There are not enough hours in the day to get everything completed and you don't have time or energy to babysit counsel and have long conversations with them or put up with their long winded reports without a purpose. You need to tell them. Remember very few defense counsel have been in your shoes. Most law firm associates and partners have never been in house counsel nor do they even know all the pulls on your time day to day. They don't know why you are pressing for an accurate evaluation or a realistic budget on a case. As a result, if defense counsel fails to ask you what you need...you need to tell them. Straight up say "I do not have time to read 15 page coverage opinions. I want you to tell me in the first paragraph your decision and then give me the reader's digest version of how you got there. Don't cite the language from the policy—just give me the cite to it. I know my policy and I know what you are talking about with just the reference." Or "don't just tell me about an event—tell me how it impacts the case. What good is it if you write me a seven page report on what was said in a deposition but you didn't evaluate the witness for me or tell me how that witness changed (or didn't change) the exposure in the case." If you do not tell outside counsel what you need or what you want they don't know that you are not getting what you need to be effective in managing the case. Even if outside counsel is getting great results for you...settling a case for less than you reserved...or winning a case at trial, if you are getting frustrated with the reporting and in the end it is going to affect whether you use counsel anymore, you need to communicate that to them. Then you will still have the long term great results from the firm but without the frustration that in the end may result in ending that relationship only to begin one with someone else that doesn't get the results but also one that doesn't cause you a headache day in and day out. Which one is better for the corporation? Can you get both what the corporation needs—good results—and what you need—a win-win?

Communication with outside counsel is the key. Tell them what you need, what you want, and when they are not providing you with one or both. I have had a number of wonderful clients that have come to me to advise that internally things have changed and tell me what I need to know in order to get their business or keep it long term. I recall a case a few years ago in which I was representing one company on a coverage matter and another affiliated company was also involved. I was contacted by the affiliated company once the case was over and asked to be their coverage counsel for my state. Up front they told me the loved the way I handled opposing counsel in a professional but stern matter, they also liked the letters I had written in the case, but they also told me how they wanted coverage opinions handled. They didn't want everything but the kitchen sink included, they wanted us to get down to brass tacks. These are the kind of conversations that at the outset make for a long term partnership that will endure bumps in the road and also open up two way communication between in house and outside defense counsel so that the corporation gets the great representation it deserves and you get a Tylenol free day.

Patricia J. Trombetta has been with Smith, Rolfes & Skavdahl since 1997, joining as an associate and is now a partner. She has been involved with the insurance industry since her graduation from law school working first as an in house subrogation attorney and then a claims litigation attorney before entering private practice in the Cincinnati area in 1992. She spends her days working in the insurance defense and insurance investigation fields. Pat has successfully defended a wide array of cases ranging from coverage issues to bad faith, including intentional torts, building risks, and significant personal injury cases, among others.

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