

For both in-house and outside counsel, being the best lawyer is not always about exhaustive application of legal skills. It may seem counterintuitive to some lawyers, but sometimes less really is more.

for the nit-picking litigators of well-sourced competitors.

Agreements that run into hundreds of pages are also less likely to be used (or even understood) by managers responsible for their implementation, increasing the likelihood of inadvertent breach—

tention that these documents not harm the company. But shredded notes won't help the company, either; some of the managers took notes for a reason.

Less overt “lawyering” may produce better outcomes. For example, rather than relying on the usual document retention forms, consider the first step: document creation. Developing a culture in which brainstorming takes place in meetings rather than in countless emails, and using whiteboards with only the final result printed and circulated, might produce less-problematic (and far fewer) records than the individual notes or emails of all participants.

When Less Lawyering Is More

BY RON POL

Engagement protocols

After your contested requests for proposals (RFPs) have produced your new lawyers, it is tempting to exhaustively outline every aspect of the new arrangements. Hourly rates, travel policies, photocopying charges, and the judicious use of paperclips and staples could be mandated in minute detail.

The RFP process sorted the firms you didn't want to marry. Carrying this approach into the agreement itself is great preparation for the divorce, and doesn't help build the relationship. Sometimes a simple “I do,” with a brief relationship-building framework, can help avoid an outside counsel divorce-and-remarriage every few years.

Competitor contracts

Complex commercial contracts between competitors are common in some industries. Diligent lawyers spend months seeking to define every conceivable possibility, with close negotiation inexorably driving delays and legal fees. Yet these same industries may also be characterized by seemingly constant litigation.

Because it is impossible to fully predict future combinations of events, ironically, the most detailed agreements often provide the most fertile ground

and more litigation.

Sometimes, a practical relationship-enabling framework, and a relatively simple plain-English agreement, may serve the organization's interests better than another prescriptive recipe for divorce.

Overusing privilege

At a conference recently, a speaker advised appending a privilege claim to virtually all documents. But for many in-house counsel, overuse of the privilege stamp can be self-defeating. A claim to privilege, successfully challenged, may call into question your organization's other privilege claims, and your reputation as well.

Another speaker, who worked across multiple jurisdictions—many of which permit in-house counsel privilege only in limited circumstances or not at all—found it more effective simply to assume that privilege never attached. If later proved wrong in any particular jurisdiction, this was a far safer course than assuming the opposite.


The document life cycle

At the same conference, a speaker told of in-house counsel at the end of meetings who habitually collected and shredded managers' notes, with the in-

Important and urgent

We say that hourly billing measures activity, not results or value. Yet many of us spend most of our own time addressing urgent demands. When did you last switch your phone to voice-mail, disable your email notification, and gaze out the window to strategize? Contemplating ways to align the legal function with your organization's top three business objectives takes time.

Live the 80/20 rule

Lawyers tend to be perfectionists, constantly striving to produce ironclad works of linguistic art. Sometimes this is necessary. Other times, however, if we can achieve 80 percent of the requisite output in 20 percent of the time—saving the remaining 80 percent needed to make it “perfect”—we can quadruple our effectiveness. This can free up our time for our most important strategic issues, now languishing in the funk of urgency. 

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