

FIVE SECRETS TO SUCCESSFULLY

NEGOTIATING WITH... Your Own Side



CHEAT SHEET

- *Roadblocks.*
When negotiating with internal clients, lawyers often face roadblocks, such as perception-related issues, pushback, exclusion, and limited involvement from the client.
- *Overcoming obstacles.*
Lawyers should seek to train internal clients on agreement-related issues, build a stronger rapport, and discuss expectations and frameworks from the start.
- *Multiple roles.*
Lawyers who are successful at working with internal clients play multiple roles: teammate, protector, facilitator, matchmaker, gardener, translator, and solutionist.
- *Nine F's.*
To accomplish positive collaboration with clients: be a first-rate attorney, fast learner and responder, focused, facilitator, friendly, forecaster, flexible, finder of solutions, and finisher.

By Tammy Fanning, Danda Zhao, and Alan Fishel

You frequently hear that to be a great attorney, you must excel in your interactions with the other side. If you are a transactional attorney, in addition to drafting excellent agreements, you must also be a strong negotiator. If you are a regulatory attorney, in addition to knowing the applicable laws, you must also be able to effectively work with the relevant agencies. As a litigator, in addition to excelling at convincing a trier of fact of your client's position, you also must be adept in your interactions with the opposing party. All of that is true, but none of that is sufficient. To be a great attorney, you also must be able to excel at working with your internal clients, in other words, your own side. As everyone knows, that is sometimes easier said than done.

We often hear, “That can’t be done, it would kill the business,” only to find out a day or a week later that it can.

Reasons for disconnects between attorneys and their clients

There are a PLATE full of reasons that excelling in your interactions with your own side is far from a given. For example, there can be any of the following:

- Perception-related issues
- Little involvement from clients when more is needed
- Automatic pushback
- Timing-related issues
- Excluding the other group, when involvement of both business and legal is necessary

Perception-related issues

Many internal clients view attorneys in a negative light at least some of the time. Often they believe attorneys are too risk adverse as to the legal issues, fail to understand the technical or business issues, or lack a full appreciation of the commercial risks that would arise from losing the deal or foregoing the project. In short, some clients believe that lawyers are obstacle — rather than option — oriented. They may have this belief as a result of an attorney they worked with in the past, a friend or family member who had a bad experience with a lawyer, the (often unfair) stereotypes sometimes associated with attorneys, or many other reasons. But whatever the reason, you have to change their perceptions,

and generally you can if you follow the steps described in this article.

Little involvement from clients when more is needed

In many instances, you will need the internal clients to have greater involvement than they would like. The reasons they might want very limited involvement in matters in which you are participating are not only that they have many other competing commitments, but also that they don’t understand, or don’t want to understand, what is required from them. Frequently business people want to stay as far away from the legal matters as possible, because they view these matters as complex, confusing, and imposing insurmountable hurdles, or, paradoxically, unimportant.

Automatic pushback

Whether with respect to transactional or regulatory matters, many internal clients are, at least initially, unwilling to consider alternatives that would greatly reduce the legal risks to the organization. We often hear, “That can’t be done, it would kill the business,” only to find out a day or a week later that it can. It is important that you help open their eyes to the options for successfully attacking whatever the issue may be without incurring unacceptable legal risks.



Tammy Fanning is global head of law — product liability/product integrity at Continental.
tammy.fanning@continental-corporation.com



Danda Zhao is deputy general counsel, head of Asia/Pacific digital law at Continental.
danda.3.zhao@continental-corporation.com



Alan Fishel leads Arent Fox’s communications and technology group. He does regulatory and transactional work, and he also conducts training for clients’ legal and business teams.
alan.fishel@arentfox.com

Timing-related issues

Have you ever had an instance where an internal client has given an unreasonable deadline for completion of an agreement or for legal feedback with respect to a project? When an audience of attorneys is asked this question, the response doesn't include words — it's simply laughter. The reasons for this recurring disconnect are three-fold.

