Of Counsel, Don't Sit Back and Wait for "Value" to Come Calling; Define It and Go After It, (Aug. 1, 2026)

Of Counsel

Steven A. Lauer works as an independent consultant to help corporate counsel to deliver higher value to their clients. He also serves as the United States Representative and Value Consultant for SKJ Juris, Inc., and as such provides clients with value-oriented services for their legal needs, including document review and production and contract and lease abstraction. He has written four books and dozens of articles on how companies can realize greater value from the legal services that they buy. Reach him at slauer@carolina.rr.com or slauer@skjjuris.com.

Every corporate client of a law firm wants the work of that firm to deliver the maximum bottom-line benefit for its business. Since the purpose of that legal work is to help the client to achieve its business objectives, we should measure the value-expressed impact of that legal work in those terms: how well do the lawyers enable the client to reach its business goals?

Outside counsel are typically retained by a company for discrete assignments, whether a dispute/litigation, a transaction, an investigation or a specific counseling-related project. This provides such counsel a limited perspective on the client organization, like looking at a large mural through a slit in the opposite wall. Related or similar disputes or applicable transactions may lie beyond the vision of that counsel through no fault of hers or his. Consequently, outside counsel may be unable to appreciate how that specific assignment relates to the client's entire business and thereby understand its value in that situation. Does a dispute with a customer threaten the client's entire business method? Is one dispute just an example of hundreds of similar claims, so that an argument made in that single matter might impact the defense of many others?

How well does the legal service provide business-related benefits to the client? The answer to that question, which is on every client's mind, equates with the "value" of the service. Unfortunately, the term "value" is thrown about with respect to lawyers' work in a general, nonspecific way. That is a very unhelpful means of discussing value in that context. To answer that question in a more useful fashion requires that we define the term in a manner that can be understood and applied readily.

We need to take into account that outside counsel and the corporate client, represented by in-house attorneys, have very different perspectives on "value" and the cost of legal service. Lawyers look at the legal service from the vantage point of a provider, so the value should represent, in their eyes, the effort undertaken to provide that service. The lawyers may consider the value of their work as reflecting the cost of the service, whereas for the client, the service has value only to the extent that it enables the client to achieve its business objectives in the matter for which counsel was retained. Paul Simon expressed that dichotomy well:

"Ain't it strange the way we're ignorant

How we seek out bad advice

How we jigger it and figure it

Mistaking value for the price"

© 2010 Paul Simon, "So Beautiful or So What"

To gauge the value of legal service, then, one should examine it separately from the effort alone. While that effort may be a factor to consider, ultimately the legal service must serve the client’s purpose in retaining counsel, or it’s effectively worthless. The client’s perspective on value should serve as the most important lodestar in the discussion. With that in mind, we can review the topic more clearly.

First, recognize that the value of the lawyers’ work varies. For example, extensive research on the legal issues related to a simple slip-and-fall personal injury claim likely would be unnecessary and a needless expense. In a major antitrust dispute between competitive companies regarding market definition or the application of intellectual property concepts to their respective software offerings, on the other hand, novel legal issues demand that considerable effort be applied despite the cost. Similarly, retaining a law firm that specializes in antitrust defense to handle a slip-and-fall case might yield a negative value for the service, as the fees would exceed the likely award if liability were set.

The ways in which various aspects of the service and the context in which it is to be delivered lead to higher or lower value for the client constitute “value-related qualities” or VRQs. Identifying and analyzing the VRQs that relate to the possible assignment should be the first step in selecting counsel and determining how to manage the matter. A simple case might not call for the same level of attention, such as for budgeting, as a more complex one.

Some VRQs relate to the specific matter in question, such as whether it’s a transaction or a litigated dispute or whether it’s a simple slip-and-fall case versus a complex multi-entity antitrust case. Some other VRQs reflect the capabilities of the lawyer or law firm under consideration for the assignment. A global law firm with thousands of attorneys and support staff located in dozens of countries may be very capable of handling a multi-jurisdictional tax dispute and necessary for that assignment, but overqualified to represent a tenant in its dispute with the landlord of a small strip shopping center.

