
CLIENT MEMORANDUM

DISTINGUISHING YOUR FIRM

This piece is the third in a series designed to help law firms distinguish themselves in a legal market where their competitors are jockeying to better serve clients in a value-driven environment. The first piece discussed the benefits of conducting project-by project evaluations, and the second piece offered guidance on how to bill more equitably under the hourly billing model. This piece addresses a critical element of effectively delivering legal services – providing information to clients.

COMMUNICATING INFORMATION TO CLIENTS

Information is the lifeblood of any in-house counsel. When operating in their capacity as risk mitigators, it's critical for in-house counsel to know what's going on within the company, as well as in the surrounding legal environment. Some in-house counsel are better than others at monitoring changes in legislation, developments in case law and other movements in the legal universe. Even those who do monitor the legal environment are generally limited in their ability to do so because of their preoccupation with their company's internal affairs. Whether or not in-house counsel is *able* to monitor legal developments, the *desire* to do so is reflected in the fact that 49% of CLOs surveyed in the Association of Corporate Counsel's 2011 Chief Legal Officer Survey¹ and 44% of in-house counsel in the 2010 ACC/Serengeti Managing Outside Counsel Survey² said that one their primary concerns is staying apprised of legal developments. To help fulfill this desire, 33% of CLOs in the Association of Corporate Counsel's 2011 Chief Legal Officer Survey³ said that one step they would like outside counsel to take to improve their working relationship is to provide updates on developments in applicable areas of law.

It's clear that your clients are hungry for information, so how do you go about feeding them? While there are a number of avenues, such as seminars, blogging, publishing, and offering in-house training, just to name a few, we will focus on two.

USING EMAIL TO PROVIDE REGULAR UPDATES

Having a comprehensive knowledge management system is an important first step in addressing the informational needs of your clients. Your firm should regularly be monitoring state and federal rules, statutes, executive orders, court rulings and similar strands that make up the country's legal tapestry, and putting the information into a central repository that's accessible to

¹ Association of Corporate Counsel 2011 Chief Legal Officer Survey, p. 38.

² 2010 ACC/Serengeti Managing Outside Counsel Survey, pp. 103, 104.

³ Association of Corporate Counsel 2011 Chief Legal Officer Survey, p. 42,43.

every lawyer in the firm. Many firms are not only aggregating this type of information, but are disseminating it to their clients. As for the individual lawyer, it's not enough to provide his clients with information about his area of expertise. The lawyer should use the vast resources of his firm to provide clients with information from every practice area that affects his clients' businesses.

One simple and frequently used medium for sharing information with clients is email. Many firms send firm news and legal updates via email blasts "from the law firm of Blake, Blake & Blake". Every client and contact in the firm's database receives the same email about "a recent CFPB appointment", for example, regardless of whether the content of the email is relevant to the recipient's business. Some firms will filter their messages such that only banking clients and contacts receive banking related updates, while pharmaceutical clients and contacts receive FDA procedural updates. Although I applaud the initiative behind these emails, and believe that there certainly is some informational and branding value behind them, these mass emails actually miss a tremendous opportunity to connect personally and positively with the client.

The better approach is for you, the lawyer, to be more intimately involved in the process. Every week, you should sift through the firm's deep repository of information, aggregate the information that's most important to your clients and email your clients the intelligence that's most applicable to them. If the information represents a monumental shift in the legal terrain for your client, get the information out right away. Don't wait for the regularly scheduled email. For important matters, let your clients know that you and/or your colleagues are available by phone or in person to answer any questions they may have. If your firm has a group that directs the firm's knowledge management efforts, use that group as a resource to help set up processes to identify, categorize and disseminate information more efficiently.

The information you pass on to clients does not have to be groundbreaking opinions or watershed pieces of legislation. If you find an article that generally deals with your client's business, pass it on. Your client will appreciate the information, and that fact that you're showing an interest in their business and staying abreast of the relevant news.

To maximize the effect of educating your client, it is important that you, the lawyer who owns the relationship, personally send the email to the client that briefly summarizes the legal issue being forwarded, and that states why the client may find the information important. This approach is a better alternative to the mass emails from your firm for several reasons:

- An email from the law firm, rather than from the lawyer, is far more likely to be viewed as being SPAM! Clients don't want spam, they want to be informed about changes in the laws that affect their business. Don't give your clients the impression that you're marketing to them, you want them to understand that you are *informing* them. The email blast from the law firm has far less of an informative feel and more of a marketing one.
- Assuming outside counsel is doing his job, an in-house lawyer will rely and trust her outside counsel. In-house counsel often looks to outside counsel for guidance in areas of the law with which in-house counsel is less familiar. An email from outside counsel **will be read**. Often times, the "spam" from the law firm itself, will not. Make sure the message gets through, and let the client see that her lawyer has the client's interest at heart and does more than advise on matters for which he is retained.
- Taking the additional step of summarizing the legal issue being forwarded to the client and tying the issue to the client's business, is the stuff of real lawyering. Any plain

vanilla legal service or paralegal can simply pass along information, but a lawyer who summarizes and applies the legal issue to the client's business exemplifies the type of skilled and communicative counsel that every in-house lawyer seeks out. Such communication provides the simplified substance that adds discernible value to your client's practice.

