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Budgets Can Be The Foundation For A Trust-Based Relationship

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This interview with Barnes & Thornburg's Jared Applegate was originally published in the November/December 2018 issue of Corporate Counsel Business Journal.

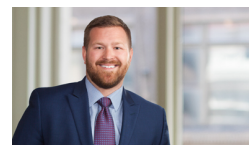
Two legal ops pros agree: Open, collaborative relationships are paramount, and budgets can be the first step.

CCBJ: What is the key to success when it comes to collaboration between inside and outside counsel?

Justin Ergler: It is essential to build a foundation of trust that goes beyond the matter at hand. Before we talk about anything else, we need to understand one another, that we're not robots. That comes not only from respecting one another from a professional standpoint, but also those personal relationships allow you to break down barriers, to have real conversations. When you have real conversations, if you're opening up and being completely honest, there are going to be some vulnerabilities. With a foundation of trust, you can let somebody know that you've got a weakness. You're never going to be willing to do that if you don't trust the person on the other side.

Jared Applegate: Relationships are paramount, exactly the way Justin described them. I believe the industry is going in that direction, specifically for procurement, legal operations, and law firm pricing and legal project management professionals. Individuals in these roles will become more connected on both the law firm side and the general counsel side – the maturity scale demands it. These are new jobs to the

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industry and because of that, operationally, there is much to learn from both sides. Yes, on the law firm side our job is to sell legal services, but we also want to make sure that we are collaborating effectively with our clients in meaningful ways.

Ergler: When you communicate successfully with your counterpart, be it clients speaking to a business counterpart or vice versa, you simultaneously elevate these roles within both organizations and demonstrate their value, which only leads to more opportunities to do that in the future. The better the buyer and seller sides work together, the more value they provide to their organizations.

In terms of talking about budgeting, how do you transition from focusing on the lowest common denominator to asking relevant, impactful questions?

Ergler: Attorneys on either side need to see the value and understand why they should be taking time to put together, review or make sense of a budget. They need to understand the non-legal-issue pressures that are faced on the client side.

In a large corporation, finance or other powers that be might not understand the ins and outs of a particular motion for preemption, but they understand the amount of money that they're paying the law firm to prepare it. When there are questions like, "Why didn't we know that the law firm was going to send us a bill for this much money?" – those aren't good conversations to have if you're an in-house counsel. Law firms are realizing that when clients have to have those difficult conversations, the law firm is drawn in as well.

On the law firm side, too, even if you're providing excellent services to your client, at the end of the day, if that matter wasn't profitable for you, that doesn't make sense. And if you're unhappy because you gave the client a bad budget and you're taking a bath on it profitability-wise, you're potentially putting the client in a bad position of trying to bail you out.

Having productive conversations upfront and making sure that both sides understand the importance of a relatively small amount of time invested at the outset of an engagement can save a large amount of time, heartache and pain during or after an engagement.

Applegate: I can tell you from experience, we would rather have a two-hour phone call on what the strategic business issues for the client are and where the law firm sees this going at the beginning of a matter to save the client 20 hours of going through invoices trying to figure out what's going on later. Sometimes these conversations take two hours; sometimes they're 20 minutes, based on the level of effort that's going to be engaged in the matter. Internally, on the law firm side, we educate on the importance of using budgets and scope-of-work documents as communication tools.

Why aren't budgets used to facilitate those conversations more frequently?

Applegate: For both law firms and legal departments, budgets were never housed in a system or used as a communication tool. This was

systemic prior to prerecession 2008. Many times, budgets were stored on the law firm partner's desk, the GC's desk. They were never put into any actionable form. That's the legacy, and it's hard to change behavior to start using budgets as an actionable way of communicating.

Internally, there's now a heightened awareness of moving budgets into our engagement letters. Our clients love that we're having a dialogue about what's on the table facilitated by the use of a budget.

Ergler: The rigor is being stepped up as well. Expectations are raised as you're able to more accurately predict how much money you're going to be spending for a given quarter on legal expenditures. There's acknowledgment that there are twists and turns, but it isn't just a fungible number that you put in as a placeholder. There is a higher expectation that if the budget number is off, harder and deeper questions will be asked than were in the past.