Some VRQs even relate to the client (a corporate or business entity, since we’re discussing business representation). A company that has an internal law department is capable of handling aspects of the representation that an organization that has no on-staff lawyers is not able to perform. Even among companies that have law departments, the internal resources vary with respect to substantive expertise and depth of capabilities, all of which will impact what can be accomplished internally rather than left to outside counsel.

Some VRQs of the client and the law firm are related to their respective “strategic strengths.” The combined professional bar admissions of a law firm with many lawyers outstrips the ability of a single law department to represent its organization in multiple courts without outside assistance. Thus, for a multi-jurisdictional matter, retaining a law firm with the necessary bar qualifications would likely be necessary.

Due to greater proximity to corporate decision makers and their participation in many, if not all, corporate transactions, in-house counsel typically have a broader vision of their company’s matters than outside counsel. This exposure to the breadth of the organization’s activity enables them to develop a strategic perspective on each specific matter that is outside the vision of their external counterparts.

With that strategic perspective and in line with their responsibility to manage all of the company’s legal affairs, in-house attorneys are best suited to assess how the organization values the legal service provided to it by the attorneys. That responsibility and their involvement in multiple matters for the company across the range of its activities give them a much more strategic view of its legal issues and, very often, its potential legal issues.

From that perspective, an in-house lawyer can assess how well a particular legal project matters to the company’s business and the degree to which that project can affect the company’s bottom line. Since attributes of the client and its business can constitute VRQs, an in-house attorney can understand and apply those VRQs so as to be positioned to realize greater value from the efforts of the organization’s lawyers.

In order to do so, however, the in-house attorney or law department needs to take the initiative to develop and understand the company's conception of value for that service. One must take into account several top-of-the-line concepts. Is lowest cost the overriding consideration in selecting and working with counsel? Does another attribute of the work, the law firm or the client dominate the calculus for measuring value? If one identifies multiple VRQs that come into play in respect of a particular assignment, what is their order of preference?

Bear in mind that the most preferred VRQ may be different for different types of matters or even among specific projects within a type of matter. Not every transaction requires identical legal service, and litigation varies tremendously, so the legal service (and its value to the client) will also.

The purpose of understanding how to approach the question of value is not to enable the client or counsel to force the other to accept its definition of value for their relationship. Incorporating the concept of VRQs and the underlying issues into their conversation, however, should enable them to understand each other's perspective on this topic more fully. They would also be able to incorporate those ideas in their relationship to their mutual benefit, whether discussing a possible fee arrangement that does not reflect only the time spent by counsel but also conforms to the ways in which the legal service advances the client's business interests and provides better means of measuring the attainment of its objectives for the assignment.

In order for the client's perspective to guide their conversations and to serve as the measure of value, of course, the in-house lawyers should be the source of that perspective. That, in turn, means that the in-house lawyers should manage the discussions and also serve as the managers of the service delivery, ensuring that the service continues to adhere to the agreed-upon value proposition.

A proactive approach to management of the legal service requires that those in-house attorneys develop a "game plan" for retaining and managing the outside legal assets (*i.e.*, outside counsel and other providers of law-related services). An example from my experience may illustrate this well.

During my years as an in-house real estate attorney for The Prudential Insurance Company of America, the company's law department determined to re-examine how it selected and retained outside counsel, which had historically been accomplished in the various sectors of the department on behalf of those sectors' in-house clients. The sectors did not make an effort to coordinate their efforts across the broad range of substantive areas of legal work needed by the company, resulting in a very large number of law firms representing the company each year. With a view to working more closely with fewer firms in order to reduce the management overhead that resulted from so many relationships, as a first step, the department reduced the number of firms on its list of approved counsel from approximately 950 to only 270. (I served as the project manager for the entire effort.)

