

CHEAT SHEET

- *Manage expectations.* Set an honest discourse early with a standard expectations memo detailing your preferences and hopes.
- *Catch people doing something right.* Unexpected praise can be a huge boost to morale, even more so when it's done quickly, publically, and specifically.
- *Correct constructively.* That old adage applies: praise in public, criticize in private.
- *Accept feedback.* It's a two-way street — ask your outside counsel how you performed as a manager and entice them into delivering quality outcomes next time around.



WANT MORE FROM YOUR OUTSIDE COUNSEL?

Apply Your People Management Skills

By Robert Falk and Gregory O. Olaniran In-house counsel often express frustration with outside counsel. The relationship can be improved by rethinking your role from vendor manager, to team leader. Team leaders think about what motivates individuals (hint: it may not be just about the money) and seek to actively engage team members to continuously improve their performance and outcomes. This article will address simple management techniques that should guide the continuous feedback loop with members of your outside counsel team.

When Rob was a mid-level associate in a large law firm, four sentences significantly changed his relationship with one of the firm's clients. Rob had been involved tangentially over a few months in supporting the client's needs. At one point, the general counsel of that organization took the time to send the head of Rob's practice group a four-sentence email praising the thoughtfulness of Rob's work and the positive impact it had on his company. Rob's response was quite human: Somehow, that client's needs always rose to the top of his desk and Rob was especially diligent about trying to find the most effective and efficient solution for the company. This in turn created a virtuous cycle, where Rob was included more in the client's work and became a more trusted advisor. It was the foundation of a long-term personal relationship between Rob and the general counsel (which included a couple of "course corrections" as well). Rob never received more money from the firm for his efforts, but his personal relationship with the general counsel and his desire to please drove him to perform at a higher level.

We all want more productive relationships between in-house and outside counsel. With high billable rates for external counsel, some in-house lawyers may presume that paying invoices is sufficient to guarantee the best possible outcomes at all times. However, savvy in-house counsel understand that they are not represented by firms, but by people. And they invest in managing the people who are part of their outside counsel teams, being clear to establish expectations, discuss processes for working together, provide feedback, and take the time to review projects once completed with a view to improving future work. This is not inherently a time-consuming process, and the return on investment can be the elevation of good teams to great, and great teams to exceptional.

Make counsel aware of your organizational objectives

You often challenge outside counsel to know your business. While outside counsel typically endeavor to do so by poring over publicly available information, such information alone will not provide *your* view of *your* business. Teaching outside counsel your business — the company's strategic plan, business objectives, and risk tolerance — from your perspective and in your words, provides the clarity they need to operate as effective members of your team. Equally important is conveying the priorities of the legal department to your counsel, particularly as it relates to the company's overall objectives. This effort includes identifying for outside counsel, your internal stakeholders, and their respective interests in the outcome of a particular dispute or transaction — this is not publicly accessible information.

Set expectations early

If you're going to have a longstanding relationship with outside counsel, either for one large project or for a series of projects over time, then the work will be more productive and cost-effective if you set aside time to set expectations and to provide feedback on an ongoing basis. This may require a bit more of your time, but it does benefit to commit to the process. There is not a "one-size fits all" approach here, but here are some practices that we have seen as being highly effective.

Develop a standard expectations memo

When establishing a new relationship with outside counsel, many in-house lawyers provide a memo explaining their expectations regarding billing and costs (e.g., we don't pay separately for X, Y, & Z, and we require prior approval for expenditures on our behalf in amounts exceeding \$_____). This provides clarity on expectations on the financial front. However, the same document can be extended to set expectations on how to work together. Imagine how much easier it would be to launch the new relationship if you provided "rules of the road," with information such as the following:

- When you send me an email on Matter X, please make sure the subject line states as follows _____ and indicates succinctly what, if any, action is required, e.g., "Approval Required" or "Review Required." This is very helpful for me in prioritizing communications.
- If you need me to respond quickly to a matter, place the word "Urgent" in the headline of an email. I tend to respond to emails twice a day. If the matter can wait, you will hear from me within 24-48 hours.
- I travel a great deal and use my smartphone as my primary communications device. If you're sending me a memo, please place the topline conclusions in the body of the email so that I can easily scan through them. I'll read the rest of the document when I'm in front of my computer or tablet.



