

# Best Practices Emerge From Client-Focused Planning

**R**ecently, I had the extraordinary opportunity to participate in two multi-day meetings involving clients and their primary outside counsel. One of the meetings involved the client, its key outside counsel, and “faculty” — lawyers and vendors who have embraced

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partnering relationships. This particular client had not previously embraced partnering as a value but had become persuaded of the value of that dynamic. The second meeting involved a client who has been committed to partnering relationships for years. This client is one of the most highly regarded forward thinkers involving partnering relationships and using metrics to value performance. Both events serve as powerful evidence from opposite ends of the spectrum of the real value of partnering relationships between clients and their counsel.

## What Is Partnering Between Clients and Their Lawyers?

Let’s quickly move past the rhetorical gobbledygook and define the key term. What, exactly, is a “partnering” relationship? Peter Jenkins, who runs the Law Partnering Institute, defines law partnering this way:

“Partnering is a collaborate effort to achieve a common vision that results in mutual economic benefit. Success is structured upon trusting, long-term, committed relationships established at multiple levels of the partnering organizations. A team effort is undertaken to identify and eliminate barriers that hinder the partners from working together to be as profitable as they can be. Instead of business as usual, partnering involves a continual reinvention of how legal services are delivered, with the objectives of strengthening relationships, achieving market focus, increasing efficiencies, seeking new solutions, inventing new business opportunities, and adding value for both the company client and its partner firms.”

There are a number of critical words crammed into that definition. Collaborative. Common vision.

Mutual economic benefit. Trusting. Long-term. Reinvention. Adding value. Perhaps at the core of the relationship is the recognition that the traditional hourly relationship is an impediment to a trusting relationship designed to be in the partners’ mutual economic interest. The rejection of “business as usual” is another cornerstone. Thus, while litigators exist to litigate, partnering requires the lawyers to embrace the client’s view that they are in the business of selling widgets, not litigating cases. As such, almost every case falls into a category where the preferred solution is that the problem disappear as quickly and cheaply as possible. That result tends not to be in lawyer’s interest in a billable hour model. Client partners frequently see fit, however, to reward the result that brings them economic benefit. Hardly business as usual.

## How does it work?

Both of the meetings I participated in focused on the development of best practices that would be uniformly adopted by the outside lawyers to the benefit of the client. It also is true that effective partnering tends to involve an element of convergence. One of the benefits that the client partner can confer upon its law firm partners is more work. The convergence, in many respects, is self-selecting since many law firms do not want to be real partners. They opt out of the process.

Here’s how it worked in the two meetings about which I write. Imagine sitting around a table and discussing scores of ideas centering on how the client can do more with less. Imagine discussing the value of systematizing an approach to budgeting, to early case assessment, to mediation. Having heard many law firms complain about having to bill electronically, imagine a group of firms not only excited about billing electronically, but also interested in working with the e-billing vendor to integrate budgeting tools into the system so that the firms and the client can track performance to budget automatically and in real time. Imagine everyone around the table talking about ways to remove barriers to sharing knowledge developed

by one firm so that it is available for the benefit of all.

Partnering is a two-way street. So these meetings also involved discussion about what the clients could do to make life better for their law firm partners. Firms want faster payment? Presto—payment by credit card within days of submitting an invoice. All firms want more business by referrals? The General Counsel at one of the meetings announced that he had just provided another GC of a Fortune 500 company the names of all of lawyers with an unqualified endorsement. A major pitch for new business coming? DuPont's in-house lawyers, for example, will accompany their law firm clients to act as an in-person referral.

### Some Specific Examples Illustrate The Point Even Better

Budgeting is an important issue. The client host of the first meeting had not imposed budget discipline on its lawyers. The “faculty members” for the meeting—lawyers with substantial partnering experience—advised that budget discipline was a valuable management tool and would lead to several critical benefits. Part of budget discipline, the client was advised, was that bills in excess of the budget had to be rejected. The client's other lawyers thought that was unfair. But the tool of rejecting bills in excess of budget is designed to return to the client the right to say yes or no to an expenditure or strategy. If firms felt leeway to exceed budgets without consequence, the client's control right was taken away. While some still were grumbling, everyone acknowledged the point.

The issue then shifted to the budgeting tool. One thing the client made clear was its preference for its law firms to use the same tools. The value of a system is obvious. The law firms got together, shared their budgeting practices and tools, and combined the best features of each to develop an exceptional budget tool. While it was being reviewed by one client, the same firms showed the tool to another client. That client offered its own tweak—instead of focusing on budgeting by litigation task code category, the second client found it more useful to have budgeting be time focused. The value of the suggestion was immediately obvious—internal budgeting is time based, not task based. So the tool was tweaked further to add a time dimension. And then that new dimension was taken back to the first client.

None of the time spent improving this budget tool was billed. The scores of hours were devoted to this process based on the belief that best practices developed for clients will have an inherent and long-term payoff for all involved.

### Other Best Practices Emerge

In each meeting, time was devoted to the contribution of vendors—preferred deposition pricing, preferred photocopying pricing, e-discovery pricing, and so on. There, too, is the ability of focus on the issues of special concern to the client. One client wants his attorneys to improve their negotiation skills. Group discussion can yield a variety of ways to accomplish the objective. We spent time discussing and refining the nuances of early case assessment, tying it to the budget process. We discussed use of decision trees, so that the company's business personnel could see in their own terms what the case involved and how it has been assessed. The only thing limiting ideas to help the client was time.

### Conclusion

The concept of partnering is hardly new. Among others, DuPont has been committed to partnering for more than a decade. But the concept has not taken off like wildfire. I have often wondered why. Now, having sat through two meetings, one with a veteran of partnering and another with a new convert, I am even more perplexed. The benefits from the process are so compelling, especially the possibility of lower legal spend. While some may lament the lack of time, the truth is that the process of converting to partnering relationships can be accomplished easily and quickly. Not precisely turnkey, but so very close. Perhaps have the curtain pulled back on the process may cause inside counsel to reconsider the process.

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