

Genuine Client Focus: Managing The Sophisticated Client's Expectations

by Patrick J. McKenna and Ronald F. Pol

It is reported that a major law firm has been dropped from the approved list of a Fortune 500 company due to a lack of satisfaction with the relationship. For many law firms this is not an isolated instance. We regularly work with firms who share their tales of woe – often only after discovering they are no longer a client's preferred choice.

Notwithstanding expressions of disbelief from some lawyers, changing law firms is seldom something that corporate counsel undertakes lightly. It is time consuming, often creates disagreement and even dissent within the legal department, and takes senior people away from their main focus of running the legal function, and the business. But, obviously some clients reach the point where they believe that their lawyers don't manage the relationship at all well – and fail consistently to deliver value.

The most recent BTI survey of Fortune 1000 companies confirmed that, mostly, clients weren't just looking for legal skills as the key to satisfaction because they believe that they can get the legal skills they need at most good firms. But what clients can't seem so readily to find is genuine client service – the effective delivery of those skills in a way that demonstrates value. Moreover although most lawyers are genuine in their desire to deliver client value, clients have reason to believe that their lawyers don't listen to their concerns – or don't care. Surely if their lawyers really cared, they would do something about rectifying the client's perceived dissatisfaction?

The all too common advice offered by consultants and other advisors is that firms should get serious about regularly seeking their client's opinions of how well they are delivering their services and managing the overall relationship. If law firms would simply make it a habit to survey or get out and talk with their clients on a regular basis (and especially at the conclusion of every major transaction) about the level of service being provided; and then act on what the client tells them, the firm would not be vulnerable to losing these clients.

While this sounds eminently reasonable at first blush, is it really at the heart of managing a client's satisfaction and delivering value?

First off, many law firms will quickly claim that they “pretty much do that stuff anyway.” The lawyers may be described as extremely confident in their belief that they know exactly what their clients really want. Yet many of their clients appear not to experience the relationship the same way the law firms describe it.

Secondly, when was the last time you ever verbally complained about a perceived lack of service that you experienced? It's not a natural or comfortable thing for many of us to do. Many in-house counsel feel the same way, so you can't assume that no complaints means satisfied clients. (It goes against the grain for many people, but for your business' sake you

may come to appreciate those of your clients who really do let you know just how they experience your services – the good and the bad).

You may think it unfair, but your client may feel no obligation to be candid with you about the level of their dissatisfaction. Only a small minority are vocal complainers who give warning of their unhappiness and they often feel even more frustrated when firms don't seem to listen. (A number of fellow in-house counsel have conveyed to Ron, "If I told them once, I've told them a thousand times, so why don't they get it?") You can't rely on hearing about complaints in order to assess the efficacy of service delivery. Many dissatisfied clients will simply vote with their feet and you may only find out after the fact. Perhaps to soften the blow, the client may allow you to respond to an RFP, but your chances of winning may be next to nil. The client's views are shaped by their past experiences, and their expectation (based on that view, with nothing to suggest otherwise) that you won't change, so client surveys or future promises become a poor form of counter argument.

Thirdly, clients sometimes fail to express the real essence of their discontent. They might express it in apparently specific terms – e.g. 'you don't meet our requirement to return our calls within two hours' – and may genuinely think that that's the issue, yet the essence of the complaint may lie elsewhere. This is particularly significant if the firm (apparently justifiably) considers the complaint to be without merit – e.g. "we often can't call back to one client representative, because we spend so much time at the client's own offices, and we don't disrupt our work for the client by taking calls - and by the way, the client's always calling to explain in minute detail about every little thing."

If the client fails to express it clearly, the real complaint might never surface – e.g. "we feel that you just don't understand us. We try to help you out by calling to carefully explain each instruction, but you seem never to be interested." Without delving deeper than what the client says in reply to regular surveys, it may be little wonder that the client walks, and that the firm genuinely doesn't know why.

Finally and most importantly, it becomes awfully difficult to survey and measure your client's satisfaction in hindsight, if you never determined up-front the basis upon which the client's satisfaction would be determined. In other words, it is a bit like having someone come down the hall, at the end of the year, to offer you a performance appraisal. What is the foundation upon which your performance will be appraised? Hopefully, it will be based upon some performance indicators that had been established and that you willingly agreed with, at the beginning of the year.

In short, client surveys are valuable, but no panacea. They mostly have you looking backward – yet looking forward from the outset provides the best view.

