

November 2009

The ACC Value Index: A Call To Action for Law Firms

When it comes to hiring outside lawyers, the in-house credo has long been: "We hire the lawyer, not the law firm." The Association of Corporate Counsel's Value Index, which purports to rate the value of services rendered by law firms, indicates that the in-house bar has made a major shift away from that position. Although the conclusion is good news for law firms, the approach ACC has taken is both perplexing and vexing at the same time.

Unveiled last month at ACC's annual meeting, the Value Index is the centerpiece of the organization's admirable effort to help the in-house bar better align the value and cost of legal services. It assigns ratings to law firms using a questionnaire that requires clients to evaluate the performance of a *single office*, for a *single practice*, industry group, or matter type, without regard to the reality that matters under evaluation may have involved lawyers from *multiple offices* and *multiple practices* of a single firm.

Already ACC members have completed over a thousand online evaluations of law firm offices worldwide. If the old maxim that 'you get what you measure' proves to be true, ACC may be unpleasantly surprised by the nature of the changes the Value Index will prompt. We also suspect that law firms will have their hands full trying to make sense out of the Index. In this *ZG Alert*, we flag concerns about the Value Index rating system, call on ACC to change the Index's fundamental flaws, and suggest how law firms should approach the issues it raises.

How the Value Index Evaluation Works

The evaluation form (which we have reproduced at the end of this *Alert*) is completed online in a "members only" area of ACC's website, and may be completed anonymously. The website does not provide outside counsel with access to the ratings they and other firms receive. We believe it is a serious flaw that law firms do not get the benefit of the feedback that the Value Index solicits. (We set forth our reasons later in this *Alert*.) The brief information that the Value Index requests is curious. The form directs respondents to identify a law firm, a particular office of that law firm by geographic location (each firm's offices are listed in a drop-down menu that ACC presumably will be kept busy updating), and a "matter type" (also listed as answer choices provided by ACC in a drop-down menu). The "matter types" are an inexplicable mix of practice areas, industry sectors, and different types of matters. Only one can be selected. Often, more than one would be involved in any given matter. Next, respondents are asked to use a five-point scale ranging from "poor" to "excellent" to "score the firm's performance" on six "value criteria." Having just asked the respondents to identify

a particular office and matter type, the instruction to "score the firm's performance" immediately underscores one of the principal flaws of the survey: *whether at any moment the respondent is evaluating that office's performance on that particular type of matter or extrapolating from his/her opinion of that office a larger evaluation of the firm as a whole.*

The value criteria are:

- Understands objectives/expectations;
- Legal expertise;
- Efficiency/process management;
- Responsiveness/communication;
- Predictable cost/budgeting skills;
- Results delivered/execution.

The survey then poses the following "yes/no" question: "Good value; would use this firm again?" Once again, first focusing on performance on a single matter and then asking the respondent a question that rates the entire firm calls into question the methodology of the form. Last, the evaluation form gives respondents the option to include their own name, a "Contact at firm," and written comments. The form provides no guidance on whether the name to provide as the contact should be the person leading the engagement, the relationship manager, or simply an attorney or someone else involved in the matter or known to the respondent. It is entirely unclear whether the evaluation scores are related to the role the contact person played in the engagement.

A Survey That Evaluates Matters by Focusing on Particular Offices and Matter Types is Contrary to the Interests of Clients and Law Firms

In asking clients to rate matters based on individual offices and practice areas of a law firm, the Value Index evaluation form overlooks the fact that firms strive to "put the best team on the field" for each client matter, staffing matters with lawyers from several practice areas and offices if that is what will deliver the best and most cost-effective service, expertise, and result for the client. To be sure, some matters are of a purely local nature—a landlord-tenant matter in a single city, for example—and might draw on just one office and just one practice area of a law firm.

The types of matters underlying the driving concern in the Value Challenge, however—complex litigation and transactions that generate outsized legal fees—almost always are staffed by teams that include lawyers from two or more offices and/or

practice areas of a law firm. This aspect of the evaluation form fails miserably in two important respects. First, it does not allow respondents to differentiate between routine matters and those that are more complex and require teams of lawyers across several offices. Second, it does not systematically permit respondents to designate whether the matter was a dispute or a transaction. In some instances it does; in others it doesn't. The Value Index *would* be very valuable if it asked clients to identify and evaluate the lead lawyer or team of lawyers who handled a particular matter, and to answer whether the client would hire that lawyer or team again. *That* is the information that in-house counsel ask one another when they seek referrals, and it also would provide direct, actionable feedback that lawyers within law firms could use to improve client service. As is, the survey instead gives respondents the *option* of naming an undefined "Contact at firm," without identifying what role, if any, the contact played in the matter being evaluated, or how well the contact carried out the role. Instead, *to be more useful to in-house lawyers*, the survey should ask respondents to identify the particular lawyer(s) whose service they are rating, or at least the person who led the engagement.

