



Ronald F. Pol, "Get More Value from Outside Counsel: Show Them the Flipside," *ACCA Docket* 21, no. 4 (April 2003): 22-39.

Get More VALUE from Outside Counsel:

In-house counsel can deliver greater value to their clients if they help outside counsel become genuinely more client-focused in their services and thus better enable outside counsel to deliver value, not just time and effort.

You are responsible for selecting, instructing, managing, and paying outside counsel. You need to get value for money and select the best lawyers for the job. You often need not just legal technicians but legal strategists, lawyers who add value not just by telling you the law, but by actively and constructively helping apply it to real business needs and helping to grow your business, not just theirs. Sure, cost is important, but for most in-house counsel, the real focus is on value.

On the other hand, law firms are responsible for obtaining new work from clients and managing client relations. In doing so, law firm marketing machines bombard potential clients with exhortations about client focus and their ability to add value, yet in-house counsel surveys continue to show that, for the most part, they merely tolerate the service levels of outside counsel and that few

Show them the Flipside

Reprinted with permission of Ronald F. Pol and the American Corporate Counsel Association as it originally appeared: Ronald F. Pol, "Get More Value from Outside Counsel: Show Them the Flipside," *ACCA Docket* 21, no. 4 (April 2003): 22-39. Copyright © 2003 Ronald F. Pol and the American Corporate Counsel Association. All rights reserved. For more information or to join ACCA, call 202.293.4103, ext. 360, or visit www.acca.com.

By Ronald F. Pol



Ronald F. Pol is corporate counsel for Telecom NZ, New Zealand's largest listed company. He is also president of the Corporate Lawyers' Association of New Zealand ("CLANZ"). He is also currently the only non-U.S. member appointed by the ABA to its speaking panel on billable hours and alternative billing arrangements. He is available at Ronald.Pol@clanz.org.

are truly satisfied clients. See the sidebar "Can't Get No Satisfaction" on page 26.

So how do we as in-house counsel find a solution, combining a reversal of in-house dissatisfaction with outside counsel and stepping up to the broader challenge facing the profession? At least two possible solutions present themselves: (1) value billing, improved billing methodologies that better reflect value to the client, and (2) helping outside counsel become genuinely more client-focused.

This article will develop the latter. In the process, it will touch briefly on the former as one element or subset of the broader proposition.

BACKGROUND

A confluence of factors, notably client requirements for better value and the cusp of a transition in law firm management, within the context of the pressures of "convergence" (corporate clients reducing the number of law firms that they use), and a challenge for the profession to deliver value rather than merely time and effort, creates a unique opportunity. Legal services that deliver better value for the money, yet increase earnings for law firms that do so, represent a win-win possibility.

ABA Report on Hourly Rate Billing

The ABA's Commission on Billable Hours Report¹ followed a year-long study and information-gathering process. It outlined the history of hourly billing, its corrosive effects on firms and clients, alternative billing methods, and barriers to change. It also outlined ways of working within the billable hour system to the mutual benefit of firms and clients.

Then ABA President Robert Hirschon described the billable hours model as a "counter-intuitive measure of value" that is "fundamentally about quantity over quality, repetition over creativity." He

concluded with a call to define "value" in a broader sense, suggesting that the profession's goal should be "to adopt innovative billing methods that provide an accurate measure of value to the client and, at the same time, make the practice of law more fulfilling and enjoyable."²

Crossroads: The Next Transition of Law Firm Management

The ABA report is timely because law firm management may also be at a crossroads, potentially on the cusp of its next major transition. Law firms' glossy brochures and websites wax lyrical about focusing on client needs, yet in reality, the last major transition was mostly internally focused on more efficient structures, systems, and processes. See the sidebar on legal services market transitions on page 27. Facilitated by consultants, law firms stripped out inefficiencies, more effectively used leverage, and generally developed better business models.

Today, however, firms' attempts to get more out of their existing processes are proving increasingly less successful. Natural barriers to the number of hours that lawyers can bill do seem to exist, notwithstanding valiant attempts to break through the 24-hour limit. Efforts to wring more out of the current model are also proving increasingly counter-productive to improved client relations. (Yes, Martha, clients really do know that standard office charges don't remove outrageously priced per-page photocopying and fax charges from bills, but instead merely replace earlier charges with new ones. Clients know also that the new charges save the firm the hassle and expense of tracking hardware and software, yet their total charges seem not correspondingly to fall).³

Win-win Possibility

Law firms have been struggling to identify the basis of the next major transformation. Equally, in-house counsel seem also to be struggling to find ideal external lawyers, mythical creatures who consistently add real value to client businesses. These twin searches may be more closely related than might first be thought.