So, when you think about it in those terms, how do we even attempt to measure our client's satisfaction at the end of an engagement? What is it that we are measuring? And how do we know that what we are measuring is of any importance whatsoever to our client (because some consultant provided you with their standard template of the questions to ask)?

The Key Lesson: More important than determining your client's satisfaction or the value of your services after the event, is to **agree in advance** on the key elements that will determine satisfaction and value. From the firm's perspective, this might be seen as helping shape your client's expectations. From a client's perspective, it might be seen as identifying, from

the outset, what will add value to the client. Same thing? Maybe. Valuable to both? Absolutely.

HOW CLIENT FOCUSED ARE YOU, REALLY?

Whether we like it or not, we are going to be measured by our clients. The good news is that we can affect the measurement process.

However, if we take a passive approach, the measuring stick against which we will be measured will be exclusively a creation of our client and likely imposed upon us. Alternatively, most in-house counsel and sophisticated clients would be delighted if their lawyer approached them at the outset of a matter, to discuss ways in which they could determine and provide value.

There are a lot of reasons why most lawyers don't bother – we're too busy to invest the extra time that it would take; there are no billable hours involved in doing it; we might be afraid to 'stir the pot;' and perhaps if we don't talk about it, then maybe it ain't really broke.

The not-so-good news is that the prevailing view among sophisticated corporate counsel would seem that it is broke. As reported in Corporate Legal Times, in a June 2003 editorial entitled, "Find Time To Whip Outside Counsel Into Shape," law firms continue to be accused of "failing to understand their clients' basic needs" and doing a "dismal job in communicating with clients and evaluating whether or not they are meeting client expectations."

As a law firm partner reading that editorial, you would likely be incensed. Like many of your colleagues, you would genuinely consider yourself client-focused - - in fact, so much so, that we expect that you would argue that you diligently meet every demand, and even every whim, of each of your many clients.

An analogy that might help provoke your thoughts; is that of a wagon-wheel.

Say you have 10 major clients. You complete invoices in a particular way to satisfy the expressed wishes of client A. You record time in a special way for client B, with narrations for each entry that match their reporting systems. You provide 1-page advice letters for client C, with draft board papers from time to time. For client D you provide data that fits in with their matter management system. Client E wants you to send bills on the second Tuesday of the month, so that's what you do. Then there is client F, for whom you attend the legal team's monthly group meetings, and visit their factories whenever you're in town. Likewise . . . for every demand, for every request, for every client.

You might well say "Whaddya mean, I'm not client-focused?, I'm so client focused, there's only 6 hours a day I don't give to clients, and I really do need to be able to get at least a couple hours of sleep, most nights."

Yes, in a sense, you are client-focused. And we're not suggesting you shouldn't do what your clients need. But maybe we should step back a moment. Look at it like a wagon-wheel. We're talking about you, so you're the hub of the wheel. The demands of each of your individual clients represent the spokes. Say 20 spokes (some clients have one or two special

things they require of you - and we can all think of a few clients who are really demanding). Now, instead of focusing on the spokes, what if you tried to identify what clients are REALLY after, in a more general sense than the specific 'spokes'?

First, it might be reasonable to assume that clients mostly don't ask you to do all these things just to annoy you, or just for the fun of watching you run around chasing your tail. They do it because they need to have you demonstrate value, and your current systems aren't doing it for them, so they've come up with ways that they hope will help force you to do things in ways that will help them demonstrate the value of the legal process. Chances are, even the most demanding clients – (for whom you half expect their next request will be for your invoices to be in a particular typeface) - are not actually obsessed with the spokes themselves – they're simply trying to get you to do a few simple things toward delivering better value.

So, take a breath from all the running around, and think, what is it that clients really want. We believe it boils down to three main things: they need (and want) you to:

- (i) **identify** what adds value (to the client);
- (ii) **deliver** that value; and;
- (iii) **demonstrate** that you have done so.

That is what THEY need to do in their role within the organization, And it's what they need YOU to do. This is something that you have a shared interest in. What better basis for real teamwork? If they don't think you're doing it, they come up with these ways of trying to force you to do it. And they're all different. Some do lots of research. Some do what seems right. And some are just plain crazy. But what it often means is that you have to run around like a chicken with its head cut off. Well, perhaps you just think you have to. Maybe you just think that's what it means to be client-focused.

