

# Top Ten Law Firm Don'ts

By Michael C. Ross

**E**ven in the best of times, a general counsel's relationship with outside counsel can amount to a love/hate affair. Many law firms have devoted significant resources to improving the quality of their work product and the level of service they offer to their corporate clients. Some firms have even engaged in efforts to control client costs and improve efficiency. Despite these efforts, many firms and individual outside attorneys routinely engage in practices that annoy in-house counsel and jeopardize the attorney-client relationship.

Here, in no particular order, are my top ten practice peeves that in-house attorneys should watch out for – and that outside counsel are advised to avoid:

## 1. Impractical Advice

When you need advice regarding an important legal issue, the last thing you want is theoretical legal analysis. How often do you get long legal memoranda, filled with discussions of cases, some of which are only barely relevant? What you want is a concise analysis of the risks and their consequences. Instead, what you often get are all of the reasons why your business people cannot do what they want. Most of all, you want your outside counsel to help you find a way to legally accomplish your company's objectives.

## 2. Lack of Risk Analysis

As in-house counsel, you need to know your chances of success in a case or on a motion. You operate with a budget, and your company will have to pay the losses as well as the legal bills. Asking for a quantification of the odds seems like a reasonable request. But how many times do you hear outside counsel ducking your question, offering the excuse that he or she cannot predict how a judge or jury will react? Experience should enable competent counsel to give a reasoned view of your chances of success.

## 3. Meter Noise

Have you ever been surprised, as you started a meeting or conference call, to find several more of your outside firm's lawyers in attendance than you expected? Why doesn't the lead attorney discuss with you in advance who from the firm will attend? (Perhaps it's in anticipation of your objection.) The outside lawyer may argue that attendance by specialists and junior attorneys is the most efficient way for them to "get up to speed" on the matter. Hogwash! The most efficient way is for the partner-in-charge to pay close attention and brief everyone after the meeting on what they need to know. Of course, if someone's attendance is necessary, that person should attend. But during my in-house career, the surprise appearance of extraneous lawyers often made it impossible to hear anything due to the noise created by all of those running meters.

## 4. Unresponsiveness

When an urgent legal question arises, you want to discuss it as soon as possible with your trusted outside advisers. Perhaps you're facing an external crisis that has potential legal consequences – don't they all? – or a question arises about your CEO's compensation package or relationship with the company's board of directors. You call your senior outside counsel for advice or to act as a sounding board to be sure that your instincts are correct. But when you dial the lawyer's direct number and no one answers, your call rolls over to a receptionist who informs you that the lawyer is not answering (as if you hadn't already figured that out). Your call is then transferred to the attorney's assistant, only to land in voice-mail purgatory (who knows if the assistant is away for just a minute or out for a week?). You could call back and insist on leaving a voice mail message directly with the attorney, that is, if voice mail isn't already filled up. But by now your frustration level has reached the point at which you're ready to call someone else. Then again, you could try the attorney's cell phone, leave a message or a page and hope for the best.

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Law firms need to remember that they are in the service business and that clients need to be able to find their attorneys or suitable substitutes as quickly as possible.

**5. Inflation**

No matter what the rest of the economy is doing, no matter how your company is faring and no matter what is happening to your management's salaries, bonuses and equity value, law firm hourly rates move in only one direction – up. Even if rates rise only modestly, your costs most likely are still rising faster due to “bracket creep,” which is caused by the increasing hourly rates of attorneys as they become more senior (and, admittedly, possibly more valuable to your company). Outside firms are not shy about seeking premiums for favorable results and completed deals, but where are they when the results are not so favorable or there are quality or efficiency issues? Firms that are focused on maintaining favorable long-term relationships are offering adjustments. The others are resisting adjustments with all the arguments they can muster.

**6. Failure to Estimate Costs**

Many outside attorneys seem unable or unwilling to provide useful budgets and balk at estimating costs. How often have you heard the excuse that they cannot predict what the other side will do in a case or a transaction? Granted, estimates may be difficult and depend upon some matters that are outside of counsel's control. Even so, none of that excuses outside counsel from giving estimates based on reasonable assumptions.

**7. Confusing Bills**

“Indecipherable” was the consensus word used by in-house attorneys during a discussion at a 2004 legal conference that focused on how to best describe bills they received from outside counsel. With firms now so intent on providing

highly intricate details (some say at the insistence of in-house attorneys), many bills no longer plainly show what has been done, who did the work and whether the work was handled as efficiently as possible. Billing against a budget should make all of this pretty clear. But billing remains an art that has been mastered by only a relatively small number of firms. Some bills include time logged by attorneys who are not working on the matter and entries that are meaningless to the client such as “telephone conversations,” “meetings,” “conferences” and “research.”

**8. Wasteful Marketing and Advertising**

How many of those generalized client memos and newsletters from outside counsel do you discard without reading? Perhaps it would be easier to count the ones you do read or at least browse through. How many firms send you memos on topics that have no relevance to your company's legal issues? Then there's that wave of law firm advertising – everything from informational messages to striking photographic images that seemingly bear no connection whatsoever to the practice of law. Have you or anyone you know ever hired a firm based on its brand advertisements in the Wall Street Journal or any other business or legal publication? Do you feel better or worse about your outside firm when you run across their expensive ads? Some general counsel argue that law firm advertising and marketing expenditures have contributed to the firms' rate increases.

**9. Staffing Surprises**

Without warning, a new associate appears on one of your cases or transactions. It's possible the lawyer's predecessor had to work on a more pressing matter for a more important client. Or perhaps the previous attorney left the firm. But why didn't the firm provide any warning and opportunity to discuss the selection of a replacement? Now you'll need to be prepared to ask

that you not be billed for the new attorney's learning curve and hope that the adjustment is fair.

**10. Shotgun Practices**

Does your outside firm send everything over to you by Federal Express or some other courier regardless of the urgency of the delivery? Does your counsel fax or e-mail you an entire document, along with a separate red-lined version, every time changes are made, no matter how minor the changes? Do you really need the table of contents, indexes, case citations and signature pages with every draft? Perhaps the firm has simply never paid much attention to these practices. Or, worse, maybe they've made a conscious decision that you have nothing better to do and really want to read – or reread – all of that stuff. Disturbingly, this shotgun approach may also find its way into the substantive legal analysis provided by your outside attorneys. Do you really need a memo – not to mention the subsequent bill for that memo – that addresses every conceivable legal issue and argument regardless of how important or remote they are? Some attorneys will manage entire cases that way if you let them.

**Speak Up!**

If it's any consolation, you're not alone if you have experienced some or all of these peeves when dealing with outside law firms. At the rates you are paying, don't hesitate to voice your complaints and insist on better service from them. ♦

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