The department understood that simply reducing the number of firms would not by itself yield the desired efficiencies and cost benefits. To achieve those gains would necessitate a complete re-envisioning of the selection-and-retention-and-management process. Accordingly, using competitive requests for proposals for legal service (RFPs) and rigorous review by in-house attorneys of the proposals submitted by law firms, the department then proceeded to award approximately sixty percent of its anticipated annual need for outside legal service to only 80 law firms.

The RFP that we used incorporated several concepts that reflected ways in which the department wanted its in-house lawyers to work with outside counsel differently than they had historically by "unbundling" what law firms had typically provided as a package. The firms were required to agree that, if their proposals were accepted and work awarded pursuant to the RFP process, they would incorporate into their service delivery the providers of several law-related services for which the law department contracted directly with those providers. Those services included legal research, data and document management and temporary staffing. This represented a pretty comprehensive use of legal-process outsourcing (LPO) at such a significant level.

We also took other steps to change the manner in which legal service was provided to the company’s business units. Representatives of the firms that were awarded the most work through the RFP process (some firms had been given the opportunity to make proposals for multiple packages of work described in the RFPs) met with their law department counterparts to discuss in detail how they would work together more effectively. Finally, after designating five teams of in-house lawyers and outside attorneys that spent weeks researching and examining ways to streamline various aspects of the client-counsel relationship like budgeting and communication, Prudential’s law department convened a conference attended by hundreds of lawyers from the firms and the department. Those teams presented their recommended changes to the working arrangements between firms and clients in respect of the areas that they examined, with those recommendations implemented in the context of the specific substantive work of each sector of the department (*e. g.*, in the context of real estate litigation or healthcare transactions). In its full breadth, this effort of three distinct initiatives represented a significant break from the historical way in which the law department managed Prudential’s legal service. The department took a much more proactive approach to that responsibility.

The LPO element of the process yielded several benefits apart from cost savings. By contracting directly with service providers, the law department was able to establish uniform service standards across all of its legal services. It received the results of those providers’ efforts directly rather than filtered through multiple law firms’ internal processes, often in databases that the department was able to utilize repeatedly. Contracting on a national basis with a single provider for each specific service for which that provider was known in the profession allowed for more favorable pricing, stability in service standards and consistent data collection.

In all, the effort yielded considerable reductions in anticipated expenditures for legal service (on the magnitude of twenty percent). Moreover, it established a very different mode of coordination and collaboration between the in-house and outside attorneys who represented the company. That, in turn, led to greater efficiencies that they were able to identify and implement as their approaches to their mutual representation of the company converged.

The aspect of the Prudential Law Department’s initiatives that incorporated LPO into the law firms’ representation of the company lay at the core of the effort. The reduction in the number of firms that the company’s in-house lawyers would use going forward was the first step and was designed to strengthen their ability to set, or at least to affect greatly, the manner in which the legal service was deployed on the company’s behalf in a way consistent with its preferences and tailored to match up with the department’s internal capabilities and operating structure and style.

The specific scope and shape of the application of LPO would, of course, depend on the needs of the particular corporate client, its legal work and its defined value proposition. Nonetheless, it represents a fertile means of achieving several VRQs that a company favors.

Every company wishes to receive its needed legal service in as efficient and cost-effective a way as it can. The application of LPO to that service constitutes an effective and client-friendly method of doing so when carefully planned and implemented.

Greater value is realizable for a law department. In order to achieve that, the department must take the initiative, define its organization’s value proposition (*i.e*., those VRQs that matter to it the most, how their significance varies by the context of the company’s legal needs and in which order they rank. Doing so will allow it to collaborate much more effectively, and with a greater positive bottom-line impact, with the law firms that represent the company so as to achieve its value-focused goals.

—Steven A. Lauer

https://prod.resource.cch.com/resource/scion/document/default/(%40%40PRACTICE_OF_LAW_CHEETAH_ALL%20P20260801-2)0fbbc4f36e85

4ddfae068dbfb6e7ae1b?cfu=Legal&cpid=WKUS-Legal-Cheetah&uAppCtx=cheetah