



## PANEL DISCUSSION: THE CLIENT RELATIONSHIP - BEYOND THE CASE

Brad Marsh

Swift Currie McGhee & Hiers (Atlanta, GA)  
404.888.6151 | brad.marsh@swiftcurrie.com

### The Client Relationship – Beyond the Case

C. Bradford Marsh, Joseph J. Angersola, & Rebecca M. Beane

#### The Personal Touch of Outside Counsel

In 2015, BTI Consulting estimated that 60 percent of corporate counsels' primary outside law firms had been replaced in the prior 18 months.<sup>1</sup> The belief that better service could be attained elsewhere was cited as the number one reason for changing outside counsel.<sup>2</sup> According to a different survey, outside counsels' lack of responsiveness was cited as the culprit.<sup>3</sup> In yet another survey, respondents reported dissatisfaction with both communication and responsiveness from outside counsel.<sup>4</sup> Likewise, refusal to take direction has also been reported as a reason for termination.<sup>5</sup>

Notwithstanding the foregoing, many in-house counsel have forged successful relationships with outside counsel. As with most relationships, trust is where a strong partnership begins and ends.<sup>6</sup> In-house counsel seek outside lawyers that will be "inclined and positioned" to provide responsive legal assistance.<sup>7</sup> Indeed, responsiveness is often cited "as one of the

most important and valued qualities in outside counsel."<sup>8</sup> Effective and ongoing communication of expectations and case developments is also key.<sup>9</sup>

In-house counsel want to feel confident in their outside counsel's skill, expertise, and advice. The "advice must be tailored to the personality of the client."<sup>10</sup> This requires outside counsel to "understand the client's needs and preferences" and learn "the client's business, how it generally operates within its larger industry, and the hierarchy within the company."<sup>11</sup> Spending a day on site with the client and observing firsthand the corporation's business and personnel can be an invaluable and meaningful experience.<sup>12</sup> It "humanizes" the corporation and creates an environment for personal connections.<sup>13</sup> Building a foundation of trust also means developing a personal relationship with corporate counsel.<sup>14</sup>

#### Recognizing and Assisting with In-House Counsel's Corporate Responsibilities

Typically in-house counsel are responsible for managing all legal work performed for the corporation, including litigation.<sup>15</sup> In this management role, they are ultimately responsible for supervising the litigation, containing costs, and communicating exposure to senior management.<sup>16</sup>

<sup>1</sup> Amy B. Alderfer & Melinda Lackey, *Keys to Creating a Successful Relationship with Outside Counsel*, CORPORATE COUNSEL, Dec. 11, 2018, <https://www.law.com/corpcounsel/2018/12/11/keys-to-creating-a-successful-relationship-with-outside-counsel/>.

<sup>2</sup> *Id.*

<sup>3</sup> C1 Business Law Monographs § 7.05 (2019).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Forging Strong Relationships Between In-House and Outside Counsel, *Corporate Counsel Business Journal*, May 1, 2004, <https://ccbjournal.com/articles/forging-strong-relationships-between-house-and-outside-counsel>.

<sup>7</sup> C1 Business Law Monographs § 7.01 (2019).

<sup>8</sup> C1 Business Law Monographs § 7.05 (2019).

<sup>9</sup> See Amy B. Alderfer & Melinda Lackey, *supra* note 1.

<sup>10</sup> Forging Strong Relationships Between In-House and Outside Counsel, *supra* note 6.

<sup>11</sup> Amy B. Alderfer & Melinda Lackey, *supra* note 1.

<sup>12</sup> See *id.*

<sup>13</sup> See Amy B. Alderfer & Melinda Lackey, *supra* note 1.

<sup>14</sup> Forging Strong Relationships Between In-House and Outside Counsel, *supra* note 6.

<sup>15</sup> C1 Business Law Monographs § 7.01 (2019).

<sup>16</sup> *Id.*

Outside counsel's success is largely dependent upon the ability to develop an understanding of the corporate responsibilities, and thus the needs, of in-house counsel.

"The heart of an effective relationship with outside counsel is early communication, on as professional a level as the respective training and knowledge of the outside lawyer and inside lawyer-client permit. . . . This communication, to be effective, demands careful preliminary analysis of issues, some appraisal of alternative strategies, and an approach to the manner in which the work will be staffed and is likely to develop."<sup>17</sup> Outside counsel should recognize the value in proposing a litigation plan early and identify the anticipated timetable for recommended discovery, motion practice, and other litigation activity. The timely development of such a plan promotes consideration of alternative strategies, initiates in-house counsel's involvement, provides thoughtful and strategic direction for future handling, and avoids unnecessary costs. This assists in-house counsel in "evaluating the costs, duration and potential exposure of the corporation."<sup>18</sup> Moreover, an agreed litigation plan allows for outside counsel to prepare an accurate budget, which promotes efficiency and transparency.<sup>19</sup>

Corporate counsel often are required to provide periodic litigation reports to senior management and/or the board of directors, particularly in public corporations where the directors owe a fiduciary duty to the shareholders.<sup>20</sup> Financial exposure, setting appropriate reserves, and disclosure of pending litigation in financial statements are the primary concerns drive these reporting requirements.<sup>21</sup> For this reason, outside counsel's ability to engage in risk analysis, assess potential liability exposure, and predict the value the case is paramount.<sup>22</sup>

For these reasons, many corporations have begun to prepare and implement litigation guidelines articulating expectations of outside counsel, budgetary controls, and reporting requirements. Therefore, it is critical for outside counsel to adhere to such guidelines.