First, many internal clients simply do not know how long it will likely take the legal department to complete its portion of the work. Second, the duration of a project is often not within the sole control of the legal group. For example, if you are negotiating an agreement, the actions of the other party, of course, will also factor into how long it will take to complete the document. Similarly, with respect to regulatory or litigation matters, the applicable agencies or courts will have a huge say in the length of time involved from the commencement of the matter until its completion. Third, internal clients are often extremely interested in expediting the completion of a matter and pushing for highly aggressive, if not impossible-to-meet, deadlines because it can impact their bottom line. To paraphrase Upton Sinclair Jr., it is difficult to get people to understand something, when their salary depends on them not understanding it.

Excluding the other group, when involvement of both business and legal is necessary

Some internal clients seek to exclude their attorneys from important phone calls or meetings because they do not believe there is a need to include the attorneys, or, even worse, they are worried about what the attorneys may say. That is, they are concerned the lawyers' input may undermine the deal or project. On the other hand, attorneys

sometimes get ahead of their clients by making changes to agreements, or providing recommendations regarding regulatory actions to take, that are unnecessary. When this occurs, it is often the result of the attorneys lacking sufficient information regarding the services, products, or other circumstances involved. The activities described in this section can delay the deal or project and, in some extreme instances, may even derail it.

The five secrets

To overcome the disconnects discussed above, there are five steps each attorney should take.

1. Recognize your specific value to the organization

It is critical that you fully recognize the value you add to your organization. Every attorney knows they frequently provide meaningful input, so we do not mean just a general recognition, but rather you should step back and examine specifically what you bring to the workplace that enhances the success of your employer. For example, with regard to working with internal clients, the best lawyers are at times a (1) teammate, (2) protector, (3) facilitator, (4) matchmaker, (5) gardener, (6) translator, and (7) solutionist.

Teammate — It is important not only for the clients, but also for you to recognize that you are their teammate. You are on the same side trying to get the deal or project completed. The clients may say something or act in a manner that makes you feel you are on different sides, but never forget you both should have the same objective — which is whatever is in the best interest of the organization. When you are interacting with clients, always keep in mind that you are their teammate and that you should act consistent with that belief. If you adopt this approach, most

Have you ever had an instance where an internal client has given an unreasonable deadline for completion of an agreement or for legal feedback with respect to a project?

Without a strong point guard, a basketball team will struggle. Similarly, without an excellent facilitator who takes the lead on a deal or project, it is highly unlikely that the matter will move forward smoothly.

likely they will eventually view you in that light as well.

Protector — Clients may want to take actions that they do not realize will violate applicable laws or otherwise expose the company to unacceptable levels of risk. As the protector, you help them avoid making these types of mistakes.

Facilitator — Without a strong point guard, a basketball team will struggle. Similarly, without an excellent facilitator who takes the lead on a deal or project, it is highly unlikely that the matter will move forward smoothly. Attorneys do not always have to be the facilitator. Sometimes clients will take that role — but if they don't, you need to do so.

Matchmaker — When negotiating an agreement, you need to make sure that the written terms match the clients' and their counterparts' oral understanding of what the business deal is. With respect to a project, given the legal issues that may be involved, you must ensure that the parties' path for moving forward is consistent with the company's risk tolerance and that any other legal issues that may need to be addressed are adequately handled.

Gardener — Attorneys frequently have to find the holes and make sure they get filled in. For example, when negotiating an agreement, lawyers will often ask their internal clients, "How is X being addressed by the parties?" or "Who is paying for Y?" Quite often the answer back from the client is, "That's a good question, we have never discussed it with the other side. I'll reach back out to them." Someone has to recognize these holes exist and make sure they are properly filled in, and often that someone will need to be you.

Translator — With respect to agreements, the "translator" role involves the attorneys explaining to their clients what the terms mean, what the other side is seeking to accomplish, what tactics, if any, the other party is using to try to get your side to agree to something, etc. Often the translation comes in the form of a written list of issues that takes the disputes out of the world of legal language and into the easily understandable wording that lay people can use to comprehend the issues and hopefully resolve the matter. In the regulatory or litigation context, this role involves translating what rules, regulations, decisions, or other legal documents mean generally and how they may apply to your scenario.

Solutionist — Attorneys often help solve the problems clients have. Whether it is devising a compromise that works for everyone during a negotiation or finding another way to move forward with a project so that it will not impose undue legal risk or result in violations of law, lawyers come through for their clients constantly.

