



In-house Counsel: The Face of the Company

Law Department Management



Much is written today about how the in-house lawyer is valuable to the company — to the degree that they are a business partner — providing not only legal but business advice, helping to form strategy, and having a “seat at the table.” All of that is true, but I would like to propose that the company

lawyer can have a positive impact on the business of the company, and help shape the business relationships, simply by virtue of what they do as lawyers. They can do this through the contract negotiation process itself.

From when we send our first draft to the customer until the final version signed by our CEO, for that time we are the face of our company, one of the first sustained interactions the potential customer will have with us. While the sales team has made the first contact and laid the commercial groundwork for legal to come in, we do so at a critical stage, before the potential “marriage” between the customer and our company. No contract has been signed and the service has not been provided yet, but the customer has embarked on a days and potentially weeks long interaction with our company — or with “legal” (i.e., with us.)

In many cases, our interaction is not only with in-house counsel for the other side, but also with key business and technical people, and therefore our communications with the potential customer is a reflection of the company we represent.

Of course, our technical solution and pricing are key factors in closing the deal, but as in life, the relationship and communication can be as if not even more important.

In that relationship, do we keep our word to ourselves and to the customer? Do we make and meet deadlines to provide or respond to the next draft? Answering yes to these questions will show confidence, responsibility, and reliability to the customer, creating a positive experience for the potential business partners. Further, do we impart a sense of urgency, particularly with strategic customers, and not that we will get to their comments when we have time? In the customer’s eyes, this can convey a sense of how our company will respond to their concerns and needs along the way.

The work of the in-house counsel in contract negotiations does not simply revolve around the negotiation points raised throughout the process, but most importantly involves how we manage the process, and the relationship itself. As in any relationship, the “how” can be even more important than the “what.”

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In the contract dialogue, do we show that we hear the concerns and priorities of the other side, and not just our own position? Listening to the other side is crucial as a lawyer for negotiation, and helps impart a sense that our company can be sensitive to the customer’s concerns and issues down the road.

Do we show that we distinguish between main issues and those less critical; that we see the customer’s time (and ours) as valuable and not to waste it on minor points; that we and our company want to go straight to and tackle the hard issues, now and along the business way?

Do we protect the interests of our company in a strong but respectful manner, finding mutually beneficial compromises and showing that the other side their relationship with us can be a “win-win”?

When the customer's comment is unclear and seemingly to our disadvantage, do we reflexively delete their comment and position, or take the time to first clarify what they meant? The latter approach can signal a willingness to try to understand our business partner, and even reveal some common ground.

After the contract has been signed and filed away, do we remain attentive to the other side's needs? If months later we receive a request from customer's counsel for a minor amendment, do we engage in a timely manner, showing we see the relationship as a long-term investment?

Specific circumstances can invite opportunities to impact on the relationship in specific ways. Consider a scenario in which a relationship with a key supplier of the company has gone south, and you're trying to get it back on sound footing. The connection was still at a delicate stage when the contract negotiations on the new framework began. The conference call included not only the supplier's lawyer but also key business people from their side.

I was leading the call, and on the one hand, it gave me the opportunity to be part of the rapprochement effort, by emphasizing our mutual desire to move forward with the contract and relationship for the benefit of both parties. On the other hand, as one of the main contract points in contention was a central issue about minimum commitments they wanted us to make, it provided me the chance to drive home a key business position from our standpoint.

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In another negotiation, with a potential new tier-one customer, the discussion moved to the service level commitments we would make. To know what we could provide contractually required a good feel for the technical side of our services, and having that helped convey the impression that we are a company that knows what it is talking about, that even its lawyers live and breathe our service offerings.

Sometimes the customer relationship may be going a bit rocky from the delivery or service side. If as in-house counsel we have an opportunity to step in and provide some quick service and regular communication (e.g., implementing a new service order template that both sides are happy with), then it can provide some breathing space for other segments of the business to regroup in terms of their own communication and relationship with the customer.

When we have a negotiation with a multi-billion dollar company, we can help shape our company's image in the customer's eyes by how we conduct the negotiation and hold our ground. By not being deterred but rather speaking as equals, we can be part of creating the message that our company is a worthy partner on equal footing.

While the impacts I describe are largely psychological (as counsel we are not setting the price or delivering the service), I would argue that psychology is at the heart of relationships.

So the next time you send the first draft to a potential new customer (or receive it), remember that you're embarking not only on another legal journey, but on a personal and business one, as well. One in which by just doing what we do as lawyers — with professionalism, confidence, and sensitivity,

we are already doing an important job in molding the relationship.

In short, don't just see yourselves as "legal" who takes care of the contract, but rather as key business partners who have a role to play in shaping the face of the company.

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