Law firms that develop systems that institutionalize the encouragement and empowerment of their lawyers as the embodiment of the ideal external lawyer can help deliver the greater value (and better

value for money) that clients require. Doing so may also herald the next transformation (and next step in per-partner earnings) sought by firms. Truly a win-win possibility.

In my view, a strong and genuine client focus, with emphasis on delivering real value to the client, is critical to the next transformation in the legal services market.

CAN'T GET NO SATISFACTION

Surveys consistently show a significant gap between law firm rhetoric and in-house counsel needs. For example, a recent survey by the BTI Consulting Group of in-house counsel at U.S. Fortune 1000 companies¹ produced the following results:

- Only 35 percent were satisfied with their primary law firms, with 65 percent seeing someone other than their primary law firm as delivering the best client service.
- When asked to name the firm that they would describe as the best provider of client service, one respondent said that lawyers “just aren’t engineered that way.”
- As one client had put it in an earlier BTI (2001) survey, “they [the primary law firms] do just enough to enable us to barely tolerate the service levels.”
- For the satisfied clients, client service drove satisfaction far more than any other factor. Higher than last year, at 53 percent, superior client service was by far the dominant factor, more than twice as much as any other, with legal skills at only 21 percent.

The survey found that, mostly, clients weren’t just looking for legal skills as the key to satisfaction because they believe that they can get legal skills 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 demonstrably adds value to the client.

NOTE

1. *The Strategic Review and Outlook for the Legal Services Industry* (2005), BTI Consulting Group.

THE IDEAL EXTERNAL LAWYER

A key element of your role as in-house counsel responsible for managing external professional service providers is to select the best lawyers to meet your organization’s legal needs. So what does the ideal external lawyer look like?

Service Attributes

What characteristics should the ideal external lawyer or law firm possess? Scores of factors have been suggested as required of outside counsel, yet many of them distill into a few key elements:

- **Recognized expertise** is a fundamental prerequisite. Without it, outside counsel will not be considered for selection. But expertise is readily available. Lots of lawyers say that they’re experts, and some of them even are. So in truth, recognized expertise just gives a ticket to the game, and other characteristics are vital.
- **Business focus** is necessary for lawyers who want to be more than legal technicians. It’s easy for them to say that they understand their client’s business, but the best lawyers also take the step beyond simply delivering legal advice. They put it clearly into the context of what it means for the client’s business and deliver it in a way that helps the client meet legitimate business needs. They translate legal advice into business consequences and business actions. This translation might be as simple as not giving the traditional 20-page legal opinion so qualified as to be meaningless, but offering instead a focused opinion that actually advises. They may also proactively prepare the one-page internal report and recommendation of action that the client representative may require, thereby enabling the client immediately to meet or take the commercial challenge or opportunity.
- **Client focus** includes a wide range of behaviors and attributes, including proactive problem solving, anticipating client needs, creative strategic thinking, focusing on results, being timely, available, and responsive, and being an effective communicator.

Necessary, But Not Sufficient

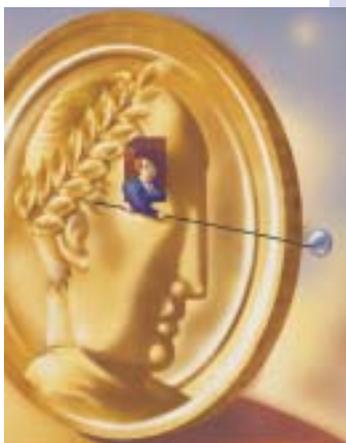
Many analyses seeking to identify what’s required of the ideal external lawyer pretty much stop there.

They focus primarily on key attributes of outside counsel: basically, who they are and to some extent what they do.

These factors are indeed necessary. The best lawyers will exhibit most of the service attributes noted above, yet the amalgam of these attributes does not necessarily identify the ideal external lawyer. There is a need also to integrate these attributes into service delivery and to remove barriers to such integration.

Integration: Developing Outside Counsel “Right Stuff”

Managing external professional service providers (by in-house counsel) and managing client relationships (by outside counsel) are really just the flipside of the same coin. Like most coins, it’s not identical on both sides, nor is it a mirror image.



One side might also feel rather more worn than the other. Yet in many respects, managing outside counsel and managing client relations represent the counterpart or obverse of each other.

Having already viewed outside counsel’s side of the coin (identifying traditional service attributes), we might benefit from starting to turn the coin over, giving outside counsel a glimpse at the side that they might see less frequently. Key to doing so is for outside counsel genuinely to view the services that they provide from the client’s perspective and for in-house counsel to help them do so.

