

LexisNexis® Emerging Issues Analysis

Steven A. Lauer on

The Need to Secure Agreement with the Client about the Definition of Value

2010 Emerging Issues 4961

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The valuation of legal work must begin and, to a degree, end with the client's perspective. Inasmuch as the law constitutes a service profession and counsel serves to further the client's goals, it follows that the legal service must serve the client's interests or it does not possess any value. The degree to which it does serve those interests will determine how valuable it is.

For this reason, a corporate law department should ensure that its own view of the value that it provides to the company coincides with the view of its internal clients. Do the in-house lawyers place priority on the same types of service as do the "C" level executives? If the latter expect counseling and advice immediately on request but the attorneys focus on responding to contract-related inquiries in order to keep the corporate machine "humming," that disconnect will prove problematic for the law department. The opposite expectations by the executives, if not matched by similar perceptions by the lawyers, will prove just as deleterious to the law department's standing.

Similarly, different companies place more or less emphasis on the cost of legal service. While every company hopes to keep its expenses to a minimum, budget guidelines may constitute more a goal at some firms while others consider such guidelines to serve as absolute limits on the lawyers' prerogatives to the extent the lawyers want to take steps that would entail substantial outlays.

Accordingly, a law department should engage senior management of the company and its internal clients in discussions about the value proposition in respect of the legal service that it provides and manages. How does the law department's work better enable the company to achieve its business goals? Can the department and the legal team do more in that regard?

How much risk would the business tolerate in the context of its legal work? In-house lawyers understand that "leaving no stone unturned" in terms of legal issues researched for a transaction or issues analyzed in respect of a dispute will result in significant expense. Will that additional effort lead to a "better result" and a more-certain legal package? If it will not, that additional work will have added little value to the underlying legal

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work while increasing the cost of the transaction or the litigation. In order to avoid pursuing the "ultimate" piece of legal work at the expense of the cost effectiveness of the effort, though, a law department must develop guidelines on the level of legal "risk" that the organization will accept. It should develop those guidelines in conjunction with its clients to ensure that they share its views in that regard. Only if the lawyers and their clients apply the same priorities will they be able to work together effectively, particularly in the heat of a large transaction or the emotions of a challenging dispute or litigation.

Too often, in-house lawyers and their internal clients fail to recognize the existence of a gap between their respective expectations and views regarding some basic issues that typically arise during the former's representation of the latter. When a client sees things differently than his/her counsel, that counsel's performance likely will not meet the goals or expectations held by that client. This will lead the client to hold a less-than-favorable opinion of the lawyer's work which, in turn, will lead the client to recognize that work as holding less value than does the lawyer.

This can prove very deleterious to their relationship by poisoning the client's mind and his or her future receptivity to the lawyer's advice. This happens when law departments acquire the reputation of always preventing deals from closing or delaying their conclusions too much (becoming known as "the department of No").

Law departments should engage their clients in discussions around the part that the legal work plays in achieving the business goals and how much that work contributes to achieving those goals. Such discussions will enable those departments to realize several benefits. First, they will develop collaboratively with those clients a common understanding of how the clients want the lawyers to work toward the business's objectives. Second, those clients will become more educated consumers of that legal service because they will gain a much more complete appreciation for the legal risks inherent in the business and the costs of addressing those risks. Third, the clients will acquire a more sophisticated understanding of how the legal issues inherent in a situation can impede the achievement of those objectives or lead to post-transaction problems and disputes or, if addressed properly, can help the company to achieve those objectives more rapidly.

How should law departments begin those discussions? As an element of reporting to management, of course, a corporate law department should provide data that demonstrate the implications of the legal matters that it manages on behalf of the company. The department might include in those reports information that details the sources of

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those potential effects on the company's risk. Applying some descriptors that explain the relative risks of various plans, the in-house lawyers can begin to educate corporate leaders about the law-related implications of their business plans and to engage those leaders in discussions about means to reduce those risks if desired. If those discussions lead to an understanding between the in-house lawyers and their clients that the risks are understood by the latter and within acceptable limits, the law department will have done its job and should have much more supportive clients with respect to its role in managing those risks.

The first step, of course, consists of achieving consensus within the law department on means by which to categorize its matters by risk level. For litigation-related or dispute-related matters, this likely will involve discussions of what characteristics of a dispute or litigated matter relate to higher risk and which characteristics identify (or likely identify) those matters that present lower risk profiles. These characteristics probably have been identified for purposes of the department's process to evaluate those disputed matters. In the context of a personal injury lawsuit, for example, the more severe the injury in question, the higher the likelihood of an unfavorable or more expensive outcome (assuming liability for the moment). Venue in a plaintiff-favorable state court might suggest a higher risk if the matter is likely to go to a jury or a local judge for decision.

Transactions present a different set of criteria or characteristics. A high-profile sale of defense-related products (e.g., military equipment or computers designed for weapons application) to a foreign government probably creates a not-insignificant risk of bribery or other unlawful activity under the Foreign Corrupt Practices Act and its counterparts in other countries. Highly regulated transactions have different risk profiles, as a rule, than do unregulated ones.

By developing its own lexicon of risk-related concerns and determining how to apply that lexicon to the work that it manages on behalf of the company, a law department will set the foundation for very productive and helpful discussions with its internal clients about their business plans and the risks associated with those plans. Tying that lexicon into a more easily understood set of graphics or metrics will assist in those discussions and, in turn, provide a format for reporting and discussion in the future that serves the interests of the law department and its clients well.

The law department must also take steps to assure that the outside legal service providers with which it works share (or at least understand) its understanding of how to value the legal work that they provide to the clients together. Such a common under-

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standing will assist the in-house and outside lawyers in their discussions of the work, billing, alternative fee arrangements (if they tackle that subject) and other issues relevant to the relationship between the corporate client and the outside providers.

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About the Author. Steven A. Lauer is Corporate Counsel of Lumen Legal and Principal Value Consultant, Lumen Legal Consulting (www.lumenlegal.com). Mr. Lauer works with corporate law departments and law firms to assist them to better align and synchronize the cost and value of legal service delivered to corporations and other business entities. Steve served as Corporate Counsel for Global Compliance Services in Charlotte, North Carolina for over two years. Previously, he served for over two years as Director of Integrity Research for Integrity Interactive Corporation, in which capacity he conducted research, wrote white papers and otherwise worked with clients and potential clients of the company on issues related to corporate ethics and compliance programs. He also spent over two years as Executive Vice President, Deputy Editor and Deputy Publisher of The Metropolitan Corporate Counsel, a monthly journal for in-house attorneys. He received a B.A. from the State University of New York at Buffalo and a J.D. from Georgetown University Law Center.

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