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Shared success

Achieving successful synergy when co-counseling cases



Cooper

By Miles B. Cooper

The lawyer considered the case. Righteous, and also benefitting from resources beyond what one firm could provide. There was a reason this case was being pitched as a co-counsel opportunity. And at the same time, co-counseling requires deliberate steps. While nowhere near as lengthy as a partnership or marriage, a successful co-counsel relationship requires the firms work together, each playing to its strengths. Time to make sure everyone agreed about the road ahead.

Shiny pennies

The opportunity to co-counsel can seem irresistible at the outset. An amazing case calling for justice. Or the benefit of working with a fantastic firm becomes its own siren song. These are great reasons to co-counsel. But not by themselves. For some personalities, the desire to move forward can occlude the downsides. Match that to a short decision timeline (trial is around the corner!) and one can find oneself in a challenging situation. Good guardrails help. The best guardrail? An internal "No" person, or if not internal, a trusted colleague who can point out all the potential pitfalls. The phrase "No" person is simplistic but straightforward. It's the detail person, the person who is dubious about new potential cases, the one who sees a sunny day's downside risks (skin cancer!) beyond the rays' warmth. Only when that person has been convinced that moving forward is wise does one then get to the next steps.

Get it in writing

Good fences make good neighbors, and good contracts make good co-counsel relationships. The writing should go beyond fee and cost advancement. It should also address staffing and decision-making authority. Will one firm take the lead? Will major decisions require consensus? What defines a major decision? What happens if the firms disagree on settlement versus trial? The writing isn't for some later breach of contract action. The writing is there so two disparate groups can meaningfully reach agreement on clutch co-counsel issues. Should friction later occur, the writing serves to remind folks what they agreed to. The best co-counsel relationships leverage each firm's strengths while maintaining clear lines of responsibility. One firm might know the case granularly while another has more experience in the courtroom and with trial preparation. Whatever the division, put it in writing, and consider revising it should the division evolve.

Co-counseling can also help spread cost risks. This requires one to create protocols for cost-sharing and approval. Will major expenses like a focus group require sign-off from both firms? Will hiring a particular trial consultant or expert require consensus? Who advances which costs? These decisions need to be made, and the costs need to be tracked so that the client can get a good sense of a net settlement figure whenever a settlement overture is made.

Culture club

Working together also involves acknowledging and adjusting to different firm cultures. Early dances between firms will result in some stepped-on toes. Recognizing and talking about this with the teams at the outset helps cushion the early bumps' impacts. So does more voice (phone or Zoom) than text only communication, as voice carries nuances text can't. Finally, assuming positive intent and following up by voice when in doubt helps keep tension down.

Communications and files

The cloud platform for files

Even with the best planning, maintaining seamless communication between firms takes effort. In cases big enough to co-counsel, regular meetings (monthly to weekly, depending on trial proximity) help. The first meeting should address file structures. By now most firms use cloud storage. Unfortunately, some of these systems are proprietary and hard for outsiders to access. Typically, firms don't have the same storage system. There are various solutions. One is maintaining dual files. Each firm maintains its own file and considers making that file accessible to the other firm if possible. In firms with good protocols this increases the chances things won't get lost. The downside is that it requires twice as much administrative load to organize the file. Another is guest access to one firm's file, with that being considered the single point of truth. Finally, if one is not using proprietary document management systems, one can consider a simple shared cloud platform like Dropbox that will allow access for all teams.

Google Doc and communication apps

Regular meetings also benefit from a continuing Google Doc to track matters. Why Google Doc? Easy access with real-time updating. Segmenting the meeting into three parts, case Headlines, To-do status updates, and Issues. Leaving substantial time to identify, banter about, and resolve issues keeps meetings focused. For ongoing communications, a group can decide whether channeled communications apps like Microsoft Teams or Slack are beneficial. A single email address that emails everyone on both firm's teams (JaneDoeFile@coopers.law) is easy to implement and cuts down greatly on the, "I wasn't looped into that chain," problem.

Outro

Back to our lawyer. The lawyer talked with the lawyer's firm about the case and met with the potential co-counsel firm. After a preliminary discussion, and with questions answered to the satisfaction of the firm's designated sceptic, everyone decided to proceed. Now, two firms could direct all fire at that corporate behemoth and its legion lawyers. Time to put them on their heels.

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