In addition to factors noted above, the best external lawyers also embrace such core elements as the following:

- **Adding value.** In essence, professional service providers need do only three things: identify what adds value to the client; deliver that value; and demonstrate that they’ve done so.
- **Communication.** Corporate clients and their external professionals often seem to speak a different language. Effective communication is vital to bridge this gap of understanding.
- **Great service, consistently.** The best lawyers give client service of almost mythical proportions.

They deliver more than their clients expect, and they deliver it consistently. Especially in such an abbreviated form, the client focus factors noted above seem obvious, but understanding what they really mean from a client’s perspective takes time and an open mind.

LEGAL SERVICES MARKET TRANSITIONS

Traditionally, lawyers told clients what their problem was, what needed to be done, and, when it was done, how much it cost. Clients mostly did what their lawyers told them and paid what they were told to pay. Lawyers’ practices were notoriously inefficient and often billed on the thickness of the file.

A consultant-led and cost-accountant-driven transition helped firms out of the traditional model. If it could be measured, it was. And billed. Time billing became common. Disbursement billing came next, with photocopying, faxes, and even staples seemingly evolving into separate profit centers. Firms also became aware of and ruthlessly implemented the lessons of leverage. All of these changes combined to cause a transformation, in which firms became significantly more efficient, and average partner draws leapt to new levels.

The time-and-everything-else billing model appears to have reached a peak. Indeed, some aspects of it still assiduously pursued by law firm remuneration models forcing lawyers to focus on more of the same have in some respects started to become counterproductive to good client relations.

Firms are attempting to identify and develop the essence of the next transition. Many of the consultants have already reinvented themselves, espousing value now as once they had time-recording and leverage.

As with the last transition, firms that first recognize the shape of the next transformation and successfully make the transition will enjoy the benefits of the next profit leap that should accompany it and of more satisfied clients.

It might be said that these factors may equally be described as necessary service attributes, such as those listed above. Like those factors, you may also simply require these of your outside counsel. Yet the distinction might nonetheless be useful. The service attributes listed above are those that are truly on outside counsel's side of the coin. In-house counsel cannot readily influence these attributes: either a lawyer has recognized expertise, is available and responsive, and is a strategic thinker—or not. If outside counsel want to do your work, best they acquire the requisite skills.

By contrast, to meet the additional factors listed in this section, outside counsel cannot usually do so independently of their clients. Sure, you might be tempted to just require them to do these things, too. Yet for outside counsel to have any chance of doing so effectively, they need to view their services from the client's perspective. Your job is to help them do so in order that they might be better able to deliver value.

For in-house counsel to do so need not be too onerous. It generally requires application, communication, and time and might involve a range of practical possibilities, such as the following:

- Invite outside counsel as observers to selected internal meetings, particularly those relating to corporate strategy.
- Explicitly record corporate objectives at the outset of transactions.
- Include outside counsel on distribution lists of corporate and industry publications.
- Distill key factors that add value to your organization and encourage in-house counsel and other managers actively to communicate these factors with outside counsel.
- Invite outside counsel to identify three ways to help achieve your corporate objectives and three ways to add more value aside from simply doing the work.
- Invite outside counsel to identify three ways and circumstances in which they might charge other than hourly billing to more accurately reflect value to you.

Remove Barriers to Integrating Client Service and Value

Many in-house counsel already take time to communicate their organization's needs to outside coun-

sel, yet the gap persists if you still find yourself asking, "If I've told them once, I've told them a thousand times, so why don't they get it?"

In part, closing this gap may simply require a more sustained effort at two-way communication. Or it may require a more systematic effort to involve outside counsel rather than dealing with issues on an ad hoc basis on individual transactions or when you believe that outside counsel manage to screw up from time to time.

Alternatively, it may require you as in-house counsel to identify and remove barriers to effective communication in your own organization.

Framework Essential

One of the most significant barriers in practice is often a lack of any real framework enabling outside counsel to add the most value. After all, having looked at them and having identified some of the attributes of the ideal external lawyer, it's just as important to look at yourself: how do you manage outside counsel in such a way as to enable them to be ideal external lawyers?

In practice, this positive enabling mostly means lots of effective communication and developing structures and processes to create win-win possibilities.

For example, currently, do your external lawyers actively identify at the outset what result and what activity would add real value to their client? Do they consistently deliver that value? Do they demonstrate the value that they've added so that the client truly understands and appreciates what they've done? Or do they mostly wait to receive an instruction and then do the work on the file? More important, as the client, have you given them the framework effectively to do otherwise?

