

Defining ‘Value’ in a Time of Unpredictability

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By **Steven A. Lauer and Kenneth L. Vermilion**

The financial collapse of 2008-2009 caused in-house lawyers to focus on cost control and expense reduction, and to demonstrate with metrics achievement of their commitments. The COVID-19 pandemic of 2020 intensified that focus in new ways. We see renewed calls for greater value and a growing resistance to time-based billing as the exclusive tool for measuring value.

In addition to that renewed financial focus, the COVID-19 pandemic has highlighted the need for enhanced flexibility and agility in the law department, logistics and management of resources on behalf of its company.

Those pressures cause in-house attorneys to seek greater “value” from their external resources with increased intensity. Without greater clarity and specificity as to what their needs are and how they define “value,” though, that effort could end in frustration.

Particularly due to the heightened significance of flexibility, corporate law departments must provide greater direction to their in-house attorneys and, in turn, the providers who fulfill the needs of the businesses for legal service. They must remember the oft-cited adage that “one size doesn’t fit all,” as this applies to the search for value at least as it does to any other responsibility of in-house attorneys.

What does that mean? Most simply put, the “value” of legal service represents the relationship between the cost of that service and the benefit that the corporate client seeks from the efforts of the internal and external lawyers.

The law department must define the benefit that the client desires from the legal service in as detailed a fashion as reasonably possible. Merely saying “we want to win this case” or “we want to close that transaction” won’t suffice because each of those outcomes can vary significantly and that variability can impact the success of a particular value-based or other type of fee arrangement.

In-house counsel should bear in mind two other points regarding “value.” How can you best communicate to external providers the company’s expectations as they might impact the legal service and, more importantly, the benefit that the company wants from those providers’ efforts? How can the law department monitor the results in terms of the company’s value-related expectations? Can the department achieve those linked objectives simultaneously? Yes, it can. Value Related Qualities (VRQs) can serve as a framework for outside counsel to better and more fully understand clients’ expectations, e.g., expertise, cost control, speed of resolution, certainty of resolution. VRQs can yield rich data to support meaningful metrics that demonstrate clearly the achievement of legal department’s goals that integrate with overall company goals.

When you know the benefit that the client seeks, consider whether the cost of the service to realize that benefit would bear an acceptable relationship to that benefit. Spending \$50,000 to defend against a simple slip-and-fall case would not meet that standard.

The events of 2020 have highlighted the need for organizations to respond to unexpected and sudden changes in their environment. The changes experienced in a very few weeks presented logistical and other challenges to law departments, law firms and other service-providing organizations.

In addition to those short-term logistical challenges, however, longer-term changes require attention, even in respect of how in-house lawyers might develop a proxy for the value of legal service and re-evaluate delivery mechanisms that they have long used.

Specifically, the flexibility that the pandemic required exemplifies a new aspect of organizational excellence and operational adaptability that should affect law departments' selection of external providers and how they work with those chosen providers. A couple of examples can demonstrate how this "new normal" might manifest itself.

The transparency of billing for legal service underlies any successful evaluation of its value. Manual processing of invoices from outside counsel persists in small to mid-sized legal departments, often due to limited resources. This approach might once have sufficed, but current restraints on face-to-face meetings and travel render that approach less effective.

Processes used to pay invoices prior to the current pandemic might still be in place. As the pandemic continues, however, we expect office staff will continue to work remotely. Paper-based invoices likely will take longer to arrive than they once did. The time may have come for the legal department to embrace any one of the many eBilling service providers. A VRQ based on outside counsel's ability to embrace eBilling and to provide granular data in the form of reports to the managing inside attorney could factor more significantly than previously in in-house counsel's analysis of the value of the law firm's efforts.

Counsel can also apply VRQs when managing a portfolio of matters dispersed around the country. A VRQ related to the location of outside counsel might once have been an element of the selection process. Due to the additional challenges associated with travel since the advent of the pandemic, a firm that has offices near major airport hubs could represent a more attractive choice than it formerly did. Thus, the geographic presence of a firm in those cities might become more important because utilizing more regional firms may contribute more value to the corporate legal department. In other words, that VRQ would be analyzed and applied differently now.

The pandemic has caused organizations across the spectrum, including law departments and law firms, to re-evaluate processes. The firms seek long-term, fruitful relationships with clients. Law departments also seek long-term relationships with their external providers, but focused more than ever on the demonstrable "value" of the service.

The changes brought forth by different, and sometimes new, business models developed on account of the pandemic require crisp and efficient communications regarding clients' expectations and law firms' service delivery to satisfy those expectations. VRQs can assist both by providing an easy, measurable means to enunciate and to address clients' value-related needs.

Steven A. Lauer *consults with law departments and law firms on the value of legal service to help law department clients to maximize the value of their legal service teams and to achieve the greatest possible return on their investments in both internal and external resources. Mr. Lauer has over 15 years' experience as an in-house counsel in law departments ranging from two to over 300 attorneys and as the*

*sole in-house attorney and general counsel for an organization. For six previous years, he was in private practice. **Kenneth L. Vermilion** currently is the principal in The Vermilion Group Strategic Legal Management LLC. He specializes in providing middle market legal departments strategic planning and operational guidance. Prior to launching The Vermilion Group, Ken was a founding director in the Houston office of Duff & Phelps Legal Management Consulting practice. He has more than 16 years of in-house legal department management experience focused on improving business performance and reducing costs through a variety of techniques including the implementation of progressive strategies, leveraging the use of technology, and the development of effective and uncomplicated management reports and metrics.*