

Best Practices for Corporate Legal Services

How Great Attorneys Represent Businesses

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Introduction

Corporations are sophisticated, repetitive consumers of legal services and operate in complex, ever-changing legal environments. They have needs which are different from non-business clients. For these clients, attorneys should use "Corporate Legal Services Best Practices". These are a set of philosophical and legal practice guidelines, some drawn from other service businesses such as management consulting, which will help optimize your business client's results. A hallmark of Corporate Legal Services Best Practices is the "Law Department Method." With this method, private practitioners use the time-tested methods of in-house attorneys for the benefit of their clients. Let's discuss some best practices in representing companies.

*The Law Department Method*SM

Large companies use Law Departments to handle their legal affairs. Their in-house lawyers are primarily responsible for the overall legal risk, successes and failures of their company; they engage in many activities to manage this risk, including providing direct legal advice and having the authority to modify company business operating methods to prevent legal problems. They work side-by-side with company management and must be keen observers of the business. They must be knowledgeable of overall company operations and apply this knowledge to create the optimal legal recommendation. For these reasons, in-house legal experience is an invaluable company asset.

These valuable in-house legal methods can be used in private practice, too. This collection of methods is the "Law Department Method". It requires the attributes of business knowledge, speed and accessibility, project management, pragmatism, a prevention mindset, knowledge transfer, accountability for outcomes, risk-taking, superior service, and cost-cutting.

First, the great business counselor must know the business. If you do not know the business, it is difficult to consistently meet the business' goals. So, learn the client's business quickly. In addition, you must be accessible. Clients need to have necessary resources available when they are needed. Just as the CEO calls on HR, IT and Finance and



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Legal solutions must help meet the goals of the business. If you do not know the business, it is difficult to help your clients consistently.

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expects quick turnaround, the CEO expects the same from their inside and outside lawyers. Clients move fast and you need to move as fast as they move.

You must plan your actions and measure your results. Just as executives have deadlines, goals and cost constraints, you must become comfortable using these measuring devices for legal projects. You should measure how key services are delivered to the client and then report your results periodically to the client.

You must be pragmatic. Clients need practical solutions for problems. Spend the time on the project which is warranted by the financial risk of the problem. Do not sound the alarm bell unless the CEO, CFO, or board will consider the risk to be large. With the *Law Department Method*, lawyers try to

The Law Department Method combines the business knowledge and client commitment of an in-house counsel with the substantive legal expertise of a traditional outside counsel.

proactively discover problems before the problems become financially damaging to the company. This can be done by asking questions all the time and becoming a keen observer of the business. Look for potential issues and address them before they become a problem. After you have solved the problem, use that knowledge to later change and improve the system.

Transfer your knowledge to the client so that they may help identify and prevent problems. E-mails and memos should be short and in plain English. For involved areas of law, conduct client training and seminars. The *Law Department Method* requires that the attorney be accountable. You must accept the consequences of your recommendations –good and bad. Risk is an everyday part of the executive’s life- so it must be for you, too. While many lawyers want to do everything to prevent even all risks, that approach takes too much precious time and costs too

much money. Become comfortable in comparing the risk to the goal and accepting appropriate risk.

Lastly, we are in a service business. Service means doing whatever is necessary to accomplish the objective, satisfy the client, and get the job done. Be their project servant and make it easy to do business with you. Return phone calls and e-mails immediately; be upbeat and social. When you do this, most clients will look forward to calling you with their next important problem.

The *Law Department Method* is based on proven business principles used by businesses in all industries. Sophisticated executives and board members expect seasoned business counselors to provide services in a way which draws upon these accepted business methods. The *Law Department Method* combines the business knowledge and client commitment of an in-house counsel with the substantive

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legal expertise of a traditional outside counsel. In other words, the *Law Department Method* combines the best of both legal worlds to achieve superior legal and business results for business clients.

Know the Business Fully

The business attorney must understand the client’s products, culture, business, competitors, industry, strategy, common issues, and financial goals. By knowing the business, you can choose the solution which best meets the needs of that business client. Knowing the business of the corporate client is the foundation of superior business legal representation.

There are many ways to acquire information about a company. If the company is public, review their public financial documents. Obtain their 10-K’s, 10-Q’s, and Annual Reports through the SEC’s online

EDGAR system, the company's website, or its Shareholder Relations Department. Also, you could review third party financial analyses such as Standard & Poors. Private company information is harder to obtain, but it is available. Look for news clippings on the company and its executives. I have found that other simple and advantageous approaches are to look at their web site, general business descriptions, advertisements, and marketing materials. Industry magazines and trade association information are also excellent sources of information. You could also attend industry conventions, read industry publications and study trade association materials. Ask to be put on the distribution lists of internal announcements or sign up for their web-based newsletters. There are also many independent sources of industry data and information on internet sites such as corporateinformation.com, hoovers.com, bloomberg.com, aardvark-business.com, and other sites.