In a practical sense, a wide range of possible frameworks can help outside counsel do these things better, including these:

- **Regular reporting and review meetings.** Such meetings build communication and facilitate no-surprises management of legal issues. They help keep track of budget and help keep lawyers from drifting down paths of intellectual interest but limited commercial value to the client. They also facilitate forward planning. For example, lawyers are especially good at doing the work: they receive a claim, file a defense, go through discov-

ery, prepare for trial, and then think about settlement. Three years later, the client has spent millions. It can seem almost entirely driven by tactics. Almost always, sitting down with your lawyers at the outset adds value: you lay out the commercial objectives and then develop strategies to advance those objectives. Tactics come last. You review progress and objectives regularly. This procedure helps channel activities into a value-add path from the outset.

- **Engagement agreements.** On what basis do you engage your outside counsel? Firms may send out engagement letters, setting out their fee structure and billing arrangements. Clients may send out their own standard terms of engagement. It may become a battle of forms. Neither really knows which applies. Yet preparing engagement agreements together helps inside and outside counsel focus on how lawyers deliver value and how to do so more effectively. Negotiating the terms of the engagement helps outside counsel better understand the client's needs and business drivers. It also helps develop a better working relationship with better understanding on both sides.
- **Risk-reward sharing.** In setting out respective expectations, deliverables, obligations, and commitments, you're necessarily dealing with how to share risk and reward. Do outside counsel take very little risk and get paid for hours worked? Or do they share some of the risk and the reward? What you agree on in your engagement agreement, whether expressly or impliedly, also indicates what you value. So you may as well examine it expressly, ask what your organization actually values, and consider whether there's some better way of aligning your organization's interests with those of your key service providers. This step is the essence of value billing.
- **Value billing methodologies to improve service quality.** Value billing may be described as a system that rewards outside counsel not simply on the basis of hours worked, but according to criteria that reflect value to the client. An appropriate fee might be higher or lower than (and in some cases significantly different from) the standard fee. Hours and rates may still be important, but are not the determining factor. An appropriate value billing methodology may help facilitate the provision of value-add services by outside counsel.

Criteria that reflect value to the client may serve also to ameliorate some of the excesses of the hourly billing model. For the outline of a value billing system and practical tips on implementing such a system, see the sidebar on page 32.

Help Outside Counsel Overcome Their Own Barriers

Even with a framework within your own organization enabling outside counsel to add value, barriers may still exist within the external law firm. If you are truly viewing both sides of the coin, it becomes obvious that helping outside counsel overcome some of their own barriers to delivering effective client service will help them help you maximize value to your joint client.

These barriers may include the following:

- **Communication.** Some outside counsel who don't possess effective communication skills think that they do. Some might be described as, to say the least, extremely confident of their belief as to what clients really want. Ironically, those who think that they might not and make the effort often best understand and meet their clients' needs. Busy outside counsel also sometimes forget that it's not just what they say to the client that matters, but that all of the firm's interactions with the client are vitally important, including those of other partners and legal staff, secretaries, and credit controllers, as well as the firm's marketing department. Everything that a firm says and does provides the foundation for creating and maintaining strong relationships. Andersen has reminded professional services firms that relationships are like a wall: built brick by brick, yet pulled down many hundreds of bricks at a time.
- **Outside counsel's belief that they already add great value.** Few outside counsel reading the ideal external lawyer section would likely disagree with it, at least in principle. In my experience, most law firms say that they pretty much do that stuff anyway. Yet many of their clients appear not to experience the relationship the same way that law firms describe it. Even if some clients tell them about this discrepancy—and, for some reason, many still don't—the very genuineness of law firms' beliefs that they are client-focused might preclude them truly from understanding how to be so from the client's perspective. If so, what hope do clients have of

being understood and of helping law firms change for the better?

I was privileged recently to be invited by a national Australian firm to try something different. Stepping outside the standard “let’s ask a couple of clients to tell us what they expect of us” talks that seem to represent the outer limit of some firms’ attempts to understand client needs, I tried two experiments, outlined in the sidebar on pages 34–35, “Law Firms,

How Client Focused Are You, Really?” Broadly, I attempted not simply to tell outside counsel that they were less client-focused than they thought, but to create a process by which they told themselves.

The result was that many partners seemed energized by what, in effect, they had told themselves. I don’t yet know whether the firm has effected any real change as a result, but it does at least appear more open to the possibility of a different future

VALUE BILLING

To implement any value billing system, the first step is to identify key factors that enable outside counsel more effectively to understand how to deliver value to your organization. We’ve already outlined possible factors when looking at the ideal external lawyer. See the discussion in the main article.

