

Keys To Creating A Successful Inside-Outside Counsel Partnership

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In an age when the Internet and technology reign supreme and data is increasing exponentially, the future of litigation is changing. Corporations don't have time or money to waste on stagnant legal plans and murky details; everyone is now operating in real time and decisions need to be reached faster. With these rapid changes, inside and outside counsel can no longer afford to simply work together; it is imperative that they work *well* together. Corporate counsel must forge strong working relationships with both outside counsel *and* services providers – relationships that are both dynamic and fluid as well as powered by effective communication. In this article we will outline a three-point process and two accompanying cycles that – if followed proactively – corporations will find helps their litigation efforts gain efficiency and effectiveness.

1. Assemble Your Winning Team

First and foremost, you must assemble your winning team. This may seem obvious, but putting together the best team for your matter goes deeper than

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picking the star litigators of Firm X. It is crucial that your vision for the case is aligned across the team. What are your goals? In what manner do you hope to achieve them? If outside counsel or your service provider has fundamental differences that clash with what you envision, you may need to consider if they are truly the best fit for a particular matter. In addition, know your limits as general counsel. Pick a team that you know has strength where you may have weakness. Consider the experience as well as the expertise that your team members have in the realm of your matter.

Trust is perhaps the most important pillar of setting up a solid team because it encompasses the previous points. Trust is built by having a team that is strong across all fronts and that operates with a unified intention. You must have all bases covered when the stakes are high. Forming a team you can trust will give you greater peace of mind because, let's face it, there are thousands of decisions that shape a case, and you can't be there to approve them all. Following these tenets will mold a team that is tailored to the nuances of your case and is ready to win. This is the first building block towards creating a streamlined workflow.

2. Set Up A Solid Case Infrastructure

Second, every case needs a solid infrastructure that will guide the movements of all parties involved and provide a reference in case fundamentals need to be revisited. A well-founded infrastructure is comprised of fluid communication, strategic planning, integrated technology and a regulated flow of information.

Fluid Communication

Fluid communication across counsel and service providers is key in an era when electronic discussions such as emails can evolve in multiple directions in a matter of seconds. It is inevitable that someone who shouldn't be included will wind up on the CC list of a forwarded email and someone that should be kept privy to any updates will be excluded. A communication protocol to lessen the frequency of these errors is essential. Who is the point person for each group and each level within that group? How often will you communicate and about what? By making these expectations clear at the outset of a case, you will avoid any misunderstandings and diminish the chance of scheduling difficulties or wasted time. Once you've established this, the point person can then gather, filter and diffuse information to all appropriate outlets so that no one is left out of the loop. Don't be afraid to reappoint or shift these roles as the matter unfolds naturally. Having the right point person for each group will simplify communication and help guarantee that all relevant parties have a voice. For example, a best practice would be to schedule a call before the Rule 26(f) Meet and Confer conference. This call should not only include your point person for outside counsel but your main service provider as well. Discuss what your goals are, how you can save money and how to balance these two aims for the most appropriate way to proceed. The service provider can provide valuable insight and understanding into the technicalities of your case that outside counsel may not be able to effectively convey to you. The leader from each of these three groups can then impart that knowledge to the rest

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of the team. A pre-meet-and-confer call will also prepare you for presenting a unified front once you come face to face with opposing counsel.

Strategic Planning

Strategic planning is another element of your case infrastructure. Come up with a workflow process that you can implement team-wide. Leverage the knowledge of your service provider to get their insights on how to best set up your case and succeed with their product. Not only will this save time and confusion when you bring new team members into the case, but it will help pinpoint problem areas within your process or breakdowns in communication that you will then be able to fix more quickly. Establish protocol for strategic workflow such as review and production procedures. If all team members are clear on how to interpret and tag documents, you will avoid mishaps such as the problem that Chicago-based McDermott Will & Emery faced when, in June 2011, J-M Manufacturing Co. Inc. sued the firm for damages claiming that lack of supervision over contract attorneys led to the production of nearly 4,000 privileged documents.

Integrated Technology

Integrated technology is also a crucial component needed in order to keep up with the real-time evolution of your case. Problems that may arise from technical incompatibility can waste a lot of time, money and resources in the middle of litigation when you could have addressed them at the outset of a matter. Think things through beforehand. What are the points at which technology will not seamlessly mesh across your team? You need to come up with a workflow for this situation or plan to use a hosted solution. If different segments of your team do end up using various technological solutions, how will you ensure that your data is sufficiently protected?

Regulated Flow of Information

This brings us to the last cornerstone of infrastructure: regulating the flow of information. Not only do you need a secure way for the team to access case information, but there needs to be a tight control of information visibility even within the team. A paralegal or an expert

witness may not have the same clearance as a partner, so how can you be sure that your data is not crossing these boundaries? Your technology needs to be scalable so that you can account for all levels of access without compromising the case. Being able to take data security to a granular level will become pivotal as more and more people are involved in the case. Separate logins for all users and members also becomes important so that you can have an accurate audit trail of the actions being taken and progress being made. Do not take the risk of contaminating your matter with issues that are easily fixable, such as letting attorneys Smith and Jones use the same account to review documents.

3. Implement Your Project

With everything in place, now it's time to implement your project. The hard work you've done beforehand will serve as a blueprint as the case progresses. Team leaders will always have a strong foundation to return to for guidance, consistency, and accountability. That being said, the process is not finished. It is never time to sit back and enjoy the show. Once you've put your project in motion you need to continuously follow up with two cycles: measurement and feedback, and training and education.

4. Overarching Cycles

Measurement and Feedback

The measurement and feedback process is something that you should make clear beforehand with your team. What type of measurement do you expect and how frequently do you expect it? Again, establishing these protocols will avoid groans and excuses later when these reports matter most. Take advantage of technology and the capabilities you have to measure all sorts of variables. You may want to keep tabs on how quickly the review is progressing or what percentage of your documents is being flagged as privileged. Taking these measurements will allow you to perform ongoing quality control throughout the lifecycle of the case and to catch a mistake before it becomes a disaster. Continuous reporting can help pinpoint problem areas in your matter, and you can then either reinforce your infrastructure or

adjust the infrastructure to better reflect the realities of the case. Consistently provide feedback – both constructive and positive – to your team to encourage the case to move swiftly in the right direction.

Training and Education

Training and education should also be constantly considered as technologies, case strategy and best practices evolve. Details of training and protocols that team members learn at the beginning of a case will most likely be forgotten in a few months' time. Therefore, consider providing brief "refresher trainings" on your technology or on relevant case points as the matter progresses to different stages. You may be unwilling to take the time out to do so, but consider how much efficiency you gain by using tools and knowledge efficiently and to full capacity the first time around.

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If you take away anything from this article, remember that even if a case has a start and an end, the way you approach managing your company's matters should not. Building a solid relationship with outside counsel and service providers and creating an infrastructure do not only give you the short-term benefit of a smoother and stronger case but the recipe for future success. The learning process that you go through as the case progresses can be applied to future matters. You should be constantly refining your system through the use of measurement, feedback, training and education to ensure that your team is always at its prime. Start being proactive right now by reflecting on the pitfalls of current or past matters, and find ways to improve by organizing and planning ahead.