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- Our CEO will not read a document that is more than one page long, or two if the matter is high stakes to the company. If I ask you to prepare a document for the CEO, it should be in bullet point format, and should focus on recommendations or outcomes. If there are more nuances, you can provide that information to me in a separate document.
- I engage employment counsel from across the country to support our operations. I will share the memos and pleadings that you prepare with other counsel who represent us. I place a great deal of value on outside counsel who demonstrate the ability to work collaboratively for our benefit.

Of course, you will have additional expectations for a particular project, and those should be laid out at the start of the work plan. Take the time to answer any questions your outside counsel may have about your expectations. If your business objectives dictate a particular approach to litigation, outside counsel must know this. For example, if outside counsel knows that your company takes a different approach to defending an employment claim versus a patent infringement claim, your outside counsel needs to know this. Imagine if you sent a short email to the law firm's relationship partner saying, "I would really appreciate you to make the attorneys who work on our matter aware of the following regarding the company's discovery policy." You then go on to provide a brief explanation (or a written document) regarding the discovery policy. Providing information about your organizational objectives may be tedious, but it is a worthwhile task. A short email or a quick phone call to communicate this information would avoid, for example, an unpleasant exchange down the line

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about outside counsel's excessive fees for discovery disputes.

Create a "check-in" system

In addition, provide quick feedback as the work is underway. If the project is large, then consider a designated "check-in" time that includes both a status report on work underway and clarifies expectations on next deliverables. In addition, the check-in can include short conversations on past deliverables with an eye to making future deliverables more user-ready. For example, you could say, "Thanks for the memo you created for our CEO. The content was exactly what I needed. For future reference, I made the attached revisions because the format is more likely to help him focus on the issue." These three sentences along with a redline should mean that, in the future, you will spend less time editing outside counsel's work for internal purposes. Similarly, you could use the check-in to describe an unfurling issue that is creating a sense of frustration. Many of our outside counsel would appreciate receiving a message such as, "You need to understand that I receive an average of 250 emails a day. I've been pleased with your firm's work, and am glad that you are now handling multiple projects

for me. However, I feel like I'm getting inundated with emails from too many members of your team. Could you designate one person to provide me with a daily update email unless something is urgent?" Without being told, each project leader is likely to provide separate communications to demonstrate that they are being responsive.

Even if the volume of work does not merit a check-in, then consider incorporating the following template into your communications with outside counsel, "Thank you for X, I found Y to be helpful. For future reference, the work product would have been even more useful to me if it had included Z."

Make time for post-performance feedback

During the course of a project, in-house and outside counsel typically communicate very frequently about a plethora of issues, availing themselves of all the tools that technology has made possible — email, phone calls, text, video conferencing — and doing so at unusual times of the day and for weeks on end as the matter requires. In many cases however, once the matter has concluded, in-house and outside counsel seldom set aside a time to talk specifically about outside counsel's performance. The often overlooked feedback phase is a critical element of managing outside counsel effectively because it can improve performance on subsequent engagements. Outside counsel are always interested in their performance because they are, for the most part, wired to please their clients. Providing feedback to outside counsel may seem at first like an arduous task, but it should not be. Remember, this is an investment. Therefore, discussing what was done right and areas of improvement will have long-term positive effects on outside counsel's performance. No topics about performance should be off-limits so long as the exchange is

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civil and respectful. Thus, clarity of direction, planning issues, fees issues, as well as conduct and attitude are fair game for feedback.

Catch people doing something right

Feedback does not have to be negative. There's an old Southern expression, "You catch more flies with honey than you do with vinegar." This is consistent with well-known behavioral research that there is a direct relationship between positive reinforcement and better performance. Simply put, most people respond better to praise than punishment. When most of us think back to our own careers, it's the times that we have been properly acknowledged that have felt most rewarding. Your management of outside counsel (and internal staff) needs to incorporate the praise principle.

