

Focus: Law

Law, business worlds unite in transactional arena

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HOUSTON BUSINESS JOURNAL

At a social gathering, a physician and an attorney were discussing a common problem — how to deal with acquaintances who seek their professional opinions at parties.

“What do you do?” asked the physician.

“I usually give them the information and then send them a bill,” replied the attorney.

Five days later, the physician received a bill in the mail.

Although accruing billable hours are the lifeblood of all law firms, some throw the counter sheets in the shredder, so to speak, and offer clients more business-type services — those that don't come with a bill five days later.

ABOVE AND BEYOND

Transactional lawyers, who deal with contracts, mergers and acquisitions and securities, may find themselves going the extra mile for their clients, spending time on their own gathering information and calling up their clients with tips that will help them conduct their business.

But the legality of “consulting” or providing client services, has been questioned recently after the Enron Corp./Arthur Andersen debacle.

“Companies are sensitive to conflicts of interest, especially after the Andersen issues,” says Paul Dickerson, senior associate with Haynes and Boone LLP's Houston office. “Everything is taken seriously, so you don't want to get caught up with any non-legal consulting services.”

The thin line between what is legal and what isn't can make a difference, he says.

For example, it would be a definite conflict of interest for a stockbroker to assist a



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Transactional lawyers often go the extra mile to help their clients with their businesses, say Haynes and Boone LLP attorneys Paul Dickerson, left, and Chris Wolfe.

company in going public and helping them work out the progress.

“If you are going to provide ‘counseling,’ it is a line that you have to be sure to stay on the right side of,” Dickerson says.

“The trick is to not get sucked into two sides of the deal.”

While taking care of billable business, outside counsel is naturally exposed to what that particular business is doing and,

because of his general knowledge, may have something to add informally.

Whether the client follows through on the tip or not, the lawyer is able to help the client think “outside the box” and also will form a deeper relationship with the client by taking a deeper interest in his concerns, says Dickerson.

“To be a good lawyer you have to really understand the client’s business and understand how the client makes money,” he says. “You also have to be a good friend.”

One area in which a transactional lawyer may be able to help clients is in networking. For example, a lawyer who has knowledge of international trade missions that would be of interest to a client may be able to introduce the client to those involved in choosing participants for the international trade mission.

“Being able to help our clients outside the natural realm of law is a fun aspect of the practice,” Dickerson says.

LEGAL EAGLE

Some firms have made being a valued and trusted outside adviser to their clients a central component of their mission statements.

Ted Paris, a partner in the corporate department at Baker Botts LLP, says the firm provides business advice as a logical extension of its legal advice.

“Giving business advice can mean different things, though,” Paris adds.

A business lawyer could, for example, help clients to determine “market” terms, such as those in securities offerings or make credit arrangements.

While a lawyer can draw from his own experience of working on similar transactions, he also will rely on a survey of his colleagues within the firm to determine what “market” means in a given type of business deal, Paris says.

“By explaining the situation to my colleagues, I might find someone else in the firm who recently handled a similar deal with nearly identical business as well as legal issues involved,” he says.

Valuable advice may be given to a client by a lawyer who regularly represents both buyers and sellers or securities issuers and underwriters and knows what procedures typically are acceptable to the other side in a given situation.

Providing that input can be very valuable to a client and can facilitate the overall objective shared by both sides of the transaction, which is to get the deal done.

Lawyers who have experience in specific markets often have opportunities to provide business-oriented advice to clients planning on entering these mar-

kets and are able to provide introductions to contacts there.

“It can be extremely valuable for a client entering a geographic area for the first time to work with lawyers who are already familiar with the local regulatory and political issues,” Paris says.

Similar opportunities arise where a client’s particular situation calls for specialized legal services beyond those typically provided by a corporate lawyer, such as advice relating to employment, tax, environmental or intellectual property issues.

The typical transactional lawyer often likes to think of himself as a “jack-of-all-trades.” In reality, however, “We can’t be,” Paris adds.

A good business lawyer is one who utilizes the expertise available when confronting issues requiring that special expertise, he says.

A good business lawyer knows, Paris says, that “it is very important to know your limitations, both in terms of legal specialization

and your ability to deliver business advice as a logical extension of your legal services.”

PRACTICE MAKES PERFECT

Even though a lawyer may not be a jack-of-all-trades, lawyers do see many examples of situations where their knowledge of business can come into play.

Paris provides the example of an attorney who may be called upon to provide advice to a company that is considering acquiring a piece of real estate where there is concern about exposure to asbestos.

“One of the things we would do is help the client get education about the nature of asbestos and its ballooning liability in the country,” he says. “We would look for newspaper articles that were coming out on the subject and forward them to the client as well as other information that would lead the client in coming up with a price to buy the building.”

Chris Wolfe, a partner with Haynes and Boone, provides another example — a case where lawyers were able to provide helpful advice to a client who was involved in a failed business venture and was considering liquidating the company. His attorneys were able to suggest alternate ways to keep the business going.

Learning the company had been undercapitalized, the attorneys suggested to the client that he separate the assets and control of the company. The creditors were given control of the assets, but the client was able to retain control of the company.

“It allowed them to still operate the company and to collect a fee for the operation of it,” he says. “The key was they had a problem and it was a matter of understanding and reaching an objective, not through legal means where we would advocate for the client, but in us suggesting a different way the client could go.”

Even though a client may go to his lawyer with an idea of the steps he plans to take to solve a perceived problem, a good lawyer may be able to suggest alternate opportunities and help him make an informed decision.



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