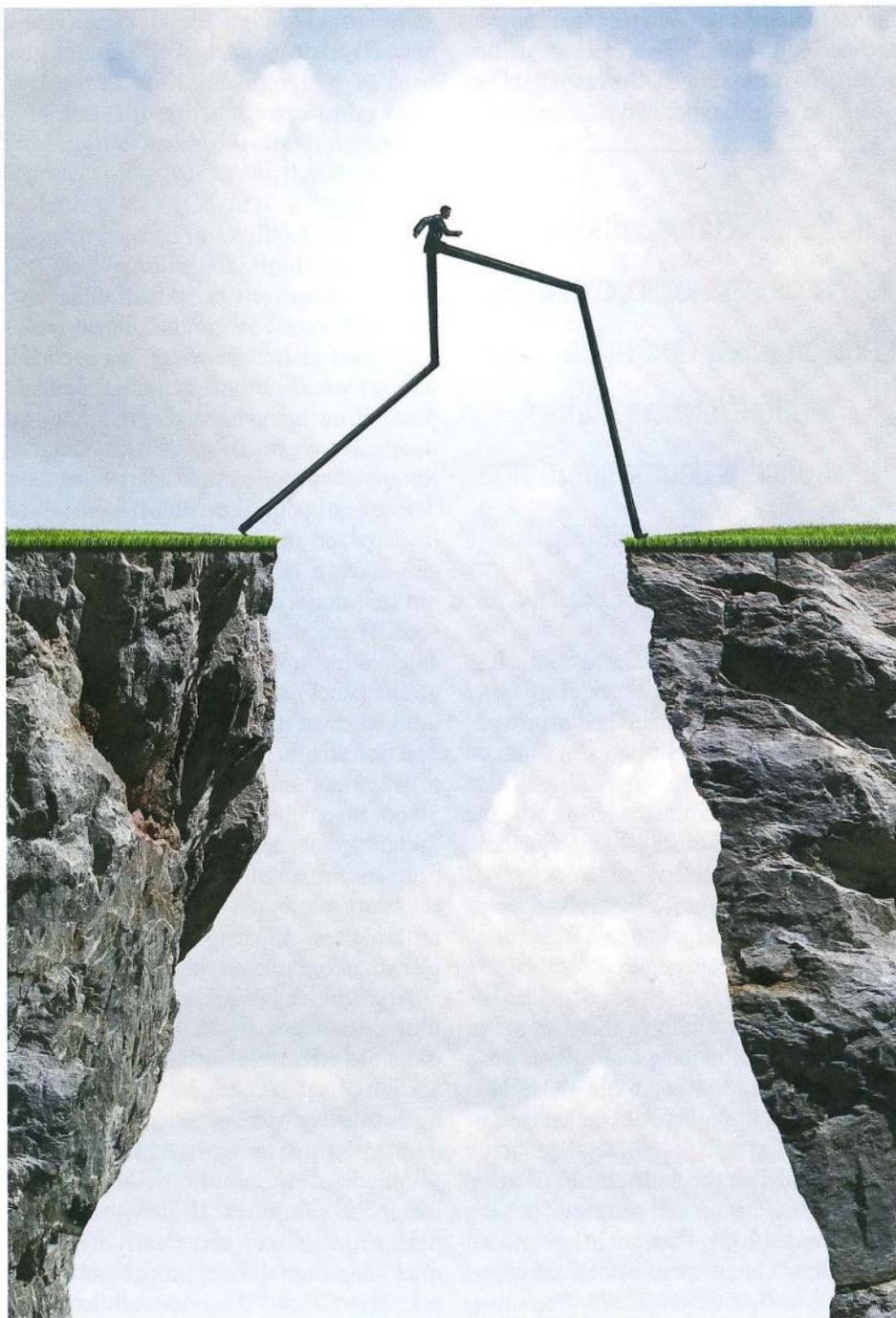


Out of the House to In-House



I recently went from a practicing lawyer searching for the “secret recipe” for creating and maintaining client relationships to

in-house counsel for a client. Although my in-house counsel status has only been part-time and for a limited duration, the experience has been eye-opening. I want to share that experience with those of you who have never worn the in-house counsel hat in hopes that it might help you create a better recipe for success.

Good vs. Bad

It’s no surprise that one philosophy does not fit all clients. That’s because in the universe, there are two types of clients: good and bad ones.

Everyone wants the “good clients” who are reasonable, in terms of expectations and fees, and not unreasonable, in terms of expectations and fees. No one wants the bad clients unless the good clients aren’t keeping them busy and there’s a greater than 10 percent chance of payment.

In the same universe, there are two types of lawyers: good ones and everyone else.

Every client wants good lawyers; no client wants “everyone else” unless the good lawyers are all too busy or, in some cases, too expensive.