We are strong believers in "catching people doing something right," meaning that when you see exceptional behavior or outcomes, you need to acknowledge it (1) quickly, (2) publicly, and (3) specifically. This is simply the most effective way to demonstrate appreciation for thoughtful work. The recognition needs to be quick, because it demonstrates that you are paying attention to what people are doing. To the extent possible, it should be public because that promotes the status of the individual. And it should be specific, so the individual sees that you understand the value of his or her

contribution. So what does this look like in practice?

Consider the differential impact of the "effusive thank you" against the "proper acknowledgement of contribution." The "effusive thank you" usually takes the form of, "Gosh, Ana, that was a super memo. Thank you!!!" Multiple exclamation points don't necessarily do the job because they may come across as insincere or don't provide any clarity regarding the accomplishment. A more effective acknowledgement takes the form of (1) identifying specifically the individual contribution, (2) the impact of the contribution, and (3) then the expression of gratitude. Although Ana might feel good about an effusive thank you, she will feel even better with a statement along the following lines: "Ana, I want to thank you for the creativity included in your memo. I had not even considered the last option, and was able to propose it to my boss. She was excited to explore the new path. You have helped our company find a new way out of this controversy, and you have confirmed that we made the right decision in hiring you. Thank you." Although the few additional sentences may take some extra time, Ana is much more likely to feel invested in the client that provides her this specific level of positive feedback.

If an individual has been "caught doing something right," that should be shared in a manner that elevates the individual's status. If an associate has done good work, that fact should be shared with his or her boss. If the partner has produced exceptional outcomes, the information should be shared with the managing partner of the firm or the office. Taking the time to make members of your team look good will yield rewards for years to come.

Whenever possible, share outside counsel's successes with internal stakeholders too (especially because they almost always hear of the failures).

Two years ago, after Ralph led the effort that resulted in a multi-party settlement of a thorny billion-dollar dispute, he received a copy of an email from his client to internal stakeholders announcing the settlement and praising his firm's outstanding work in securing the settlement. Following the email, his client called, not only to thank him, but to insist on having a short face-to-face meeting with the company CEO to discuss Ralph's work in leading the settlement effort. The client's insistence on an audience with the company CEO gave Ralph a greater sense of his value to the client and, most importantly, being part of the client's team.

Discuss opportunities for improvement directly and constructively

While we recommend praising in public, correction needs to be done in private. Nobody likes to be embarrassed publicly, and a public thrashing is only likely to lead to blame shifting. If performance has been below expectations, that message needs to be delivered in a manner where it can be heard. That is usually best done one-on-one, and preferably, in person or via voice conversation.

The conversation about subpar performance or identifying areas of improvement should be very open, honest, and respectful. Again, consistent with the positive reinforcement principle, start with what went right. Did outside counsel respond to your questions in a timely fashion? Did she write a good brief? Did she present well at oral argument? How did he handle the cantankerous opposing counsel or party? Pointing out the good at the beginning of the conversation sets the tone for a constructive exchange instead of one filled with finger pointing and defensiveness.

During the course of any project, particularly large ones, mishaps occur. A mishap may not be the

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fault of any one person or party, but due to a miscommunication or misunderstanding between in-house and outside counsel. You may need to step back and consider what in the system led to the less than ideal outcomes. This also requires a willingness to be introspective and curious. How clear were your directions to outside counsel? Were those last minute revisions to the brief substantive or stylistic? Could you have brought outside counsel into the case earlier? Could your business team have provided discovery documents in a more timely fashion? How well did you communicate the business interests of the litigation or the transaction? These are some of the questions that you should be willing to ask of yourself to make the exchange with your outside counsel meaningful.