Instead of looking to the spokes (yep, back to the analogy), try to find the rim of the wheel. If you find what most clients are pretty much after (say, the three things we mentioned earlier), AND YOU ACTUALLY SET ABOUT DELIVERING IT TO THEM, then you might just find that most of the spokes fall away. Sure, some will remain. But mostly they'll be the most basic 'process' ones (e.g. client G needs you to send a copy of the invoice separately to the legal department and to the accounts payable department, and both need to approve independently for the client's accounts system to go 'snap' and to generate a check - Sure you'll still do that one, right?!) And anyway, for this analogy to actually work, you still gotta have like 3 or 4 spokes minimum, else the wheel will collapse and our metaphor will crash with it.

When he managed the major litigation and dispute resolution function of New Zealand's largest listed company, Ron used to tell his outside lawyers:

Obviously, I've put lots of work into getting a system that addresses my needs; into getting this right. So I must care passionately about the process, right? I must care passionately about the specific invoice format and other criteria that I've developed, right? Wrong.

Sure, if we're going to do it, I expect you to get it right. But in the broader sense I care about it not one bit. If anything, I dislike it with an intensity matched by the frustration that caused me to do something, anything, to try to force you to do three simple things that I've been asking you to do for ages - help me identify what adds value, deliver that value, and demonstrate the value added - in terms that matter to us as the client.

Now, do I think my system is perfect? Far from it. I'm sure someone else could come up with a better one. But no one has, at least not that I know about. You haven't done so, or if you have, you've kept it a secret. No law firm has done so, that I'm aware. So it's really just the best I could do, on my own. I won't even cling to 'my' system out of spite. Even now, if any law firm can come up with a simple system that does those three things, I'd drop my requirements in a nano-second.

And he was quite serious too - but of course, as he reports it, none of the firms ever did rise to this challenge. Instead, they just met the client requirements, i.e. as yet another 'wagon wheel spoke' – often after putting up lots of resistance either simply meeting the new requirements, or seemingly 'gaming' the new system for all they were worth - later seeking to justify 'premiums' and defend 'discounts' without ever really trying to look at value.

IDENTIFY WHAT ADDS VALUE

When you are first retained by corporate counsel, you are likely hired to resolve specific problems that the legal department does not have the skills, resources, time, or inclination to handle. In handing the matter over to you, corporate counsel is entrusting you to serve as the bridge between their legal team and those of your lawyers who will work the case. It is your job to ensure that your client's needs and expectations are met.

To truly understand your client's expectations, you must first have some empathy for the environment in which they work. For example, the average associate general counsel for litigation may be handling anywhere from 20 to 200 different matters in a number of different jurisdictions. This means that each matter is likely to get only about an hour's attention each week. Meanwhile, you may have forgotten that the single matter that you are working on is only one that your client is juggling at any given time.

The ramifications are obvious. We need to understand the workflow and the demands on the time of that in-house lawyer who is giving us the assignment if we are to have any hope of becoming their trusted business partner and a true asset.

It is important therefore, to identify and distill the key factors that add value to your client's organization and also explicitly to record those factors at the outset of the transaction. Sitting down with corporate counsel allows you both to lay out the commercial objectives, develop strategies to advance those objectives, and then prepare an engagement understanding that can be reviewed and monitored as the matter progresses.

To determine those factors might be as simple as engaging in a discussion and asking your client:

As I hope you know, we really do value you as a client and want to deliver a level of service that not only meets, but exceeds your expectations with this particular matter. Can we take a few minutes for you to tell me specifically, what constitutes 'value' for you in the way in which we will handle this particular matter? What I would like to do is understand completely how you measure value, what we need to do at every stage in this transaction to make your life easier, and then be able to sit down again at the conclusion of the case and assess how we did and what we might learn about how to perform even better in the future.

Listening skills are paramount. The key is not to approach collaboration on the basis of, "Here is how we want to do it," but rather by asking your client, "How can we serve you best (or at least better)?"

Both corporate counsel as well as outside counsel have come to use the term "value-added" with such frequency that it is quickly in danger of becoming meaningless. Lawyers are suspicious that corporate counsel tend to invoke the term to support outrageous expectations, while corporate counsel believe that lawyers toss around the term in their marketing pitches without ever defining what the "value" they're "adding" really is, or worse still, use the term to justify 'premiums,' yet otherwise bill at 'time.' Indeed, the hourly billing mechanism appears to have conditioned many lawyers into thinking about 'premiums' and 'discounts' - from a firm management perspective - rather than about 'value' from a client perspective.