At Telecom, for example, we came up with 10 factors. Yours might be different, as ours might be now that we’re at a different place from where we were when we first developed these factors. Examples of factors that you might want to include in your considerations for value billing might be outcome/importance to the client, problem solving, legal/commercial judgment, availability, timeliness of advice, coordination/project management, understanding of business drivers, staffing levels/balance, management of fee level expectations, and whether the relationship is helpful/constructive/useful.

In an earlier article, I outlined some practical steps that distilled from the development and implementation of a system designed to encourage external lawyers to deliver a more effective and valuable service.¹ In essence, the seven steps distilled from that process were these:

- **Get buy-in.** For any new system to succeed, it needs to generate win-win possibilities for both in-house and outside counsel.
- **Plan for a strong initial implementation.** Getting off to a good start involves identifying key value-add factors and setting up a system that applies agreed criteria consistently.
- **Simplify the logistics.** Complicated systems are often not worth the effort. It’s usually a good idea to make any system as easy as possible for everyone to use.
- **Ensure partnering application.** To ensure a real quality improvement drift beneficial to clients

and outside counsel, both parties need genuine input into the process and the results.

- **Incorporate into existing systems.** Whenever possible, use your existing systems, such as invoicing, making it easier to implement your program.
- **Use transparent, task-based value billing.** Abandon the opacity of traditional narrative bills, but you do not necessarily need to import the complexities of the Uniform Task-Based Management System (“UTBMS”).
- **Front-end load the value.** More important than determining the value of services after the event is to agree in advance on the key elements of value-added objectives.

For Telecom, its value-billing initiative helped improve service quality, helping create a more sustained, consistent delivery of value-added services, with direct correlation to factors that actually mattered to the client. For outside counsel, it represented an opportunity truly to understand what added value to the client, to deliver that value, and to be recognized for having done so.

The essence of value billing, however, is less about the mechanics of billing than about helping create the right environment to encourage ideal lawyer behaviors and characteristics and helping outside counsel deliver better value.

In my view, lawyers will best serve their clients and develop their own business and the profession by genuinely and actively rebranding themselves as delivering and selling not time, but value to their clients.

NOTE

1. Ronald F. Pol, *Seven Steps to Value-Added Legal Services*, NZ BUSINESS (Aug. 2001), available at www.clanz.org/files/NZB_Article_Aug01.pdf.

than many of its competitors. As Oliver Wendell Holmes put it: "One's mind, once stretched by a new idea, never regains its original dimensions."

- **Pockets of excellence.** When outside counsel go in-house, it often takes several years fully to make the mindset transition—and some seem never to do so. Yet when in-house counsel who have actively developed a broad and deep understanding of client needs return to private practice, law firms' systems and processes seem inevitably to grind down a major competitive advantage that they might otherwise bring to bear, that of truly understanding client needs. For most in-house counsel returning to law firms, much of their distinctive value is lost in a few short months. And

those few who retain it may well represent the ideal external lawyer for many of their clients. Yet firms' systems and processes seem to keep these isolated pockets of excellence just that: isolated.

For benefits to accrue to firms, as well as to the few lawyers who might be recognized as stellar performers by many of their clients, firms need to encourage the development of key attributes and to institutionalize these behaviors more widely within the firm.

This concept is simple, but implementing it is almost impossible. Most firms inhibit the ability of their lawyers to deliver great client service. Lawyers are trained in law, not client relations. Too many act like "brains on legs" rather than service providers.

LAW FIRMS, HOW CLIENT FOCUSED ARE YOU, REALLY?

Most law firm partners consider themselves strongly client-focused. Most would also consider their firm client-focused, though perhaps less so than each partner's own assessment of himself or herself. In a simple quiz that I gave to two groups of 50 or so partners of a national Australian firm, these assumptions proved well founded.

From the perspective of in-house counsel, however, most outside counsel seem significantly less client-focused than they might think. This notion certainly comes through in countless surveys and anecdotal evidence from in-house counsel in America, Australasia, and elsewhere.

As in-house counsel, we could tell outside counsel this notion. Such observations won't usually fall entirely on deaf ears. Yet they may well founder on the rocks of genuinely held beliefs that outside counsel already consider themselves to be extremely client-focused. They might react defensively, pensively, or even silently. They may feel misunderstood and unfairly maligned. Pretty soon, their clients might give up trying to tell them and simply use them as required to do the job. In the client's mind, they're still not client-focused, yet for outside counsel, the lack of criticism may be taken as demonstrating that they are. Work might for some considerable time carry on in a truce-like state of apparent harmony.

