

# The Year-End Discussion With Outside Counsel: The General Counsel's Guide

By **Kellye Walker and Cari Dawson** | October 29, 2018 at 01:17 PM

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There are scads of articles that discuss the changing role of the general counsel and the heightened expectations of today's law department. To deliver on those expectations, many general counsel have implemented a variety of processes and programs designed to measure the value and effectiveness of the department. There is no question that the value delivered by the law department is inextricably linked to the department's relationship with and management of its outside counsel. As a result, general counsel are even more focused on the various elements of that relationship and showing how a shared commitment to building a long-term strategic relationship benefits the corporation, general counsel, and outside counsel alike.

From the perspectives of both a general counsel *and* an outside attorney, the “year-end” discussion can be a key part of building that relationship.

Measuring the effectiveness of any relationship can be a bit challenging. Yet for general counsel and outside counsel who view their relationship as a true partnership instead of simply a commercial engagement, the efforts to

measure the relationship's effectiveness and develop a discernible set of criteria that can be used to foster continual improvement. It can be a highly productive joint effort.

From where general counsel sit, they should be encouraging their primary outside counsel to put themselves in in-house counsel's shoes when preparing for discussions with the CEO and other C-suite members about the law department's performance. Outside counsel can help shape the narrative by making sure the general counsel has clarity around a set of core questions. Though the CEO is not likely to ask these specific questions, having answers to them will allow a discussion with the CEO to go beyond containing costs and to focus on delivering value—the operational and commercial impact delivered by the partnership between the law department and outside counsel. These questions include: How does the department evaluate the performance of outside counsel? Is there an effective method for providing and receiving feedback as it relates to outside counsel? How does the company obtain the level of client service, work product, and desired outcomes from its outside counsel? How does the company ensure that its outside counsel understands the company and the industry, is proactive, and identifies opportunities and threats?

Key to addressing these questions is a well-honed point of view and methodology from outside counsel that make the end-of-year meeting a valuable tool for not only understanding more deeply their client's legal needs but also their businesses and industries, competitors, and opportunities and threats.

From the perspective of outside counsel, the year-end meeting is a golden opportunity to seek and provide feedback and to glean ways to make the client relationship even stronger. While it is important to ask for client feedback regularly throughout the year (at a minimum, once a quarter), the year-end meeting is a deep dive to examine the law firm's overall relationship with the client and how the firm (as a whole) can provide greater value and efficiency.

General counsel should use the meeting to address a wide range of issues such as communication, process improvement, efficiency, added value, budgets, and costs, and to provide recommendations for risk mitigation and business opportunities. By examining specific engagements and projects over the course of the year, it is easier for both the general counsel and outside attorney to identify broader issues and trends—positive and negative—as well as areas for improvement and opportunities to add value and to enhance the relationship.

Given the potential wide-ranging scope of the discussion, general counsel should provide clear expectations about the topics to be discussed. Consideration should also be given to asking outside counsel to prepare a document in advance of the year-end meeting that is both backward- and forward-looking.

That document should:

1. Identify the key engagements, identify the lead lawyers at the law firm and the in-house counsel who worked together on the engagements, and provide a status update, significant rulings (if any), next steps, and/or outcome for each engagement. Importantly, always include a

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"Lessons Learned" in this section to use in a constructive way to acknowledge the need to make changes and avoid what didn't go well and retain permanent specific workflows or procedures that worked exceptionally well.

2. Identify non-billable engagements and projects that outside counsel worked on with the in-house counsel, such as arranging speaking or publication opportunities for the in-house counsel, co-authoring or ghost writing a paper, nominating an in-house counsel for an award, getting in-house counsel free passes to attend outside CLEs, or jointly doing a CLE at the company's offices based on input from the in-house counsel.
3. Identify internal non-billable projects at the law firm that enhanced its level of service, such as sending team members to CLEs on topics relevant to the industry or practice areas of particular concern, subscribing to certain periodicals relevant to the industry, and having internal team meetings (non-billable) among the lawyers who work on the company's matters to ensure coordination and efficiencies.
4. Address at a high level the effectiveness of budgets and demonstrate the reasonableness of fees.
5. Use (1)–(4) to flag what the law firm can do in the future to mitigate the company legal team's legal risks, strengthen the relationship between both teams, and be more efficient.

Because outside counsel may tend to provide a very detailed document, it should be made clear that the document is intended to be very high-level and meant to facilitate discussion, not to memorialize or recap the year. Bullet points and brief descriptions should be utilized.

The outside counsel should also be prepared to discuss industry trends and share, where permissible given confidentiality and trade secret concerns, best practices from other clients. The forward-looking portion of the discussion should flag opportunities for the general counsel to proactively address potential threats and identify revenue opportunities. This can be a significant source of added value.

Remember that the year-end discussion not only helps to identify ways the law department– outside counsel team has added value to the enterprise, it is also about ways to improve and deepen the relationship. In order to get the most out of this year-end meeting, the general counsel should also take steps to prepare for the discussion. To facilitate a productive meeting and avoid having the meeting derailed, it is important for the general counsel to alert outside counsel in advance of the in-person meeting to any key issues they want to cover. The general counsel or head of litigation should be prepared to share information concerning their personal and professional goals for the next year. Though maybe counterintuitive, it is important for the general counsel to advise the firm's relationship partner of any directives and/or personnel or organizational changes that are relevant to or may impact the relationship.

In the end, both the general counsel and the outside counsel want the relationship to work well. Open and honest communication throughout the year is critical and should be prioritized. General counsel have to resist the temptation to be too busy to have discussions beyond the issue du jour in the case or transaction at hand. The end-of-year discussion is simply another opportunity to invest in the relationship—to deepen and strengthen it—and most importantly ensure that there is a mutual understanding of personal and professional expectations, risks, objectives, and priorities—for the benefit of all involved.

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