### The Business Aspects Behind Litigation

Understanding the "quantitative dollar trade-offs" for a corporation involved in litigation is a vital component to outside counsel's success.<sup>23</sup> This usually requires a shift from a legal-centric approach focused on the merits

of the litigation to a business-centric perspective. Each case should be approached within the context of the company's overall business objective and risk tolerance within the broader implications of the suit on the business operations of the company.<sup>24</sup>

Litigation is expensive. It is not uncommon for the projected legal costs of litigation to exceed the estimated value of the case.<sup>25</sup> Similarly, legal fees can drive litigation strategy and settlement negotiations. Nevertheless, the impact of legal fees on the case cannot be considered in a vacuum, particularly when outside counsel is defending the corporation in a lawsuit.<sup>26</sup>

The potential long-term consequences of the suit should also be duly considered.<sup>27</sup> "For example, if a corporation develops a reputation for 'buying peace' by paying up to settle lawsuits, that reputation may remove a deterrent to—and may even encourage—further suits filed by other parties."<sup>28</sup> Likewise, "[a] suit may present important issues, both for the reputation of the business, and for the future operational handling of the matter that gave rise to the litigation."<sup>29</sup>

Similarly, the impact of the litigation on the corporation's business function should be assessed. When the corporation's opposing party is a strategic business partner, employee, or governmental entity, salvaging the relationship or employee morale may take priority over the merits of the litigation.<sup>30</sup> Litigation is often a drain on the business, as discovery obligations, document production, depositions, and trial divert the company's personnel, senior management, and resources from their revenue-generating functions.

As demonstrated, litigation can affect the client in a variety of ways. Outside counsel will be well served by visiting with their in-house counterparts early and often to undertake a cost-benefit analysis of the litigation and assess the risks involved.<sup>31</sup>

### Diversity Efforts and Planning for the Future

It is apparent that corporate counsel view diversity as a critical criterion in selecting and evaluating outside counsel. In 2004, Sara Lee General Counsel Roderick

<sup>17</sup> C1 Business Law Monographs § 7.03 (2019).

<sup>18</sup> Id.

<sup>19</sup> Id.

<sup>20</sup> C1 Business Law Monographs § 7.08 (2019).

<sup>21</sup> Id.

<sup>22</sup> See C1 Business Law Monographs § 7.07 (2019).

<sup>23</sup> C1 Business Law Monographs § 7.08 (2019).

<sup>24</sup> See Jill Schachner Chanen, *The Strategic Lawyer*, ABA JOURNAL (July 2005).

<sup>25</sup> C1 Business Law Monographs § 7.08 (2019).

<sup>26</sup> See id.

<sup>27</sup> Id.

<sup>28</sup> Id.

<sup>29</sup> Id.

<sup>30</sup> See Jill Schachner Chanen, *supra* note 24.

<sup>31</sup> C1 Business Law Monographs § 7.08 (2019).

Palmore published “A Call to Action: Diversity in the Legal Profession,” which built upon the earlier 1999 initiative, “Diversity in the Workplace: A Statement of Principle.”<sup>32</sup> More recently, in January 2019, more than 170 general counsel signed an open letter indicating that they plan to give more business to law firms committed to retaining and promoting diversity.<sup>33</sup>

Such companies view diversity as not only the right thing to do, but the smart thing to do from a business perspective. Those that share the commitment to diversity believe that the benefit of various ideas results in a better work product. As indicated by American Airlines, “[o]nly by having a rich blend of cultures and viewpoints in our workplace can we achieve the understanding and spark the innovation that will keep us a strong competitor.” Similarly, Shell Oil Co. president and country chair stated in years past, “I’ve seen firsthand how diversity and business success go hand-in-hand.”<sup>34</sup> Moreover, advocates of diversity emphasize the importance of outside counsel to reflect the diversity that exists within a corporation, its customers, and the community.<sup>35</sup>

Given the perceived value and importance of diversity, some companies are asking partners for periodic

demographic billing reports to assess outside counsel’s commitment to diversity and to ensure the company’s expectations are being satisfied.<sup>36</sup> It is those firms who have embraced and demonstrated a commitment to diversity that are winning and retaining business.