With my audience of law firm partners, I elected not simply to tell them what many of their clients could tell them about client focus. I considered that

it might be more powerful if they told themselves, so I asked them instead a few simple questions.

The results were neither scientific nor especially insightful by themselves, but were potentially a useful tool for partners to question their own assumptions. As expected, nearly 90 percent rated themselves very client-focused, with fewer (less than 60 percent) rating the firm as high. The response to the next questions, dealing with just one aspect of client focus (their knowledge of major client representative organizations in their key markets), ranged from 0 to about 35 percent. This result was considerably less than participants' no doubt genuine perceptions regarding client focus.

If these results are broadly indicative of other firms, lawyers might be congratulated for considering themselves client-focused because their response at least strongly demonstrated recognition of its importance. Likewise for recognizing that their firms are also client-focused, yet that they could perhaps do more, because this recognition provides impetus for improvement.

Yet if these perceptions do not adequately reflect reality, firms might like to consider going beyond asking the occasional client representative to speak to them about what clients want. Firms might ask themselves whether they are still looking at things mostly from their own internal perspective, rather than genuinely trying to view issues from the perspective of clients themselves. They could maybe even tap into the resources of client organizations

Some even pride themselves on this approach: “I trained to be a lawyer, not a marketer.” Nonbillable time is impliedly, even expressly, disregarded for internal rankings, promotion, and remuneration. The message from the system of many firms is strong: billing another hour continues to be favored over client relationship stuff.

Nevertheless, clients do use service attributes to distinguish between law firms, as noted in the sidebar on page 26, so firms should consider more effectively using client service to differentiate themselves from their competitors.

Whether your outside counsel face these or other barriers, there may also be value to your organization in helping firms to overcome them.

VIEW BOTH SIDES OF THE COIN

Having identified key attributes of the ideal external lawyer, integrated them into service delivery elements to develop outside counsel “right stuff,” developed frameworks enabling outside counsel to deliver more value, and removed barriers within your organization and theirs, the task is still not yet complete for diligent in-house counsel.

In my opinion, it’s not enough for in-house counsel to turn the coin over to appreciate the needs of their external lawyers, nor to flip it over to enable outside counsel to do so in order better to understand and meet client needs. To maximize the value of legal services delivery to their joint client, in-

(continued on page 38)

themselves, such as ACCA and similar organizations. After all, their members are looking at these very same issues, yet on the flipside of the same coin.

If just a few firms choose to take this step, if they develop programs truly to understand client needs from a client perspective, if they embed that understanding into their systems, processes, and people, if they’re committed to creating a genuine client-focused culture, if they accomplish all of these goals, they might well lead the way to the next transformation, that of delivering truly great client service and reaping the benefits of a competitive advantage.

The questions that you could ask outside counsel to give them a chance to demonstrate their client focus are legion. You could tailor your questions to the area of law in which you practice, such as intellectual property, or to the area of the country or the world in which your client might need outside counsel’s expertise. I wanted something short, simple, and demonstrably objective, so I asked the following questions:

- On a scale of 1 (not at all) to 5 (heaps), how client-focused do you consider yourself?
- On the same scale, how client-focused do you consider the firm?
- What do the following acronyms stand for? ACCA, CLANZ, ACLA
- What’s the website address for each organization?
- Who’s the head of each organization?
- Roughly how many members does each organization have?

- Name any one of a range of similar organizations worldwide.

The answers to those questions are as follows:

- The acronyms and websites are the American Corporate Counsel Association (www.acca.com), the Corporate Lawyers’ Association of New Zealand (www.clanz.org), and the Australian Corporate Lawyers Association (www.acla.com.au).
- Details of the current heads of each are available at their websites. I liberally accepted several answers as correct: for ACCA, the name of either the board chair or the president; for CLANZ, either the president or the immediate past president; and for ACLA, either the CEO or the national president.
- For membership numbers, I accepted a wide variance: for ACCA, anywhere between 10,000 and 15,000 would have sufficed; for CLANZ, anywhere between 1,000 and 1,500; and for ACLA, anywhere between 1,500 and 2,000.
- Other similar organizations worldwide include the Canadian Corporate Counsel Association (“CCCA”), the European Company Lawyers Association (“ECLA”), the Corporate Lawyers Association of South Africa (“CLASA”), the corporate counsel committee of the International Bar Association (“IBA”), and so forth.

Finding out whether outside counsel know the answers to the questions that you pose will help you find out how focused they are on their corporate clients and on the work that you might need to have them do for you and your company.

From this point on . . .
Explore information related to this topic.