The bottom line is before you can, through your actions, convince clients that you are a key cog in the successful resolutions of their deals and projects, you must do one thing upfront — convince yourself. The above description provides just a

brief overview of some of the ways in which attorneys are invaluable to their clients.

2. Training clients on agreement-related issues and other legal matters

Training clients is a win-win-win-win-win endeavor if done correctly. Correctly means that the training must be not only highly informative, but also extremely interesting and interactive. If the clients are looking at their phones or laptops throughout much of a training session, you have accomplished very little. If they are engaged, you can make a world of difference. With training, here are a few wins to expect:

Win — Clients get to know you better under more relaxed circumstances.

Win — Clients will realize you are a first-rate attorney.

Win — Clients, to a far greater degree, will recognize the value you bring.

Win — Clients will understand at some base level the general issues and amount of work involved in what you do, which will also give them a better sense of how long it takes.

Win — Agreements and other legal matters move away from being a scary Rubik's Cube that clients do not want to get near. Instead, they begin to feel empowered. This does not mean that they will ever know nearly everything you do with regard to legal matters — but it does mean they can start to get on the same wavelength as you regarding what is involved and how important what you do is.

As noted author Wayne Dyer once said, "If you change the way you look at things, the things you look at change." In the same vein, if you change the way your clients look at agreements, legal issues, and you, they may very well believe that all of the foregoing has changed — and for the better.

3. Building a strong rapport with your clients

Building a strong rapport with your clients is extremely important, and this groundwork, when possible, should be done well ahead of working with them on a matter. Training is a critical step in that regard, but since training is not usually done on a frequent basis, more ways to build rapport are generally needed. Attend some of their business team meetings, take them to lunch, find other opportunities to get to know them — and have them get to know you. The more they know and respect you, and the more you know and respect them — outside of a specific deal or project — the easier it will be to work well together on deals or projects and to iron out any differences quickly. Moreover, make sure you learn who is who in your organization and that you get to know anyone who will play a significant role in the organization's success with respect to the matters in which you are likely to be involved.

4. Setting an upfront framework and expectations with respect to responsibilities

With respect to litigation or regulatory matters, many attorneys establish a client communications plan and a structure to ensure that there is continuous tracking of what is occurring, what needs to occur, what will need to be approved, and so on. With respect to deals, it is important to have a plan in place with respect to what documents will need to be prepared or reviewed, what phone calls or meetings will need to be scheduled, and so on. Ensuring the client has a clear understanding of at least a rough estimate of the time commitment expected is crucial, as they typically need to build in time to be engaged with the legal topic, as well as stay on top of their “day job.”

Both you and the clients, of course, also need to understand your roles

and what needs to be done by each of you with respect to any of these matters. It likely will be up to you to ascertain, or at least help determine, who will be doing what and when they will be doing it. Therefore, you must figure out early on what questions you need to ask, what documents you need to see, and what people need to be involved. You may not know all of this on day one, but if you get off to a good start with the initial questions you ask and preliminary guidance you provide, and make it clear you may have more questions and may need more information, you can continue to progress in a way that will likely lead to success. You should be very clear with respect to what you expect from each of your clients, as well as yourself. The goal is to avoid having clients disappear when you need them most or to say “I didn't realize that was my responsibility.” Often, you will want to put much of this in writing so that you can refer them back to emails in which they agreed that they understood what they needed to get done, as well as the date by which they needed to complete it.

For those attorneys who work with a client overseas, setting up this framework can prove to be more challenging, yet even more important. Under these circumstances, the reality is either the attorney or the client is working very early or late in the day to deal with the matter. Taking this into consideration and addressing it upfront by setting workable times to communicate will provide efficiency and express to the client you are actively addressing this additional challenge.

5. The nine F's

To work well with clients, it is important that you act in a manner, and that clients view you as acting in a manner, consistent with the nine F's, which are as follows:

Building a strong rapport with your clients is extremely important, and this groundwork, when possible, should be done well ahead of working with them on a matter.