You must also be business-savvy. This means, among other things, generally understanding how a company operates, knowing basic financial accounting principles and being aware of fundamental theories of business management.

Ascertain how the company fits within its industry. By knowing the industry, you can observe the legal issues of the industry and its competitors. When you observe industry difficulties, you can prevent these

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problems from happening to your client. This could save the company hundreds of thousands of dollars and will make you highly valuable to the client.

Next, get to know the board members, executives, and managers. Find out what is important to them. You need to know the company's culture. Culture is that definable and yet undefinable way work gets

done at the company. Carefully observe people and determine the culture.

In my experience, the best way an attorney can understand the culture, personnel, and intangibles of a company is to be on-site. However, if you are not inside counsel, visit the company and ask for a tour, including sales offices, design studios, demo floors,

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manufacturing facilities, and the like. Try to attend meetings at the company's offices – not your office. These trips to the company and presence at meetings will help you get to know the company's culture and provide invaluable perspective into the company. This insider's knowledge is indispensable to the great counselor.

Understand the Client's Goals

A lawyer must help accomplish the goals of the business client – in financial and strategic terms. But first, you have to know the company's goals. For example, if you know that the company is investing significant capital and management time to introduce a new, highly profitable product line, or is increasing investment in the product line, you will treat a patent infringement against this product line differently than you would treat a patent infringement against a low margin product which you know is being discontinued. Or, if you are dealing with a customer who is the company's largest customer, you may accept a larger risk in that situation, as opposed to a lower-profit customer which has shown it will not do much repeat business with the company.

If you know the company's goals, this knowledge will help you focus on, inquire about, research, and offer ideas that are the most useful to the business

client. This will help you provide the greatest value to your client.

Forcefully Reduce Costs

One of the most important goals of for-profit companies is to make a profit and assure continued financial success. This is not to say there are not other important goals such as supporting their employees and their communities, but financial profit is one of a business' most important yardsticks. The great business lawyer knows and embraces this reality.

Help the company cut legal costs. There are many controls which can cut legal costs such as in-sourcing legal work previously done by outside counsel, requiring budgets, closely and knowledgeably managing legal matters, using alternatives to the hourly billing method, fee and billing guidelines, spending rules, Alternative Dispute Resolution, task-based billing, fixed fees, choosing counsel with lower billing rates, success and merit bonuses, obtaining discounts from your current counsel, finding counsel in lower cost metropolitan areas, and settling cases for the same amounts but earlier in the process. (Describing these methods warrants a separate, in-depth article or all-day seminar.) Investigate and recommend applicable methods to help reduce costs while maintaining an appropriate risk profile for the company.

Design Your Practice for Businesses; the Role of the Generalist

A generalist is someone who has counseled businesses in a wide range of company legal problems. Often, this skill set just comes from many years of business legal experience.

Most small and medium-size companies can better utilize a generalist than a specialist. This is because one legal problem can often include several distinct and totally different legal sub-parts. For example, even a standard contract negotiation can involve the diverse issues of Intellectual Property (IP) (representations, indemnity, or transfer), UCC and state contracting law, environmental law and Alternative

Dispute Resolution (ADR), to name a few. An attorney is of greater value to the business if she can analyze all the diverse, overall business aspects of a problem rather than solving just one aspect and then handing off all the remaining areas to other specialists.

You should know the broad liability schemes and concepts of the usual legal areas confronted by your business client. Treat each problem as if you are the "general counsel of the problem"; take ownership of

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the problem and manage or directly handle all aspects of the problem. This approach decreases cost, lowers the risk of miscommunication, and decreases the time needed to solve the problem. From all dimensions, this can be the optimal approach in many circumstances.

Of course, all great attorneys need to have some specialized legal knowledge. Use your knowledge of the business to ascertain which specialized areas of law will best help meet your business client's needs. Having this specialized knowledge will allow you to provide more in-depth solutions in key areas. With this blended approach, you will be better equipped to provide an overall solution to the business as opposed to a collection of specialists who must constantly cross-confer.

Provide Superior Service and Improve Results

It is imperative to provide the best possible service. In addition to setting your own high standards, determine how the CEO and other key executives want you to deliver legal services. We are in a service business and different people want services delivered in different ways. For example, some managers want lots of detail and some only want summaries; some want constant reports and some only want to know of a major development; some want you to show excitement for their ideas and some do not care

if you show excitement. Determine their preferences by getting to know the employees. Ask them what they want, take action and work fast.

The great business attorney must respond and provide legal services at the speed of the client's business. Respond to e-mails, phone calls, and faxes almost immediately. On important issues, make sure to "over-communicate" with the executives and managers by constantly updating them with the latest important developments. It is a good idea for the executive's priorities to become the great attorney's priorities and the executive's schedule to become the great attorney's schedule.