ONLINE:

- ACCA's committees, such as Law Department Management Committee and Small Law Departments Committee, which have listservs to join and other benefits. If you have questions about these or other ACCA committees, contact the chairs (listed in each issue of the *ACCA Docket*), or contact Staff Attorney and Committees Manager Jacqueline Windley at 202.293.4103, ext. 314, or windley@acca.com, or visit ACCA OnlineSM at www.acca.com/networks/ecommerce.php.
- *ACCA/Serengeti 2002 Managing Outside Counsel Survey Report: Assessing Key Elements of the In-house Counsel/Outside Counsel Relationship*, available on ACCA OnlineSM at www.acca.com/Surveys/partner02/.
- Alternative Billing InfoPAKSM, available on ACCA OnlineSM at www.acca.com/infopaks/billing.html.
- Billable Hours, full report of the ABA committee, plus a wealth of background information, including an online toolkit and speakers bureau, at www.abanet.org/careercounsel/billable.html.
- Adam Frederickson, *Global Counsel Best Practice Indicators: Outsourcing to External Counsel*, GLOBAL COUNSEL, 2002, VII(9), 9, available on *PLC Law Department* at www.practicallaw.com/A26619.
- William B. Lytton, *The Value Added Model: The New Paradigm for the Corporate-Client Relationship*, GCCA-Europe 9th Annual Conference, Versailles, France, June 24, 2002, presentation materials, available on ACCA OnlineSM at www.acca.com/chapters/program/gcca/valueadded.pdf.
- Outside Counsel Management InfoPAKSM, available on ACCA OnlineSM at www.acca.com/infopaks/ocm.html.
- Ronald F. Pol, *Seven Steps to Value-Added Legal Services*, available along with other materials on alternative billing arrangements on the Corporate Lawyers' Association of New Zealand ("CLANZ") website at www.clanz.org/alternative_billing.html.
- *Pricing Professional Services: A Research Study into Contemporary Practices within Australian Firms*, Aug. 2002, available from Beaton Consulting, at www.beaton.com.au.
- Stuart E. Rickerson, "Beyond Task-Based Billing: Dramatically Improve Results with Strategic Legal Management," *ACCA Docket* 19, no. 1 (January 2001): 28-48, available on ACCA OnlineSM at www.acca.com/protected/pubs/docket/jf01/beyond.html.
- James D. Shomper and Gardner G. Courson, "Alternative Fees for Litigation: Improved Control and Higher Value," *ACCA Docket* 18, no. 5 (May 2000): 20-34, available on ACCA OnlineSM at www.acca.com/protected/pubs/docket/mj00/fees.html.
- *The Strategic Review and Outlook for the Legal Services Industry* (2003) and other BTI Consulting Group surveys, at www.bticonsulting.com.
- Task-based Billing InfoPAKSM, available on ACCA OnlineSM at www.acca.com/infopaks/taskbasedbill.html.

ON PAPER:

- Colin Jasper, *Pricing to Create Value*, AUSTL. L. MGMT. J. (SUMMER 2003).
- CHRISTOPHER LOCKE, GONZO MARKETING: WINNING THROUGH WORST PRACTICES (Hardie Grant Books 2001) (an eclectic book, summed up by its opening quote, "Only the insane take themselves seriously"; a primer for certain senior partners and business development managers, perhaps?).
- DAVID H. MAISTER, TRUE PROFESSIONALISM: THE COURAGE TO CARE ABOUT YOUR PEOPLE, YOUR CLIENTS, AND YOUR CAREER (The Free Press 1997) (a more serious book).
- THOMAS J. WINNINGER, FULL PRICE: COMPETING ON VALUE IN THE NEW ECONOMY (Dearborn Trade 2000).

If you like the resources listed here, visit ACCA's Virtual LibrarySM on ACCA OnlineSM at www.acca.com/resources/vl.php. Our library is stocked with information provided by ACCA members and others. If you have questions or need assistance in accessing this information, please contact Legal Resources Manager Karen Palmer at 202.293.4103, ext. 342, or palmer@acca.com. If you have resources, including redacted documents, that you are willing to share, email electronic documents to Managing Attorney Jim Merklinger at merklinger@acca.com.

(continued from page 35)

house and outside counsel need also to retain an overview of both sides of the coin.

Put another way, if managing external lawyers and managing client relations are really just the flipside of the same coin, we should be able to learn a lot from each other. Communication within our respective camps is important. Yet effective communication between them and the ability for both more genuinely to appreciate the needs of the other are equally valuable.