- First-rate attorney
- Fast learner and responder
- Focused
- Facilitator
- Friendly
- Forecaster
- Flexible
- Finder of solutions
- Finisher

First-rate attorney. It would take pages to describe every possible attribute of a first-rate attorney, but some of the ones that stand out to us include: (1) knowledgeable on the relevant subject matter; (2) analytical; (3) credible (and this applies not only to honesty, but also to meeting your deadlines and refraining from being unduly aggressive or exceedingly conservative with respect to your advice); (4) articulate (you can be brilliant, but if the clients cannot understand what you are saying, your advice will be rendered ineffective); (5) interesting (if they are not paying attention when you are talking, you may as well be talking to yourself); (6) confident, but not arrogant (if they do not believe that you have confidence in what you are saying, why should they?); (7) willing to recognize that when it comes to solutions perfect is often the

enemy of the good; and (8) ready to speak up and push back respectfully where necessary.

Fast learner and responder/ Focused. You must be willing to quickly get up-to-speed on everything you need to know, bring your business as well as legal hat to internal meetings and calls, and respond quickly to requests from clients even if it is just to let them know the date by which you can complete something. You must always strive to meet the deadlines you previously agreed upon and to go the extra mile when necessary. You should also never forget that while what you say matters a lot, so does what you hear. You need to be a great listener and focused on what they are telling you.

Facilitator. See earlier discussion under 1. Recognize your specific value to the organization.

Friendly. It does not matter how smart and analytical you are, if you are someone that the business teams dislike because of how you treat them, whether it is your words or your tone, you will have lost them — as well as your ability to work well with them. Always treat them with respect, keep your cool, look for opportunities to compliment their ideas or strategies, and never make them

ACC EXTRAS ON... Internal negotiations

ACC Docket

Small Law: Outline, Outline, Outline (March 2018). www.acc.com/legalresources/resource.cfm?show=1480853

The Value of Acknowledging Your Internal Client's Good Work (Nov. 2016). www.acc.com/legalresources/resource.cfm?show=1441528

Sample Form & Policy

Contract Process and Negotiation Playbook Structure Handout (March 2018). www.acc.com/legalresources/resource.cfm?show=1479758

Top Ten

Top Ten Do's and Don'ts for Successfully Working With Your Side When Negotiating Agreements (Jan. 2017). www.acc.com/legalresources/publications/topten/negotiating-agreements.cfm

Program Material

Negotiation Casting Call: Learning Advanced Negotiation Techniques by Playing Your Part (April 2016). www.acc.com/legalresources/resource.cfm?show=1449115

ACC HAS MORE MATERIAL ON THIS SUBJECT ON OUR WEBSITE. VISIT WWW.ACC.COM, WHERE YOU CAN BROWSE OUR RESOURCES BY PRACTICE AREA OR SEARCH BY KEYWORD.

feel that they have asked a stupid question or raised a dumb idea. We all know plenty of nice ways to let someone know a certain suggestion they made may not work — use any one of those ways to so inform them.

Forecaster. Accurately forecasting what may occur can add a lot to your credibility. This is often easy to do given your prior experiences. Of course, never promise an outcome you cannot possibly guarantee.

Flexible/Finder of solutions. Lawyers have the (often unfair) reputation of being the voice of “no,” “the business prevention unit,” or even “the bonus prevention unit,” (i.e., inflexible). If you show your flexibility, and that you are option-oriented, not obstacle-oriented, you will quickly gain the clients’ admiration. With respect to finding solutions, brainstorming often works, and it also makes everyone feel valued and that they are part of the team that found a solution. Also, don’t forget that you should not take dismissive claims that a solution “can’t work” at face value. So many times people have told us (and we are sure have told you) that X cannot be done, and many times those people have been incorrect. In a similar vein, when people are making suggestions to you for solutions, before you immediately dismiss them, think twice and maybe even three times. That is, don’t look for reasons why something won’t work, look for a way in which it can.

Finisher. Some attorneys are fine with respect to large matters up until the time they have to give a sign-off and then they get nervous. Always have confidence in yourself, and keep in mind that while approving a deal you should not have may be a problem, so is repeatedly refusing to approve deals you should have. Do not be scared to authorize moving forward when your instincts are telling you it is the right thing to do.

Conclusion

Successful attorneys must never forget the importance of working well with internal clients nor take it as a given that such will occur. Some clients will be easy to deal with, others not so much, but you can succeed with just about anyone if you follow the five steps described above. **ACC**