In both cases, however, there is often a mismatch of expectations between the value perceived by the firm and the value perceived by the client. Oftentimes, this is not just because in-house and outside counsel have a different perspective, or perception of value, but because they failed explicitly to consider what would constitute value – before resources were committed and results achieved.

In some situations, you may need to probe deeper to help your client help you identify the factors that really matter to them. While the client may have carefully drafted guidelines that are presented to the law firm as conditions of retention, there is usually very little real guidance on the kind of client service it would like to get from outside counsel, the frequency of communication, how to provide more proactive preventative counseling, or other conditions that signify what the client might really value.

In those instances, we have found that thinking through the various steps involved (we call this the client's Value Chain) in completing the transaction, can allow you to explore specific client expectations at each "touch step" along the way.

Here is an example of the various steps involved in a typical legal matter and a sample question that you could ask to elicit what your client is hoping to achieve at each of these links:

THE CLIENT VALUE CHAIN

Instructions – Transaction – Deliverables – Billing – Assessment & AfterCare

INSTRUCTIONS:

- How does this matter fit within your company's overall business goals and how important is this case in comparison to others you are working on?

TRANSACTION:

- When (hourly, daily, weekly) and how (voice-mail, email, meetings) do you want to hear from me?

DELIVERABLES:

- How would you like me to make my reports and presentations more useful to you and easier to pass along or utilize within your organization?

BILLINGS:

- What would you like to see on your invoices, and how could we simplify or improve our statements so that they provide the information you need in the format you need it in?

ASSESSMENT & AFTERCARE:

- How might we debrief at the conclusion of this case in order to determine what we've learned, to your future benefit - such as identifying ways to reduce future liability or develop 'resource multipliers' enabling the legal department, demonstrably, to deliver more value to the business?

Commit Your Client's Objectives and Key Expectations To Writing

In order to be able to manage your client's expectations all the way through the particular matter it is important to identify key factors that enable you effectively to deliver value to the client organization. Our recommendation is that, in concert with your client, you develop a specific checklist of what their expectations are and what, for them, would constitute real value being delivered on this matter.

Now often, your client will be able to articulate broad concepts such as the following:

Well, I need you to be sensitive to the importance of this matter to our company, to be highly responsive when we need you, to provide excellent coordination and case management, and it would be highly valuable to our department if your team could provide us with some substantive training in this area.

While these concepts may be a good start, you then need to have the client define precisely what they need and how they will know when their expectations have been met – and indeed, exceeded (which should be your ultimate goal).

TIP

A particularly good technique for probing to better understand is the Five Whats: Starting with a question like “What do you expect from us?” Answer: “To be responsive” You then follow with: “And what does that mean to you; what would some firm being extraordinarily responsive look like?” And then again “What does that mean . . . ?”

This stage is vital, yet often overlooked, as we all just assume what needs to be done. We've done it before, we know this client, we know this stuff, right? This stage is especially important for firms – when you truly know what the client values, then that's where you can focus resources, without spending lots of time (and trying to justify it later). And when you deliver, you know it and the client knows it – always a great time to have a billing conversation. So, get into some specifics early on. That doesn't necessarily mean screeds of paper, with detailed procedures and precisely defined micro-objectives. But what it does mean is truly to understand what the client values – it might mean just a couple of sentences. So, yes, sometimes you'll need to 'drill down' just a little more. For example:

You mentioned that you expect availability. In order for me to understand exactly what you mean by availability, as you might appreciate that different clients might define that term differently, can you please give me some examples of what you need so that together, we can develop a standard for how we will actually meet your expectations in a measurable way

DETERMINANTS OF VALUE

	INDICATOR OF VALUE	We will both know that this has been accomplished to the client's satisfaction when ("what" happens) . . . ?
1	Outcome / Importance for Company	
2	Understanding the Business	
3	Legal / Commercial Judgment	
4	Availability	
5	Timeliness of Advice	
6	Co-ordination (Project / Matter management)	
7	Unprompted Communications	
8	Staffing Levels / Balance	
9	Manage Fee Level Expectations	
10	Relationship - Helpful/ Constructive / Useful	

The 10 indicators identified here are of course not significant in themselves. They simply represent some of the possibilities – and some of the factors that corporate counsel seem regularly to complain about. What is important is that they reflect what is important to your client. After all, if you never find out what is important to your client, how can you expect to deliver great results? Or more importantly, how can you expect readily to *demonstrate* to the client the fact that you’ve delivered.