The expectations of corporate legal departments have increased as well, as a function of the success of the legal ops professionals who are translating legal realities – things that happen in litigation and transactions, etc. – into fees to show someone in finance who wasn't trained in the law why it makes sense, why they're getting a fair fee. The expectation is that you should be able to tell the business how much they're going to spend, and the business should have insight into why they are spending that much.

Applegate: I'd go as far as to say that if you're not investing as a law firm in understanding how to handle not only budgets but also these types of conversations to provide solutions, you're not going to have a meaningful dialogue with a Fortune 500 client such as GlaxoSmithKline.

Ergler: In the legal industry in general, clients aren't beholden to firms in their geographic region anymore. There are many great lawyers and many great firms, so differentiating yourself is very important. From the client's side, one of the differentiators is a firm that understands its numbers and has a solid core competency in budgeting and fleshing out other proposals. There is a stark contrast between firms that have invested in these functions and firms that have not.

If, say, whenever we've hired Firm A, they always mess up their numbers, and they're never able to point to what changed in the matter, but Firm B never causes us additional headaches, when push comes to shove, that can be the reason Firm B gets the work over Firm A. I've seen it happen. Peers and other clients say they simply don't work with a firm as much because they always have trouble on the budgeting side. It's simply not worth it because clients, especially large clients, have access to so many great firms.

How can both sides work together to define success?

Ergler: Good, old-fashioned relationship building, creating inroads with a client, even if it's something as simple and basic as reporting. "Hey, can I start running a couple of reports that will help give you some insight into where we are on your matters?" Then maybe that in-house attorney might float those reports up the food chain, and the next question is, "Wait a minute, why aren't my other firms doing this?" It's being proactive and willing to show the client that you understand the challenges they're

facing.

What other low-risk, no-regret practices can be implemented?

Applegate: Legal departments across the country have a lack of resources and at the same time are attempting to monetize their value and save money. Many times, they never get the spend that other departments in a larger organization get. If law firms have invested in legal project management, scalable budget solutions, even just tracking internal budgets, and can share those back with clients, it's a pretty low-risk, no-regret move. It's information the law firm already has if they're doing it right and managing those things internally. That's a huge way to start a collaborative conversation.

Where do you see the most breakdown in the current conversations that are being had?

Applegate: A big miss is not taking the time to effectively understand client needs and expectations, and quantifying and qualifying those expectations, which is really "Consulting 101." Identify key stakeholders early and get everybody at the table. A great deal can be learned from both sides. This is a hot topic for several leading industry groups around this collaborative approach between both legal operations and law firm professionals.

But having trouble connecting one way doesn't excuse you from finding another path to the solution. For example, a great client of ours was having issues just gathering feedback on our legal work from their own internal team. So we said, "We do third-party 360 surveys all the time. How about we send those to you so you can implement as soon as we close each matter." From the client's point of view it is a win; the law firm wants feedback to do better and it is free to the client. Both parties get feedback right away so we can see how well we were giving solutions, giving advice, so on and so forth.

How can legal ops professionals promote these and other conversations?

Ergler: The business sides of corporate legal departments and law firms are evolving their offerings from purely administrative – e-billing, tracking finance, accounts receivable – to problem-solving, strategy, understanding what issues are being faced and how those roles contribute to a solution.

That evolution might be helping clients by saying, "Here are some best practices I thought you might be interested in," or "Here is why one of my other clients structures things this way. Here is a challenge she was facing and how this helped her meet that challenge or communicate better to her internal business stakeholders." Breaking down barriers and having a willingness to share and learn from one another is a huge key to success because it helps develop that foundation of trust at the center of all of these things.

Clients are looking at law firms more like they look at other suppliers to

their organization. When we're evaluating a firm, we're going to be looking at the law firm as a whole. When you're dealing with different partners at a law firm from different geographies, different practice areas, the linchpin that helps provide the consistent face of the firm to the client can be those business professionals.