When it is clear that outside counsel is fully responsible, the criticism should be direct, objective, and respectful. Talk about facts and consequences, not people and personalities. If we adapt the "proper acknowledgement" conversation for a subpar performance, the conversation should (1) identify the specific problem that has been created, (2) discuss the impact on your organization or your legal services, and (3) then lead to the discussion about future expectations regarding performance. Remember the organizational and departmental objectives you

What outside counsel want you to know

- Better planning equals fewer fire drills for outside counsel.
- If you request a write down, please have a good reason.
- If you request a rough estimate of fees, please don't later use it against us as if it were a fixed budget.
- Communication of "realistic expectations" in terms of fees, feedback, and goals lead to realistic outcomes.
- You should leverage what we've already learned about you. If we have defended you in a big litigation, then talk to us afterwards about how you can reduce such risks in the future.
- Treat us as a trusted advisor, rather than a vendor. Our advice is not a commodity, and we appreciate it when the client appreciates that fact.
- Remember and appreciate all the times we took frantic calls on the weekend (for no charge), called in favors, or used hard earned personal capital for you. Don't take this (free) assistance, and then complain that we spent 0.2 hours too much on a phone call.
- Our younger associates are also part of your team. If this is a long-term relationship, then invest in helping them learn your business and your expectations. They will then be able to assume more significant portions of your work in a cost-effective manner.
- Don't force the firm to adopt non-essential billing guidelines of the company when the firm would have to rewrite its accounting software. Both need to be flexible.
- Tell us what helps make you look good to your boss. If we understand that, we'll knock down walls to get you there.
- Let us buy you lunch after the deal closes so that we can discuss how to do even better next time.
- At some point, we can't keep providing free advice. We may provide an overview of an area to help you come up to speed or to show our capacity. But if you really need us to work on a matter for you, be prepared to pay.
- If we have made you look good, help us look good. Recommend us to your peers. Go on the speaking circuit with us.

shared with counsel at the inception of the project, re-identify those objectives, and relate the criticisms to those objectives. If at the outset of the project, you articulated a cost objective and outside counsel's fees far exceeded the agreed upon budget, it is worthwhile to discuss how and why that happened. If, even in winning a case, outside counsel's scorched earth approach to litigation hurt the company's brand, this is a must-discuss. Regardless of the issues addressed, both sides should leave the conversation understanding that the "difficult conversation" is an investment in the future of the relationship.

Invite conversations on process improvement from outside counsel

As professionals, we should be working on our own professional growth and figuring out how to better serve our clients. Like anybody else, we need feedback on how to do so. Outside counsel can be a useful source of that kind of feedback. First, they may see you more in the trenches of the legal issues that you manage than your internal clients. Second, they probably can make comparisons between how you manage a situation and how their other clients may approach a similar problem. Your outside counsel should also be invested in your success in the organization. So why not enlist them

as allies in your professional growth?

When you are doing a debrief of the project or at the end of the year, you may want to consider asking questions such as the following:

- What suggestions do you have for helping me manage these matters more effectively or efficiently?
- What practices do your other clients use that might help me in my practice?
- What could I be doing to be working more effectively with you and your team?
- How do you think we could do even better next time?

Besides making you a better in-house lawyer, this kind of reverse feedback reinforces your outside counsel's understanding that they are part of your team.

Conclusion

The foregoing suggestions are not by any means an exhaustive list of "to do's." Also, many of you already engage in some of the suggested practices. The overarching point is that investing in making your outside counsel a part of your team opens up the process for continuous process improvement. This may take a little more of your time, but it does require focus. Set expectations early, and do course corrections as needed. Take the

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time to ensure that they understand your business as you see it. Celebrate their successes with them in a public manner. Do not shy away from difficult conversations, but make them objective and specific. In the end, your leadership in this area will result in a more efficient and effective legal program for your company. **ACC**

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Reimagining the Law Department—Law Firm Relationship (June 2015). www.acc.com/legalresources/resource.cfm?show=1402924

Outside Counsel Management 2015 (May 2015). www.acc.com/cs_upload/vl/membersonly/SampleFormPolicy/1410560_1.ppt

The Perfect Legal Personality: Critical Factors for an In-house Counsel to be Successful (May 2014). www.acc.com/legalresources/resource.cfm?show=1374552

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Lincoln Financial Uses Analytics to Measure Firm Success and Retain Outside Counsel (Aug. 2015). www.accdocket.com/articles/lincoln_financial_measures_outside_counsel.cfm

Doing It Better: Disney Discusses Knowledge Management (April 2015). www.accdocket.com/articles/disneykm.cfm

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