The other important consideration is that there are only a limited number of indicators, and that this process is fairly simple. A complicated process, with too many variables, may look great in theory but will seldom work in practice.

This process can also serve to protect your interests. Let’s say you have agreed to take a litigation case on a fixed fee basis. Your client, because they are paying a fixed fee may have an incentive not to settle expediently and may simply veto early settlement opportunities. Your average cost per case now starts escalating. Then the client pressures you to lower your average cost per case. He says, “If you want to stay on our approved list, you’ll need to discount your rates.”

It also serves to protect your client’s interests. The relevant corporate counsel has a budget and other expectations to meet within their organization. If you are part of setting these expectations from the outset, and you meet or exceed agreed deliverables, corporate counsel will also meet or exceed internal expectations. This will help strengthen any relationship more than divergent expectations ever will.

This process channels everyone’s attention into designing a real value-added path from the start and at each key stage – before work is done (and expense incurred) and reinforces teamwork between the lawyer and client.

DEMONSTRATE THAT YOU HAVE ADDED VALUE

When your matter is completed, you can now utilize a simple checklist to both assess your client’s satisfaction (on terms that were predetermined) and demonstrate the extent to which you have added value.

In practical terms, a simple checklist might list the key criteria, with a box for each, to be assigned grades from 1 (poor) to 5 (excellent), and a “comments” field. Such a checklist provides a useful basis for identifying whether lawyers meet key value and performance criteria for each transaction, and across a range of transactions.

You might want to invite your client to complete the form, return it to you, and then schedule a specific meeting to discuss your client’s feedback.

In practice, you may find that your evaluation of your performance may be higher, and that you view your value contribution greater than your client did. Most importantly though, this process allows you to identify key areas for improvement and key areas in which you are doing well, in which both you and the client may increasingly be ‘on the same page.’ For example, using the same factors as above:

ASSESSMENT OF VALUE DELIVERED

	Indicator	1 Poor	2 Fair	3 OK	4. Good	5. Exc	Comments
1	Outcome / Importance for Company						
2	Understanding the Business						
3	Legal / Commercial Judgment						
4	Availability						
5	Timeliness of Advice						
6	Co-ordination (Project / Matter management)						
7	Unprompted Communications						
8	Staffing Levels / Balance						
9	Manage Fee Level Expectations						
10	Relationship - Helpful/ Constructive / Useful						

Many corporate counsel will agree that, mostly, lawyers do achieve results – yet the process by which this occurs is sometimes a difficult one, from the client’s perspective. Maybe this is part of the reason for the ‘disconnect’ between law firms and their corporate counsel clients – lawyers who have in the end ‘delivered the [legal] goods’ might think that’s what it’s all about. For years, however, corporate counsel have been trying to tell them that that’s only one part of the game.

Although the best lawyers actively seek to identify key commercial drivers, these sometimes translate into ‘legal’ outcomes that, at least within the internal processes of the firm, seem in effect to become the de-facto determinant of value in the lawyer’s mind.

Worse, some lawyers still seem to focus more readily on *key legal tasks* rather than *commercial goals*. For example, a claim may be met with a robust defense, discovery and interlocutory applications, before considering creative ways to resolve core commercial issues. For a time at least, the legal process itself effectively becomes the perceived goal.

When that happens, the lawyer almost invariably will not truly have identified what adds value to the client. Sure, the lawyer might ultimately do so, after several years of “working on the file.” Little wonder clients sometimes feel frustrated by the legal process.

Even having ultimately achieved a great result, lawyers sometimes expect clients to warmly thank them, yet often the corporate client has moved on to focus on the next transaction. Worse still, even with a favorable result, the client might consider that it simply achieved what was rightly its due, at what it might view as considerable cost – usually, the perceived cost and delays generated ‘by the lawyers.’

It is easy to say that you understand your client’s business, but the best lawyers also take the step beyond simply acting like a legal technician. They translate legal advice into business consequences and business actions. Corporate clients often consider that relatively few lawyers truly identify core objectives, genuinely from the client’s perspective, and from the outset.

In essence, lawyers need do only three things: identify what adds value to the client; deliver that value; and demonstrate they’ve done so. These are in many respects communication skills rather than technical legal skills. The goal is clearly to identify value objectives from the outset, and effectively to demonstrate the value of your contribution in terms that relate directly to client objectives rather than simply ‘legal’ outcomes.

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