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How In-House Counsel Can Avoid Being A Nightmare Client

By [Michele Gorman](#)

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Law360 (March 8, 2019, 3:36 PM EST) -- Tight deadlines, unexpected problems and last-minute demands can be par for the course in attorney-client relationships, and firm lawyers seeking to help corporations succeed — and secure repeat business — often try to overlook the behaviors and actions that irk them.

But that doesn't mean clients should be nightmares for outside counsel by pushing the limits, destroying boundaries and being unresponsive.

Most of law firm attorneys' top complaints tend to pop up more with long-term clients, as they grow comfortable and start to push the limits, rather than with first-time business that doesn't require meeting previous expectations.

Legal industry experts and current and former lawyers agree that poor communication is a major underlying source for lawyers' headaches. As in any relationship, this crucial missing element can weaken candor and trust while increasing strain between the two parties.

Amy Impellizzeri, a former [Skadden Arps Slate Meagher & Flom LLP](#) lawyer and author of books including "Lawyer Interrupted," a guide for leaving the law, said she found problem clients to be one of two extremes: They either failed to communicate vital details or updates about a case, or called her at all hours of the night about trivial concerns.

"There are issues that can't wait," she said. "But there were also clients who knew that their issue could wait."

She added that, in her experience, some in-house counsel eroded boundaries and expected their firm lawyers to be available to them on a 24/7 basis, seemingly abusing a BigLaw attorney's refusal to turn down a client's request. Some even asked Impellizzeri to pull case law facts and other nonbillable favors unrelated to the matter at hand.

"Nobody will ever tell them no, and they figured it out pretty quickly," she said.

Jay DeYoung, a principal at [Fish & Richardson PC](#), includes her cellphone number in her email signatures — which means her clients could call her at any time, day or night. But she said most are respectful of her time and refrain from sending her requests, say, late on a Friday afternoon. When that does happen, she said it's often because of a communication issue at the company.

"They have their internal clients as well, and sometimes their internal clients don't keep them in the loop as much as they could," she said. "If they're calling me at 5 on a Friday, they feel bad about it and they're annoyed, too."

Some experts said they have observed clients who wait until the last minute to provide outside counsel with documents, and then are upset when the firms don't have briefs and discovery responses for review far in advance of the due date.

While DeYoung generally praises her clients, she said there are always improvements to make in any kind of relationship.

For instance, she advises them to be successful project managers — set reasonable timelines and give timely instructions, rather than wait until the last possible moment.

"As much as they value us being responsive, we also value them being responsive," she said.

Outside counsel acknowledge that some urgent matters are unavoidable and that at times they might be at fault for not asking for clarification on a deadline. But one of their major complaints, legal industry experts have observed, is about their clients' "fire drills."

"I've definitely heard law firm lawyers complain that there are unnecessary deadlines that are difficult for them to impose on their associates," said Debbie Epstein Henry, a legal industry expert and consultant and co-founder of [Bliss Lawyers](#). "When there's a real emergency, it's different. But when it's just as a result of poor

communication and something wasn't required at that time, that can be difficult as well."

Michele DeStefano, a guest faculty at Harvard Law School and full-time professor of law at the University of Miami, interviewed more than 50 heads of innovation and partners at firms about their in-house complaints and found that lawyers are often frustrated about their clients seeking immediate resolutions for late, urgent requests or asking for help with an issue that ultimately isn't critical.

Since they strive to please their clients, lawyers often rush to solve an issue, but then are ultimately annoyed because later they realize that specific resolution is not what the client needs.

But there's a disconnect there, DeStefano said. A lawyer's job is to help the client solve the problem, she said, but if the lawyer doesn't engage in problem-finding and refining with the client, he or she may end up only seeking solutions for the symptoms of the issue.

"At the end of the day, it may be what the clients say that they want but it's not what they need," she said, referring to what she calls the "Rolling Stones problem." "I think it's outside lawyers' jobs to give clients what they want even if they don't need it, and take the time to help clients figure out what they really need. It's both."

To ease this tension and for mutual understanding, DeStefano suggests firm lawyers set aside a few minutes to question their client about the true need when an issue arises suddenly.

"More time spent up front doing that will save everybody time and this negative feeling on the other end," she said.

Another point of tension is when in-house clients conduct anonymous auctions to determine which shop will ultimately be hired for a particular matter. As clients increasingly expect more value for their money, firms in turn want increased loyalty and steady business. But that's not always the case.

Henry said she has seen firms struggle with the bidding processes for work that are solely driven by price.

"[Lawyers] believe they're bringing much more value than what a representation costs," she said. "They believe it's oversimplifying the value of their services and their offerings" to focus solely on price.

Another challenge surfaces in conflicting views about whether outside counsel or corporate clients are responsible for creating alternative fee arrangements. It appears that some corporate clients often think firms should find ways to price matters beyond the billable hour, but generally most outside counsel expect a company to either raise the issue or develop the solution, Henry said she has noticed.

Some firm lawyers told DeStefano that clients are risk-averse and vague with innovation and collaboration because they either don't want to test a new arrangement, or don't communicate what they want when they are open to adopting alternative methods.

And experts say the firms that do spend time, energy and money on figuring out creative pricing or more efficient processes don't feel appreciated for their efforts — because clients don't pay for those value adds, pay late or ultimately revert to the billable hour without experimenting with a new process.

Ultimately firm lawyers want to help their clients succeed and develop a long-lasting relationship, which DeYoung acknowledged happens more easily if in-house counsel stay organized and send information at once in bulk, rather than in unnecessary stages.

"At the end of the day, it is a service industry," she said. "I'm going to do my very best to give the clients what they need."

DeStefano acknowledged that some frustrations are the same for both in-house and outside counsel.

3/8/2019

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“There are two sides to every story,” she added, “and I feel like that’s what everyone is missing.”

--Editing by Pamela Wilkinson and Alanna Weissman.

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