

Fast, Cheap and Good: How to Get the Most Out of Your Attorney

BY **JOSHUA STEIN** | 9/10 9:30AM

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In an ideal world, as imagined by anyone hiring counsel, attorneys always deliver three things. First, incredibly fast work, to meet the unusual and extreme timing needs of this particular transaction. Second, low bills, because everyone knows attorneys just push a button to create documents and close deals. And, third, absolute perfection regardless of complexity.

In an attorney's ideal world, clients would have the right to select only any two of those goals. Of course, clients and the market won't accept that. So clients and their attorneys must work together to try to help clients meet their goals. Here are some suggestions.



Joshua Stein

Continuity and education help. Counsel should try to learn how the client thinks, where their priorities lie, how they close their deals. The educational process might sometimes seem frustrating. But once counsel is educated, everything works better.

It also helps to keep the team consistent—the same firm, the same people at that firm and the same people in the client's organization. Shared institutional memory helps make the education worth the start-up costs.

Clients and counsel can identify the most time-consuming and problematic elements of their transactions, and figure out how best to handle them. If the other side always objects to certain provisions in documents, which always get changed the same way,

maybe counsel should update the template documents to incorporate some middle-ground position, saving time and money and reducing the chance of error. Good arguments also exist against pre-negotiation, but this is not the place to explore them.

Improvement of documents and procedures can take time beyond that needed to close each particular deal. But with enough deal flow, the client can reasonably ask counsel to contribute to that investment.

For any particular transaction, the process of negotiating documents—commenting, responding, recirculating—creates expense, suspense, delay and mistakes. It may be intellectually stimulating, even enjoyable, for counsel. To a client, it's just an impediment to closing. In my experience, it's the single largest cause of delays, billing surprises, post-closing problems, mistakes and lost deals.

Left alone, attorneys will often over-worry and overthink. That's their job. Clients should help their attorneys keep an eye on what matters and pick their battles. A minor imperfection in language on some minor hypothetical contingency isn't as important as getting the interest rate or CPI escalator right or making sure the nonrecourse carve-outs don't bite the guarantor where it hurts.

If an issue usually ends up getting resolved a certain way, the client might prefer to avoid taking extreme positions. For example, if a property owner insists on complex, detailed and potentially burdensome standards for exactly how a developer will operate a new apartment project on a ground lease, the property owner will probably need to relent or lose the deal. Everyone can save time by moving to the center and resolving the issue the way everyone else does: by giving the developer flexibility similar to that of ownership. Of course, it's the client's decision, not the attorney's.

If issues stay open, festering, they'll keep needing attention and running up billable hours. A client might hesitate to drop an issue without getting something. Horse-trading sometimes works. If the parties will eventually meet in the middle anyway, it might make more sense to skip the theatrics. If both sides compromise, they can shorten the list of open issues, save legal fees and close faster.

I've found it helps to distill open issues into a simple grid summarizing the "bid" and "asked" positions as concisely as possible, so no one needs to look at any document. This helps everyone stay focused on the actual disagreements, without spending a lot of time trying to understand what the disagreements actually are. If people have a taste for horse-trading, a succinct line-up of issues makes that easy.

Good timing and planning help. Clients know that regardless of tight timing demands, competent counsel will always meet them. So the timing gets even tighter next time. But super-quick turnaround is often super-inefficient, increasing the risk of mistakes. An emergency timeframe may require unnecessary and inefficient use of senior lawyers, thus increasing fees. Issues the parties could have easily worked through on an ordinary schedule may require long meetings or conference calls—time and excitement that could have been avoided.

Clients should plan ahead and prevent a fire drill by getting counsel started earlier rather than later. If it's a continuing relationship with solid deal flow, counsel might share some of the risk of spending time on deals that die.

And here's my one last secret technique for any client trying to get the best possible results from counsel: pay the bill quickly.

Joshua Stein is the sole principal of Joshua Stein PLLC. The views expressed here are his own. He can be reached at joshua@joshuastein.com.

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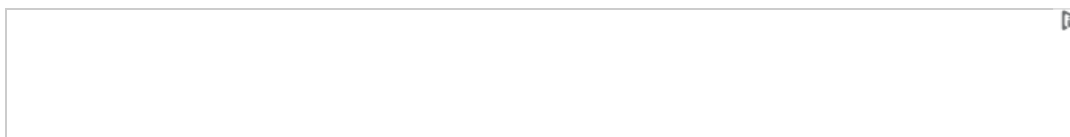


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