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Steven A. Lauer Esq. on

Without Effective Evaluation, All May Be for Naught

2010 Emerging Issues 4866

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Absent good communication, in-house and outside counsel's ability to work together effectively to represent their mutual client will suffer. Establishing good channels between the in-house and outside attorneys is necessary at the start of their relationship. Assuring that they understand each other, by developing or confirming that they share common understandings of the words that they use, must occur at the start as well. Shared expectations regarding the work that the latter performs at the direction of the former will serve as a useful calibration for the work going forward.

In order to assure that the client realizes the most value from the legal service, though, whether in the context of a single, one-off assignment or as an element of an ongoing relationship that covers multiple (even many) matters, in-house counsel must establish an effective means of evaluating outside counsel and the latter's work and communicating the results of those evaluations to outside counsel in a manner that will conduce toward improvement in the relationship and the work.

In fact, the evaluation of outside counsel might be as important as the initial selection. A failure to properly evaluate outside counsel and to communicate the results might irreparably damage the relationship and the work. On the other hand, the benefits of effective evaluation will serve counsel well immediately in respect of the current assignment and they will manifest themselves fully more and more over time.¹

Proper evaluation requires that a law department follow these steps:

Determine what criteria regarding outside counsel and outside counsel's work on behalf of the company match up with the law department's needs;

Develop measurements by which the department will be able to determine how well counsel fulfills those criteria;

1. See Lauer, "What Business Can Teach Law," *Legal Times* (September 22, 1997), p. 25.

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Assure that the in-house attorneys apply those criteria consistently across the department and over time;

Establish a mechanism by which to convey to outside counsel the results of the evaluations.

The criteria used, of course, should be the same as, or at least not inconsistent with, the criteria by which the department selected the outside counsel to be evaluated. To the degree that they are, they will reinforce the department's ability to assess the wisdom of its selection and its ability to communicate to others within the company (and, perhaps, even audiences outside the company) why it selected the particular outside attorneys. In these days of heightened oversight and second guessing of many corporate decisions, that facility will serve the department well.

The measurements by which the department evaluates its outside counterparts should match up with and feed into any reporting that the department must prepare for internal audiences. Assuring corporate management that it identifies the legal support team methodically and with some objectivity will enable it to speak to that audience in language that the audience understands and uses on a day-to-day basis. Moreover, by demonstrating its willingness and ability to measure the performance of the company's outside counsel (and, indirectly, its own performance), the law department likely will impress its corporate management in ways that will redound to its benefit significantly.

Those criteria should also reflect the department's and the company's definition of "high quality legal service." If that definition is highly dependent on cost efficiency, for example, adherence of outside counsel to cost-control guidelines, budgets, and similar directions should be measured in some fashion. If a company has adopted a very aggressive mode of dispute management and resolution, look for ways to measure how well outside counsel serve that goal.

A law department should secure the views of its internal clients regarding the outside attorneys with which it works. This will provide several benefits to the in-house lawyers. First, they are the clients of the law department and of the outside attorneys, so their views of the service must command attention. Second, since the clients' views of the law department's service to and for them likely will affect the department's standing within the company, negatively or positively, enabling those clients to express their views about that service invests them in that service delivery. If, after having had an opportunity to express satisfaction or dissatisfaction, they later criticize the outside

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attorneys or those attorneys' work, their criticism will be less directed toward the law department. Third, since their perspective likely will differ from that of the in-house attorneys, their evaluations of whether and how the legal work product adds value to the business process should "round out" the overall assessment of that product in a way that benefits the company.

One law department that established a formal, consistent evaluation process for its outside law firms reports several benefits. The company general counsel believes that the process has led to healthier, more constructive relationships with the firms. That law department's initiatives around topics such as alternative fee arrangements and electronic billing have proceeded with little of the controversy that some other law departments have encountered because the firms have clearer understandings of the department's needs and perspectives and how those initiatives can benefit both in-house and outside counsel for that company. The department also recognizes the law firm that has earned the highest evaluation score at its annual meeting with the outside firms. The general counsel reports that the firms actively compete for that award, to the benefit of the company as well as themselves. A second law department that initiated such an evaluation process uses the results of its evaluations to inform its discussions with those firms that receive the bottom quartile of evaluations about ways in which those firms can improve their performance for that company. Without such a specific, well-thought-out process consistently implemented, that department would have less "ammunition" for such discussions.

By following these guideposts, a law department should be in a position to assure itself that it arranges for and manages the delivery of legal service that contributes value to the corporation's business efforts. By doing so, it also assures management that it contributes value to the enterprise. And that can only be a good thing these days.

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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.

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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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