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Changing conversations

How have the conversations changed between an in-house lawyer and an outside lawyer?

Tina Martini: The dialogue has actually shifted quite a bit over the last few years, much in the same way that the practice of law has shifted over the last few years. Bottom line: There seems to be a lot more expectations in terms of communication around the relationship, and in terms of what the outside counsel is going to deliver to the in-house counsel. ...

Especially in a bad economy, cost is always a very important consideration. There seems to generally be a lot less tolerance for ambiguity, particularly around cost. For example, if there is a cost overrun for a particular project, outside counsel these days are expected to shoulder that risk a lot more so than they used to. This is neither surprising nor unfair, frankly, given the way in which the legal profession and the landscape of law has changed over the last couple of years. Many would say this shift was a long time coming.

... Beyond the who, what, when and how much aspects to the conversation, there are also some other critical elements as well. Clients really want to know who is going to be working on the project, beyond just knowing who the relationship partner is. ... They want to know how much time is going to be spent by the different levels of attorneys, both as a cost check, as well as for the human element. ... Because they're going to be paying a lot of money for the services being provided, they want to know and develop a rapport with the people who will be providing those services.

A huge part of the conversation is and should be what are the client's expectations around the final work product. Sometimes the client is expecting a luxury car, sometimes they are expecting a scooter, and sometimes they

are expecting a skateboard. It really depends on the circumstances the client is finding themselves in, and what they really need at the end of the day and can afford.

One of my favorite discussions around this whole topic is the human interaction, right-brain, intuitive aspects to these conversations. The clients really need to feel like they are being heard. And they have to feel like their outside counsel is actively engaged in the conversation. If clients don't feel like their outside counsel really wants to help them at the end of the day, and is just running the clock and wanting to get paid, I think that really shifts the conversation in a way that ends up not doing wonders in terms of the client relationship. Sometimes what is not said is more important than what is said. ... Clients are charged with figuring out which of their outside counsel are driving value to the business and who is really driving great results. And there is an expectation among clients that their attorneys are going to be willing to take the time to understand their business. ... That they are going to be willing to make an investment, both in terms of time and emotions. ...

David Susler: ... The changes I've seen over the past year in the conversation really relate more to the structural elements of the relationship: more discussion about budgets, more discussion about alternative fees, more discussion about value, and evaluating the relationship. And I think these changes in the conversation are positive. They bring about value in the profession, generally, and in the attorney-client relationship in particular. If the conversations are had in the spirit of openness, honesty and trust, then it really is a win-win situation. ...

If you're having a full-disclosure conversation and you are talking about different

aspects of the relationship, you could gain greater budgetary certainty, better planning, and better phone communication, and this leads to a stronger overall relationship. These discussions can be difficult to begin, especially if you've never had them before. But they are actually much easier to have than people might think. ... The Association of Corporate Counsel Value Challenge provides a terrific model in which to hold these conversations. It outlines the beginning of the conversation, and it helps to frame the conversation in a mutually valuable way. It should be noted, these conversations aren't just about knocking down outside counsel fees. They are about changing the entire relationship and restoring value to that relationship. It's about the processes and mechanisms that you can engage in to restore value, which in turn lead to a stronger, healthier, longer-term relationship.

If you haven't been having these conversations, or if you haven't changed the conversations you've been having with your outside counsel or your in-house client, then I urge you to start. ... Two things I look for in hiring and keeping outside counsel are creativity and proactivity. If you initiate that conversation, you are demonstrating both of those things to me. The worst thing that can happen is your client says, 'No thanks, I'm really happy with the way things are.' But if you kick it off with simple questions like: 'Have you ever considered alternative fees?' or 'How are we doing?' that can lead to a more open and deeper discussion about things you've probably never discussed before or at least not anything you've discussed in any depth. And that can only bring about a positive change in the relationship. ■

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