- By providing updates and explaining how the legal development may affect the client's business, you show your client that you both understand the client's business, and you are on watch to safeguard the client's interest. This type of team player can prove to be a valuable tool for any in-house counsel.
- Finally, sending the email under your name ties your name to the issue, and gives the client someone to call if she has questions or needs more information. If the email comes from the law firm of Blake, Blake and Blake (and if the client actually reads it), she may think to call another lawyer with whom she has worked if she has questions. With your name and number on the email, it's your phone that is most likely to ring.

Keeping your clients informed gives them the means necessary to make adjustments to their operations to adapt to the changing legal landscape. What is lost on some lawyers is that protecting your client's business is another way to protect your relationship with your client. When I was in-house, I found the area of employment law to be very dynamic and I struggled to keep up with the changes. After several years of using a very sharp and effective employment counsel, I eventually terminated the relationship with her. I realized that I was finding out about changes in laws and rules that affected my company by reading articles or from HR consultants looking to gain our business. The lawyer was a very good technical lawyer and extremely knowledgeable, but even after being asked to try to keep me updated on the multitude of changes that regularly took place, she generally only shared her knowledge when specifically asked. That was far short of the expectations I had for outside counsel, and I suspect that many of your clients share those same expectations. Don't make your client look elsewhere for information that you have readily available

PERFORMING LEGAL AUDITS

Legal audits take informing and educating clients to a whole new level, one that can greatly benefit the client, and lead to substantially more engagement in the client's business for your firm. A legal audit is an examination of a certain component of a company's business (e.g. corporate governance, consumer compliance, risk management, etc.) with the goal of identifying any shortcomings in the company's practices, and developing solutions to remedy those shortcomings. Audits are generally performed after a company has already been exposed for some bad behavior and they're looking to weed out (or give the appearance of weeding out) any other nefarious conduct. Audits are also performed when a company is being merged with or purchased by another company, or is entering into large credit facility or other financial transaction (although these audits are generally referred to as "due diligence" in these scenarios, and are performed at the behest of the other parties involved in the transaction). It's not often enough that companies perform audits at their own initiative *before* the occurrence of any wrongdoing or mistake.

But that should change, and it should be the law firms pushing for the change. Each practice group of your firm should focus on hot areas within that practice and build audit programs around those areas. A firm with 10 practice groups, for example, could have 25 different audit programs across the firm that can be customized to address each client's circumstances. After the audit

programs are established, each lawyer should thoughtfully consider areas of his/her client's business where the firm's advice and expertise can add value, such as (a) the client's corporate governance, (b) its exposure to various categories of liability, (c) its risk management policies, (d) its document retention policy and general preparedness for litigation, (e) its crises management plan, (f) its I-9 compliance, (g) its social media policy, (h) its anti-bribery and foreign practices policies, (i) the soundness of its standard form documentation, (j) the adequacy of its escalation procedures when serious problems arise, and (k) such other areas where the company may be exposed to risk, whether formal policies exist or not.

After considering these areas and determining where the firm can help, offer to audit the client's policies and practices in one or more of these areas to assess what risks, if any, these policies and practices pose to the company. The audit performed must be thorough, requiring you and your colleagues to not only review any existing written policies and procedures, but to talk to the company's operators to ensure that you know how those policies and procedures are implemented in practice. An understanding of the company's business is a must, and the audit will allow you to gain a greater understanding of how that business operates, as well as the players involved.

Once the audit has been performed and the risks have been assessed, create an action plan for the client to mitigate or eliminate any such existing risks, and suggest changes to the policies and practices to reduce the risks going forward. The action plan will summarize the company's current activities, provide a legal framework within which such activities take place, and provide a legal roadmap to the client that will guide the company's future activity.

Think about how much better Walmart's General Counsel would be sleeping had the "discount giant" been performing regular and thorough audits of the company's anti-bribery and foreign practices policies. Think about how many other large international retailers have performed audits of their anti-bribery and foreign practices policies since Walmart's Mexican bribery scandal broke. Think about how good your firm would have looked to your large international retailer clients had you performed anti-bribery and foreign practices audits and recommended remedial measures *prior* to news breaking of Walmart's indiscretions? As the saying goes, it's better to build a fence at the top of the hill than to have an ambulance at the bottom.

Billing for Legal Audits

As a strong advocate of providing client-centric legal services, I'm tempted to recommend performing audits at no cost to the client - but that's not practical. The amount of time and effort it takes to perform a thorough audit, coupled with the tremendous value it provides the client, warrant that the firm bill for its services. However, I believe each audit should be billed out at a reasonable flat fee, for two primary reasons:

1. The goal is not to profit from the audit itself, but to learn more about the client's business, to identify areas of the client's practice where your firm can provide other legal assistance and to build closer relationships through which more substantive work will flow. Although audits can provide clients with critical information, from a billing perspective, you should think of them as an intricate business development exercise.
2. The audit will not grow the client's bottom line, nor will it be the impetus of an innovative new product or service. It is a preventive measure, and is, therefore, likely to be viewed with skepticism by the business-minded executives inside the client. The flat fee will give the client cost certainty and will make it easier to sell the audit to the business people who control the purse strings.

Legal audits can provide immense value to your clients, and can provide your firm with unprecedented access to the clients' inner-workings. The value to clients and the depth given to your relationship, make the legal audit a worthy endeavor.

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