Although ACC states that the Value Challenge is an effort to engage law firms in a dialogue about better aligning the cost and value of legal services, the Value Index does not collect specific actionable data that would be helpful to law firms striving to do so.

Moreover, because the Value Index evaluates law firms only either by a matter type, or by a particular office, practice area, or industry group, rather than by rating how a given team or person responsible for the matter performed, it could end up working against clients' best interests. A metric that evaluates a law firm's offices and practice areas likely will encourage offices to keep work local and avoid cross-office and cross-practice staffing in an effort to control the scores they receive. Instead of promoting efficiency by encouraging law firms to staff each client matter with the best, most cost-effective expertise possible, the Value Index may foster the counterproductive, expensive inefficiencies and on-the-job learning that ACC is striving to change. Evaluating individual and team performance would have been a far more constructive and useful approach.

Is the old adage "Clients hire lawyers, *not* law firms" dead?

If the last question in the evaluation form ("Good value; would use this firm again?") is interpreted literally as asking whether the in-house lawyer who has just rated an *office* and matter type would hire the *firm* again, then it is clearly out of sync with clients' frequent assertions that they hire lawyers, *not* law firms. Anecdotal research says that despite protestations to the contrary, firm reputation is an important part of the decision to hire an outside lawyer. ACC itself in the past has acknowledged that clients' negative experiences with one lawyer or team of lawyers do not stop them from subsequently hiring other lawyers

in the same office or practice area, or in other offices or practice areas of that firm. It makes no sense, and adds no value to the dialogue, to develop a metric that asks clients to base their views about a firm on the performance of a single office on a single type of matter.

The Evaluation Form is Rife with Problematical Compound Questions

Another flaw in the Value Index evaluation form is that many of the questions require single responses to compound subjects. Over half of the answer choices to "Matter Type" fail to identify the matter type, practice, or industry area with enough precision to make them actionable by law firms. "IP/Copyright/Trademark/Patent," "Real Estate Zoning/Land Use," and "Liability—Products, Property and Premises or Auto" are just three examples of answer choices that bundle multiple practice areas into single categories when, in fact, each subpart of the answer choice comprises a distinct matter type. (We have produced the full list of choices the Value Index provides in a footnote to the Evaluation Form reproduced at the end of this *Alert*.)

This compounding extends to most of the "Value Criteria" answer choices. They bundle distinct concepts that should be unbundled. The criteria "responsiveness/communication," for example, forces the respondent to provide a single score for two very different criteria: an outside lawyer can be extremely responsive in getting back to clients promptly, but could be a miserable communicator who cannot get a point across clearly or succinctly. Likewise, the criteria "predictable cost/budgeting skills" assumes that someone who is good at predicting costs has strong budgeting skills, when, in fact, a lawyer could be lacking in budgeting skills but have a wealth of experience that makes him or her particularly adept at predicting how much a matter ultimately will cost. Clients will tell you that they are far less concerned about whether a lawyer is technically good at budgeting than if he or she can accurately predict the cost of the matter. The poor methodology underlying the use of compound questions severely compromises the usefulness of the data.

In addition, the phrasing of the question "Good value; would use this firm again?" is problematic, because it precludes the possibility that a client who believed it received good value would not hire the firm again for unrelated reasons, or vice-versa.

The Value Index Creates a Star Chamber

As we stated at the outset of this *Alert*, we believe the Value Index is fundamentally flawed because the feedback it solicits isn't shared with the firms that are evaluated. When ACC unveiled the Value Challenge it said it was an effort to show "how it is that going forward, both inside and outside counsel could better team to find solutions and satisfy clients." How is it that inside and outside counsel can better team to "find solutions and satisfy clients" if the very feedback on client satisfaction that ACC is collecting is kept secret from the law firms being evaluated?

ACC defends its position by saying on its website, "We created the AVI [ACC Value Index] as a member service, so by definition, it is available only to ACC members." To us, it is inapposite to the stated purpose of the Value Challenge for ACC to be facilitating a one-way conversation. To accomplish change, there must be clarity about and a shared understanding of what needs to be changed, and agreement on how best to accomplish the change. ACC is thwarting all three.