Moreover, the great attorney should also help with mundane issues and tasks. Do the little things that help push along projects or that are just plain helpful, like making copies or clearing place settings at a conference room table after lunch.

The great attorney should constantly strive to improve the delivery of his legal services – to constantly seek ways to improve the quality of his service. Regularly reassess your service methods and always stay current with the latest service techniques.

Measure Your Work

The great attorney must develop systems to measure, quantify, record, and improve her work and productivity. Track your work and create reports showing matters handled, time to completion, and resolution. Use these measurements to improve your work. Have this information accessible on demand 24/7 through the internet, intranet, or an extranet. This information should be presented in such a way that non-attorneys can readily understand it.

Act like a Businessperson

The Use of Project Management Techniques

To deliver superior business legal representation, the great attorney must act and think like a businessperson. Great businesspeople use project management ("PM") techniques for complex projects. Project

Management can be defined as the application of knowledge, skills, and techniques to a broad range of activities to meet the requirements of a particular project.

For example, Information Technology professionals need to be especially gifted project managers. Their projects can have tens of independent and dependent steps, utilize many vendors, cost millions of dollars, have several go/no-go decision points, and can last for months and months. Litigation and other complex legal projects (as you were probably thinking) share the same characteristics. Thus, lawyers must be good project managers.

You can use established PM techniques for any type of complex legal problem. One simple PM framework is the CAR method (Challenge, Action, and Result). With this approach, you identify the Challenge to the business, take Action to address that challenge and deliver the desired Result. For your next complex business legal problem, create a project charter using this method. Define each step, the completion dates of each step, budget, assumptions, and rationale. Revisit the plan periodically to see how you are doing. Make adjustments as necessary.

To efficiently track and effectively supervise a complex project without any special PM training, I recommend Microsoft® Project software. This simple-to-use software allows the user to create different project steps (including dependent deadlines). This

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software allows an overall look at a complex project. For each step, you choose the conditions, timelines, budgets, and interrelationships between steps. Like Excel, when you enter new data Excel will automatically change all the dates which are dependent on that changed date (according to the dependency rules you define).

There are several advantages to using PM for legal

problems. First, this is the language that executives understand. Second, this approach encourages the practitioner to identify each logical step. Another benefit is that it allows for better legal budgeting. You can show your PM Timeline to your client. This will give executives a better understanding of the legal problem and demonstrate how you arrived at your solution.

While legal problem-solving can be complex, it can be dissected into components and executed. A PM approach does not diminish in any way the underlying complexity of legal problem-solving. Intuition, creativity and the application of complex rules to ambiguous facts are of course still *de rigueur*. Using Project Management techniques will help the great attorney solve legal problems in a more rational way and guarantee better results over time.

Develop Productive Etiquette and Behavior

The great business attorney must use proper etiquette and act diplomatically, as does any smart service provider. Decide your approach in light of the social and business dynamics of the company. Listen to the executive management team, gather information, calculate their needs, and then respond in the language and with the method they prefer.

The great attorney should keep in mind that a client does not want to discuss his legal problems in a theoretical way. She wants to know the status of the problem, the financial implications, and the prospect of its resolution – all in plain English.

Of course, you must be forthright and speedy in communicating bad news. Deliver bad news as early as possible in the process, while simultaneously recommending and ranking alternative solutions.

Conclusion

Attorneys can benefit from creating and using a set of Corporate Legal Services Best Practices for their business clients. The *Law Department Method* is a valuable component of the best practices for your business clients. By following an advisable set of best practices, the great attorney provides more than ad hoc, per-issue advice. The great attorney contributes to the overall legal strategic planning, legal compliance, and prevention of problems at the company. In the end, this will be a more cost-effective and better use of the company's money. This approach will lead to greater appreciation of the business role of an attorney and a realization of the hazards of operating without one.

I have found that the keys to counseling business clients are knowing their business, goals, industry and competitors, having a generalist's ability to manage legal issues in more than one area of expertise, developing systems, forcefully reducing costs, providing superior service, delivering solutions using the CAR or other Project Management methods and using the correct etiquette. Using these simple and time-tested tenets, you can create your own *Corporate Legal Services Best Practices*.

This article does not constitute the giving of legal advice. Please seek legal counsel who can assess your individual legal situation in compliance with the law.

About Corplaw Associates LLC

Corplaw Associates LLC is a law firm of experienced business attorneys who deeply understand their clients' businesses and who use best practices to achieve their clients' business goals. The firm provides full support for businesses. For clients who need on-site legal help, Corplaw is one of only a few firms that specialize in this model. Their mailing address is Corplaw Associates LLC, 400 Central Avenue, Suite 150, Northfield, Illinois 60093. They can be contacted at 847.784.1300 or at firm@corplaw.com. Their web address is www.corplaw.com.

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