Earlier this year, AdvanceLaw, a network of approximately 250 general counsel that helps find and retain outside counsel, announced a new mentoring program.<sup>37</sup> Through this program, general counsel and other senior lawyers from Fortune 500 companies will mentor diverse mid-level and senior associates at large law firms by providing guidance on building client relationships, client service, and career advice while developing relationships that may lead to future work.<sup>38</sup> The concept of mentoring or fellowship programs hosted by corporations for their outside counsel is not new. Such programs serve as an onboarding programs designed to train and educate attorneys; provide an insider’s view into the corporation’s business, operations, and culture; and develop next generation relationship partners. These programs benefit not only outside counsel, but also in-house counsel who want to ensure “the availability of excellent lawyers when needed, and the ability to assemble as large a team as an urgent situation might require.”<sup>39</sup>

<sup>32</sup> Morgan Morrison, In-House Counsel: Embracing Diversity: Your Business Depends on It, 68 Tex. B. J. 928, 929 (Nov. 2005).

<sup>33</sup> Debra Cassens Weiss, 170 Top In-House Lawyers Warn They Will Direct Their Dollars to Law Firms Promoting Diversity, ABA Journal (Jan. 28, 2019).

<sup>34</sup> Morgan Morrison, *supra* note 32.

<sup>35</sup> See Debra Cassens Weiss, *supra* note 26; Morgan Morrison, *supra* note 33.

<sup>36</sup> Morgan Morrison, *supra* note 32.

<sup>37</sup> Christine Simmons, Big Company GCs Sign On as Mentors to Foster Big Law Diversity, *The American Lawyer*, Feb. 25, 2019, <https://www.law.com/americanlawyer/2019/02/25/big-company-gcs-sign-on-as-mentors-to-foster-big-law-diversity/>.

<sup>38</sup> *Id.*

<sup>39</sup> C1 Business Law Monographs Chapter C1-7.syn (2019).

**THE CLIENT RELATIONSHIP  
— BEYOND THE CASE**

*swift / currie*

**MODERATOR:**  
**Brad Marsh |**  
**Swift, Currie, McGhee & Hiers**

**PANELISTS:**  
**Keri Mamorek | Beazley Group**  
**Bruce Batista | Sherwin-Williams**  
**Ken Diamond | Aimco**

*swift / currie*

## **From a Client Perspective:**

### **Areas Where Outside Counsel Can Set Themselves Apart**

*s/c*

**The Client Relationship - Beyond The Case**

## **1. The Personal Touch of Outside Counsel**

*s/c*

**The Client Relationship - Beyond The Case**

## **2. Recognizing and Assisting with In-House Corporate Responsibilities**

*s/c*

**The Client Relationship - Beyond The Case**

## **3. The Business Aspects Behind Litigation**

*s/c*

**The Client Relationship - Beyond The Case**

## 4. Diversity Efforts

*s/c*

The Client Relationship - Beyond The Case

## 5. Planning for the Future: Mentoring and Succession Planning

*s/c*

The Client Relationship - Beyond The Case

## 6. Other Differentiators

*s/c*

The Client Relationship - Beyond The Case

**THANK YOU!**

*swift / currie*



## C. BRADFORD MARSH

Partner

SWIFT CURRIE MCGHEE & HIERS (Atlanta, GA)

404.888.6151 | [brad.marsh@swiftcurrie.com](mailto:brad.marsh@swiftcurrie.com)

As demonstrated by representative work, Mr. Marsh is an accomplished trial lawyer who has successfully tried to verdict dozens of cases. He has handled a variety of cases in different venues, including both state and federal courts. Much of his work has been in the areas of products liability and other complex, large-exposure matters. Experience and success in court enable Mr. Marsh to be wise counsel who, if the situation warrants, can negotiate favorable resolutions short of trial. Mr. Marsh has also been able to validate his opinions and results on appeal.

Over the years, he has been a frequent lecturer to client, industry and legal groups, presenting in the areas of products liability and trial techniques. Mr. Marsh is an appointee of the Review Panel of the State Disciplinary Board of the State Bar of Georgia, serving as chairman in 2004. Mr. Marsh is also a member of the Formal Advisory Opinion Board of the State Bar of Georgia and was elected chairman in 2014.

Mr. Marsh has been favored with an "AV" rating since early in his practice. He has been consistently named by his peers as a Georgia Super Lawyer by Atlanta Magazine. He also served on the board of a community hospice, taught Sunday School and sings in the church choir. He is happily married and the father of two daughters.

### Practice Areas

- Automobile Litigation
- Professional Liability
- Products Liability
- Premises Liability
- Medical Malpractice
- Environmental Law
- Employment Counseling & Litigation
- Commercial Litigation
- Catastrophic Injury & Wrongful Death
- Trucking Litigation

### Awards and Recognition

- Georgia Super Lawyer, 2005-present
- The Best Lawyers in America®, 2016-present
- "Lawyer of the Year," Best Lawyers, 2017
- AV Preeminent® Rating, Martindale-Hubbell Peer Review

### Education

- University of Georgia School of Law (J.D., 1984)
- University of Georgia (B.A., 1981) (Omicron Delta Kappa, Blue Key [President] and the Mortar Board Honor Society)