So, what’s a “good lawyer”? Before my in-house counsel experience I went out on a limb and asked my own clients what they thought made a good lawyer. The responses were educational. A few said, “Read the manual I sent you already.” Others ignored my inquiry; thus, effectively sending me the following message: “Bugging me with pointless e-mails is not what good lawyers do.” However, I did receive this helpful advice, which I was told was not necessarily directed at me: first, return my phone call before it’s been so long that I’ve forgotten why I called. Next, admit when you screw up; I’m not perfect either. And, last



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but not least, don't forget the power of the "N/C". It's amazing the kind of loyalty that will engender.

I debated whether I could charge my client for reading this email, but ultimately decided against it. (Sign of a good lawyer.)

Learning by My Own Experience

In the midst of my "information" gathering, a client without in-house counsel needed to hire in-house counsel for about twenty-five hours per week. The client worked out an arrangement with my firm and I became that guy, while still spending the remainder of my time at my firm's office assisting my other clients.

Before I assumed this in-house counsel role, I generally understood that in-house lawyers fulfill unique roles that vary as differently as their employers. See e.g., ABA Model Rules of Professional Conduct 1.13 and 5.5(d). I also knew, based on experience, that in-house lawyers are under a lot of pressure to keep fees within ever-diminishing budgets. And I knew, based on even more experience, that in-house lawyers' expectations and personalities vary as greatly as those of practicing lawyers; I assumed this meant that there were only a limited amount of clients that were a "right" for me.

It did not take me long to learn that my assumption was wrong. There are several important "good lawyer" traits most clients are looking for and most lawyers are capable of developing these traits.

Rapid Response

First, respond to a client immediately. It is not enough to satisfy your ethical duty. See ABA Model Rules 1.3 ("A lawyer shall act with reasonable diligence and promptness in representing a client.") (emphasis added); cf. Comment 3 ("Perhaps no professional shortcoming is more widely resented than procrastination."). This means that if a client emails you, email them back as soon as you read the email. If a client calls you, don't let it go to voicemail; if you are out of the office, call back as soon as you see the message. Saying to a client, "Sorry I haven't responded sooner—I've been in a closing (or trial) the last two days," does not cut it. This does not mean you answer questions right away, but let your clients

know that you received their inquiry and give them a time when you can respond. Consider using this caveat: "If you need an answer sooner, let me know and I'll get it done."

I had heard different variations of this advice previously, but I did not appreciate how in-house counsel are under tremen-

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dous pressure to get answers immediately. Non-lawyer professionals think lawyers know the answer to any legal question—or that they can find the answer really quickly. Or that a legal problem can be solved with a magic wand and a crystal ball. We lawyers know that is not true, which is why in-house counsel need you. That said, they are still left with that perceived reality from their non-lawyer counterparts. I learned pretty quickly as in-house counsel that it is unacceptable to say, "I asked our lawyer about it a few days ago and I still haven't heard anything. I'll let you know when I get a response." I also learned that in some cases, it's unacceptable to say, "I asked our lawyer about it this morning and I am still waiting for a response." If you want to be a "good lawyer," treat clients like their relationships are your highest priority.

Update, Update, and Update

Second, continuously keep your clients in the loop on any important developments in order to avoid surprises. Again, the ethical rules require this behavior. ABA Model Rules 1.4 ("promptly inform the client..."; "reasonably consult with the client..."; "keep the client reasonably informed..."; "promptly comply..."; "consult with client..."). What you may not realize, however, is that in-house counsel deal with a

litany of surprises they've never dealt with just about every day; they should not get any surprises from an experienced lawyer who specializes in an area unfamiliar to in-house counsel, particularly on a delayed basis. (Yes, dates on emails will kill your relationship if the dates show you have delayed passing along important information.) This applies to fees as well as case strategy, developments in litigation, and deal issues in transactions. "Good lawyers" are always striving to give excellent customer service, and this tip is an important aspect of that service.

Be a Business Partner, Not Just an Expensive "Caution" Sign

Third, and finally, never answer questions with a "no" or "you can't do that" without offering alternative suggestions for accomplishing the client's objective. Hence, a 20-page memo explaining all the ways something could go wrong or won't work is not helpful. Sure, there are some questions that need blunt answers, like, "If you do this, you will go to jail." But be a true advisor: think more like a business partner and less like a business expense. ABA Model Rules 2.1 ("In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.") To do that, you need to immerse yourself in your client's business and business aspirations. It sounds quaint, but it is what sets the "good lawyers" apart from "everyone else."

Marcus Luttrell summarized the mindset of most in-house lawyers when they work with attorneys—they can spot the good lawyers very quickly... and everyone else. "I can guarantee you that if three SEALs were put into a crowded airport, I would spot them all, just by their bearing, their confidence, their obvious discipline, the way they walk. I'm not saying anyone else could recognize them. But I most certainly could." *Lone Survivor* at 17.

Be recognized; be good. ■