

Legal Assistance

How outside attorneys can avoid stepping on the in-house counsel's toes

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When in-house legal staff is overwhelmed, companies often turn to outside counsel to provide the necessary manpower or expertise.

Though outside help is welcomed by in-house lawyers, the relief can bring a host of new problems if the house and outside counsels clash – delaying time-sensitive business transactions or risking damages from new litigation.

The key to a successful relationship, says Chris Porzio, an attorney in the Jericho office of law firm Nixon Peabody, is setting clear expectations.

“It’s important, as an outside lawyer working for a firm, understanding the role the in-house lawyer wants to play and how involved they want to be,” said Porzio, who previously worked for three years as an in-house attorney for Manhattan broker-dealer Phoenix Partners Group. “It really comes down to communication and everybody understands their role at the outset.”

Situations when companies might turn to outside counsel include litigation, labor-intensive audits of employment records or business matters where in-house staff lacks expertise. By meeting the client’s expectations, outside attorneys show their value to the firm, Porzio said.

“Whether it’s a board, whether it’s their CEO, you want to be able to be in a position, as an outside lawyer, to have that in-house lawyer appear to the people that they report to in the best way possible,” he said.

Legal teams of just one or two members are not uncommon among small to midsized firms, increasing the importance of the relationship between in-house and outside counsel.

Brian Ziegler, a partner at Certilman Balin Adler & Hyman in East Meadow, said the process usually begins when he receives a phone call from a client seeking assistance. He then receives a letter of intent or an initial draft before meeting the in-house legal staff. During this meeting, Ziegler gets an overview of the business and legal aspects of his assignment and learns what the in-house counsel expects of him.

“You kind of get your marching orders,” he said.

Ziegler believes it’s important to develop a mutual respect with in-house counsel so he can confidently share his views when his opinion differs from the client’s. One of the trickiest areas is when the two decision-making bodies have a difference of opinion on how a legal matter should be settled, he noted.

Ultimately, the in-house lawyer has the final say in deciding a course of action because he or she is more closely connected to the client firm.

Ziegler said he recently advised a client to be more restrictive in one of its business arrangements, but the client insisted it would rather take the risk than upset the deal. In those cases, Ziegler said he makes his case, but defers to the clients’ business sense.

“The business aspects are paramount,” Ziegler said. “Lawyers can be great lawyers, but if they can’t get the deal done the way the business people want the deal done, then they haven’t accomplished it.”

Like Porzio, **Joe Campolo**, managing partner at Ronkonkoma-based **Campolo, Middleton & McCormick**, has also served as both in-house and outside counsel, which he said puts him in a unique position to understand the stresses of in-house counsel. He formally worked as the first general counsel for Hicksville-based Expedite Video Conferencing Services.

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The primary role of in-house counsel, Campolo said, is to manage the outside attorneys assigned to a project and keep the project within budget.

In-house lawyers sign off on the day-to-day business transactions, such as contracts, service-level agreements, warranties and payment plans.

Campolo said that holding up business deals is one way outside counsel can fall out of the good graces of clients.

"What we've learned over the years is that if we have a 'no' answer, which in-house counsels don't always want to hear, it can't just be a 'no,'" Campolo said. "It has to be a 'No, but this is what you can do, and this is a solution that makes sense to do.'

"If all you do is say 'no' you're not going to be in business for very long as a lawyer," he added.

Outside attorneys serves as problem-solvers and the additional resources they bring can be invaluable to in-house attorneys with too much on their plates. During his time as Expedite's general counsel, Campolo said he looked to bring in attorneys who could provide him with efficient solutions to problems outside his area of expertise.

"You need outside counsel to understand that sometimes things just require triage," Campolo said. "They require a very quick and down-and-dirty solution rather than getting the Magna Carta."