Few would disagree with this arrangement in principle, but how might it work in practice? In late 2002, I spoke at or attended three conferences, two in Sydney, Australia, and one in Washington DC. Two were specifically for in-house counsel. The first was *Best-Practice In-house Legal Function*. The second of these was ACCA's annual meeting of more than 2,000 in-house counsel, *Transforming the Profession*. Aside from a few external lawyers, delegates at the in-house counsel conferences consisted of mostly in-house lawyers from Australia and New Zealand at the first conference and from the United States and the rest of the world at the second conference.

The third conference was designed for law firms. Grandly titled *World Masters of Law Firm Management*, it featured consulting luminaries David Maister, Ward Bower, George Beaton, and Sam Beasley. Delegates consisted of hundreds of managing partners and business development directors of scores of law firms from the Australasian and Asia-Pacific region.

As far as I could tell, however, I was the only "client" to attend. Why attend a conference for outside counsel? Quite simply, to understand them better, to more effectively work with them, and to help them better understand the needs of in-house counsel. Yet many in-house counsel seem content to stay in the comfort zone of the side of the coin that they know best. After all, they may say, it's up to outside counsel to understand us and to change their ways accordingly, right? Wrong. There are, I believe, real advantages in viewing both sides of the coin.

For example, one of the keynote speakers at the law firm conference said that one of the greatest barriers to U.S. firms being able to bill for value rather than time was in-house counsel themselves! It was said that in-house counsel recognize the inefficiencies and failures of time-based billing and that effective

value-billing methodologies would deliver greater value to their organizations, yet that they nevertheless require time-based billing, precluding innovative firms from offering value-billing alternatives. Remarkably perhaps, there was no dissent from the audience, until I offered a contrary view, from direct experience of having implemented a value billing system in which, by contrast, outside counsel were probably the greatest single barrier to its implementation.⁴ Most important, however, neither observation was incorrect, yet without the other, neither showed a complete picture, potentially to the detriment of both. In my opinion, the most significant progress will not be made until both are aware of and genuinely understand the other perspective.

If some outside counsel already attend "our" conferences, as they do (and in my experience far more often than those of "us" seem to attend "theirs"), are they already better at understanding the flipside of the coin? Well, maybe, but too often, they seem rather more focused on so-called practice development opportunities, handing out business cards and extolling their firm's virtues, than actively participating in key sessions that might enable them genuinely to understand the client perspective, as well as their own.

It's also too simplistic to suggest that attending each other's conferences or subscribing to a broader range of publications is sufficient or even necessary. It is simply one example.⁵

However you do it in practice doesn't much matter. At least being open to the possibility that the flipside offers valuable insight to your own side of the coin is a useful starting point.

CONCLUSION

Whatever system you put into place, whether some form of value-billing that rewards results and value to the client rather than just effort expended, or some other framework to improve relationships with outside counsel, what both you and they may be missing might simply reside on the flipside of the same coin.

It's about them, sure—whether they're the best outside counsel for your organization. But it's also about you—whether the frameworks that you put in place are designed genuinely to help outside counsel become ideal external lawyers.

For both in-house and outside counsel better to understand each other's needs and more effectively to work together to maximize the value of the delivery of legal services to your joint client, it may help to flip the coin: look to outside counsel's needs and enable them better to understand yours. ■

NOTES

1. Available via the ABA homepage, at www.abanet.org.
2. *Id.*, at ix.
3. An analysis of Telecom bills following the introduction of standard office charges by one of its main outside firms found that the new charges would be higher in more than 90 percent of the cases and in many cases very significantly higher—not just a few percentage points, but often by a multiple of up to about 10 times higher—than disbursement billing would have been.
4. A recent survey records that in-house counsel's perceived resistance to alternative fee arrangements by outside counsel appears to be growing in both frequency and strength. Only 4 percent recorded no resistance, yet 84 percent recorded appreciable or considerable resistance by outside counsel. *ACCA/Serengeti 2002 Managing Outside Counsel Survey Report: Assessing Key Elements of the In-house Counsel/Outside Counsel Relationship*, available on ACCA OnlineSM at www.acca.com/Surveys/partner02/.
5. For law firms, whether or not they seek to implement some form of value billing methodology, there may also be value in reviewing their pricing practices at least to take into account clients' perceived value. A recent Australian survey revealed that professional service firms still mostly take account of and closely monitor their own costs in determining price, far outweighing the number of firms that consider or even monitor client value, notwithstanding other studies demonstrating the critical importance of value in determining client satisfaction. Cost as a factor in pricing professional services also far outweighs considering or monitoring the pricing strategies of competitors—truly a dangerously introspective paradigm. *Pricing Professional Services: A Research Study into Contemporary Practices within Australian Firms*, Aug. 2002, Beaton Consulting, at www.Beaton.com.au.