There is another good reason for law firms to have access to the feedback clients provide through the Value Index. Clients filling out the Value Index can choose whether to identify themselves by name. In an ideal world, every evaluation system, even anonymous ones, accurately would depict matters that actually occurred. To prevent misinformation that could be harmful to clients and outside counsel alike, the Value Index should include a mechanism whereby respondents must identify themselves and the role they played in the matter, and where law firms have an opportunity to confirm that the representation in fact took place. The role the respondent played in the matter is of particular significance; it is possible for an in-house lawyer who played a minor role in a large engagement to smear an entire firm for a minor infraction without any context. Indeed, the client organization well may have been satisfied with the overall performance of the firm. This lack of transparency could have stunning implications. An anonymous evaluation system that a law firm never sees opens the door for abuse. As Carl Liggio, ACC's co-founder, is fond of saying, "Sunlight is the best antiseptic." We're surprised that ACC has created a star chamber.

If ACC is serious about wanting to better align value and cost, it should reconsider this serious misstep. In order for the profession to benefit from greater alignment on the issue of value, clients and law firms need to be in dialogue, not having separate conversations.

A Call to Action for Law Firm Leadership

Honest and direct client feedback is indispensable to any law firm that is serious about aligning its service delivery with clients' best interests. The idea of evaluating outside counsel is not new—many law firms desire and seek actionable client feedback. ACC is to be commended for encouraging its members to contribute to the ongoing dialogue. But we would have expected a more thoughtful evaluation form and transparent process from an organization whose stated goal is to connect the value and cost of legal services more effectively. The flaws of the Value Index, including its focus on law firm offices rather than lawyers, its ambiguous questions, its unrefined answer choices, and its lack of transparency, reflect poorly on ACC's efforts to promote better communication and alignment among law firms and clients on issues related to cost and value.

Judging from the Value Index, it appears that ACC and law firms are ships passing in the night. They both want the right lawyer for the matter, but ACC's approach is fostering a one-way conversation. By not collecting useful data and by not sharing it with the firms being evaluated, ACC is talking to itself. And, in its questionable methodology, it is driving change in a different direction—away from getting clients the best value for each matter. In the face of this challenge, it is more important than ever for law firms to engage proactively in a two-way conversation with their clients, first seeking candid, concise, clear, and actionable feedback of their own, and then communicating to their clients how they are driving change to best align the value they deliver with their pricing. Because the flawed ACC Value Index evaluation form does not gather very useful data, and because the information it gathers is not shared with law firms, in its best light it is a call to action for law firms to initiate productive dialogue with their clients about how to bring about the change they both desire. We urge our clients and other friends to proceed with dispatch.



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[Law Firm Name]

[Law Firm Office Location], United States

- Matter type¹

Score the firm's performance on the following value criteria

1=Poor 2=Fair 3=Good 4=Very Good 5=Excellent

- Understands objectives/expectations
 - Legal expertise
 - Efficiency/process management
 - Responsiveness/communication
 - Predictable cost/budgeting skills
 - Results delivered/execution
- Good value; would use this firm again? Yes No

Comments (optional)

- Please give your evaluation a caption or title

- Comments

Contact at firm (optional)

- First name
- Last name

What others will see about you

[Evaluator's Name]
[Evaluator's Title]
[Evaluator's Company Name]
[Evaluator's City, State and Country]
Email: [Evaluator's Email Address]

- Show my contact information
- Show only my title, location and industry

If the information shown here is incorrect, please [update your member record](#).

1. The drop-down menu answer choices are: Admiralty & Maritime; Advertising/Sweepstakes; Agriculture Law; ADR/Mediation; Antitrust/Competition; Aviation/Aerospace; Banking/Financial Services; Bankruptcy/Debtor-Creditor; Biotechnology; Business Formation; Collections; Communications/Media; Compliance Counseling – General; Computers/Software; Construction; Consumer Protection; Contracts/Commercial Law/Commercial Paper; Corporate – General; Corporate – Governance; Criminal Law/White Collar Defense; E Commerce/Internet/IT; Education; Employee Agreements/Benefits/ERISA; Employment Discrimination/Disabilities Law; Employment/Other/Litigation; Employment-Workplace Safety/OSHA; Employment/HR/Labor Law; Energy/Natural Resources/Utility Law; Entertainment/Sports; Environmental Law; Equipment Finance & Leasing; Ethics/Professional Liability; Food & Drugs; Franchises/Franchising; General Representation/Counseling; Government Contracts; Health & Safety; Health Care; Immigration & Naturalization; Insurance Law/Insurance Defense; IP/Copyright/Trademark/Patent; IP Litigation – Other; International Commerce/Trade; Liability – Products, Property and Premises or Auto; Litigation – General; Lobbying/Elections & Political Law; Media/Publishing; Mergers/Acquisitions/Divestitures; Non-profit-Trade Association; Privacy Law/Data Protection; Public Finance; Real Estate Zoning/Land Use; Regulation Agency Practice/Compliance; Securities/Corporate Finance; Tax; Torts; Toxic Torts; Transactional Work; Transportation Law; Other.