



Michael C. Ross

## General Counsels' Pet Peeves

By Michael C. Ross

It has been three years since I wrote a column about some of the pet peeves shared by general counsel, and it is time — perhaps past time — for a sequel. By canvassing some current and former GCs, I have collected some new issues. This is not to suggest that the prior list of peeves has gone away, but only that in-house attorneys are raising additional quality, service, cost and relationship issues.

### Quality and Service

A common complaint is that outside lawyers simply fail to follow instructions. A good example is the company that develops an effective and efficient strategy for defending recurring litigation. In-house counsel explains to each local counsel the strategy, which significantly limits discovery and usually leads to early summary judgment. Frequently, local counsel ignores the plan and embarks on costlier and riskier defenses.

Obviously, timeliness is important to clients. Even though corporate counsel knows the schedule for disseminating board materials in advance of meetings, they often wait until the last minute to suggest additional agenda items that could have been proposed much earlier. Outside litigators know the deadlines for filing motions and other papers but wait until the day before they are due to submit them to in-house counsel — and then get frustrated that in-house counsel cannot drop everything else they're doing in order to approve the filing.

It should be safe to assume that, given the high hourly rates being charged, the client will get solid legal advice. All too frequently, decisions made after what should have been thorough consideration by outside specialists have to be changed because some specialist was not consulted. A law firm will have contracts or leases drafted in an office in one state, only to have to send them for substantive revision to their lawyers in the state where they

were originally intended to be used. As cases near trial, outside counsel's estimate of the downside increases without there being any new information to justify the increase.

A column on relations with outside counsel would be incomplete without mention of responsiveness. One in-house attorney reports that one of her outside lawyers used to return calls and leave messages after hours, on weekends or at other times when she was unlikely to be available. That outside lawyer has since been replaced.

### Cost Issues

Containment of outside legal costs continues to be one of the top priorities of in-house counsel. By now, outside counsel must know that legal departments are under a great deal of pressure to reduce costs. Yet many outside attorneys seem to be completely insensitive to the problem.

Numerous complaints relate to budgets. Even if in-house counsel are successful in getting outside counsel to create a realistic budget (which can be a frustrating endeavor), many outside attorneys ignore it. They do not track costs incurred against the budget, rarely consider it when making tactical decisions and fail to report overages in a timely manner.

Staffing can be either efficient or excessive. Many firms overstaff matters, fail to leverage their attorneys' expertise to the advantage of their clients, or both. In many cases, in-house attorneys learn of staffing decisions and changes only after reviewing the bill.

Managing matters to prompt resolution, as circumstances allow, often translates directly into reduced total costs. Nonetheless, many outside attorneys are too busy to push matters along and are quite content to let them drag on, thereby increasing total costs.

In-house lawyers continue to raise lots of complaints about billing. "Take it or leave it" billing (including fees for busted deals),

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whether the bill is based on hours and rates or some other method, is not well-received, to say the least. Indeed, law firms may find that a “take it or leave it bill” is the last one the client pays.

My favorite billing story comes from a former general counsel (now

about the company’s interests and objectives. He did not get any work from the company. One general counsel describes the attitude of outside lawyers as “arrogant.”

It is not just Rodney Dangerfield who gets no respect. Apparently in-house attorneys suffer a lack of re-

Do any of these issues sound familiar? If so, you would be in good company trying to get better quality, service and cost control as well as a more beneficial relationship from outside counsel. If you do not get them from current counsel, look elsewhere.

If you have other pet peeves, please e-mail them to me at [info@altmanweil.com](mailto:info@altmanweil.com) so I can use them in the next sequel. ♦

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on the board of directors of a public company) who tells of his experience as a new GC. He was invited by the billing attorney at one of his outside firms to meet some of the partners at the firm, which did a significant volume of work for the company. This GC turned down an invitation to have the meeting at a fancy restaurant (good thing!), settling instead on lunch in one of the firm’s conference rooms. Imagine his surprise and chagrin when he received a bill from the firm for not only the partners’ time but also the catered lunch. Needless to say, he did not pay for either.

### Relationships

Law firms like long-term relationships with clients. And in-house counsel generally like long-term relationships with law firms. So why do outside counsel treat in-house lawyers the way they do?

One former general counsel describes an in-person pitch by a high-profile, big-city lawyer who spent over an hour name-dropping, telling war stories and extolling his credentials. He had apparently done no research on the company and its legal work and he asked nothing

spect from some outside counsel. One former general counsel reports that some outside attorneys deigned to talk about cases only with the director of litigation, refusing to discuss anything important with in-house attorneys assigned to manage the cases. Other GCs complain that outside counsel go around the legal department entirely and discuss important subjects with senior business executives, without inside counsel’s knowledge.

A recurring problem for general counsel stems from law firms’ requests for up-front, blanket unconditional waivers of future conflicts of interest. The message is clear: The law firm’s potential business with other clients is more important than the new business with the client at hand. Outside lawyers often say their firms have a policy of requiring waivers, telling clients that they cannot proceed without one. Law firm management should think again. Most GCs are very reasonable in granting waivers on a case-by-case basis. But law firms do not yet have monopoly power, and many general counsel will simply refuse to sign blanket waivers and instead take their legal work elsewhere.

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