

The Search for the Meaning of Value

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Value is an elusive quality, but discussing billing methods is impossible without considering the “value” received and perceived by the client. That is why this book and the two prior editions start with the meaning of value in billing for our services. This book is intended to be practical. But implementation of alternative billing will depend on a number of individual factors and considerations. In making these decisions in your law practice, understanding the meaning of value is required.

From the standpoint of the client, the value of legal services is the client’s perception that there has been a benefit. Value may be positive in the sense of acquiring a desired result, but value may also be a negative, such as the avoidance of a detriment or risk, as in the successful defense of a civil or criminal case. When the price of the services received reflects the client’s perception of value, the client will be satisfied.

Lawyers and Clients: Perception Is Reality

One of the key points in discussing value is to understand that there are frequent differences in perception between the lawyer’s point of view and the client’s point of view. Lawyers are trained to make calculations on probable outcomes and risks. The lawyers

may not consciously calculate the odds in a mathematical fashion in all client matters and may resist reducing a complex situation to a stated probability or percentage. But in many situations the client and lawyer can only communicate in terms of possibilities when trying to make appropriate decisions.

Lawyers frequently deal with dozens of these future judgments every day and in every matter. Will the jury believe a certain witness? Will the judge view the case as more analogous to precedent A or precedent B? Will the taxing authorities oppose or accept a certain proposed tax treatment? What dollar amount of damages might a jury award for a certain injury in a certain region of the country? What sentence will the judge impose for a certain offense? What type of zoning change both serves the client's proposed use and is most likely to be approved by the municipal authorities? Will a certain document be deemed admissible into evidence or excluded?

If a lawyer is pinned down and forced to give some sort of odds, the client may view them very differently from the lawyer. Telling a client there is a 60 percent chance of success may give him the idea that "our attorney said we will probably win." The lawyer, on the other hand, is thinking that it is a toss-up, with a slight advantage to the client's benefit. Stating that the odds are 90 to 10 in a client's favor leaves the client with the idea that victory is assured, while the lawyer still understands that if ten of these cases with these exact facts are tried, one will be lost.

Therefore the lawyer may counsel that paying \$100,000 to settle a one-in-ten chance of losing a \$1,000,000 is a rational decision, especially when one considers the attorney fees that will be incurred on the way to that court date. The client may be aghast at the prospect of paying \$100,000 to settle a sure winner, especially when the attorney's fees that have already been incurred to date are considered.

The possibility of a disconnect between the lawyer's perception and the client's perception is a critical concern in all aspects of the attorney-client relationship, and that includes setting fees and billing.

Client Perceptions of Value

Clients perceive value in a variety of ways. When spending money adds to the value of what a person has, the dollar outlay is an investment, not an expense. A developer client invests in raw land, hoping to have it rezoned as a residential subdivision. The developer pays for planning and engineering services to lay out the tract, for a lawyer whose expertise results in appropriate rezoning, and for streets and utilities to be installed. Each of these investments adds value to the developer's land. They are clear and, in a sense, tangible.

Individuals would prefer to achieve a result or to conserve existing assets. Businesses would prefer to invest capital in assets upon which there will be a return. Thus, both individuals and businesses would prefer not to pay legal expenses unless there is a benefit. For example, an individual client may wish to have an estate plan that will provide for family needs with minimum tax impacts, or a business client may want to collect a past-due account. Where the client's objectives are reached, value has been achieved.

But perceptions are affected by many factors. A client's prejudices, experiences, cultural background, social and economic status, religious background, or education all may impact the client's perception of a legal matter. A client sued for divorce who does not want the divorce will often never appreciate fully the valuable advice and counsel of the lawyer. The same is true for a businessperson who is sued over a course of conduct that he or she deemed proper.

What Is Value?

Lawyers sometimes tend to take for granted the many ways that they bring value to their clients and the transactions in which they are involved. After a transaction becomes somewhat routine, a lawyer may underestimate the experience, and therefore the value, he or she brings to bear on a legal need.

The following examples illustrating how clients perceive value, while not exhaustive, should stimulate the lawyer's thinking and also provide a reference source for the future should a lawyer be challenged as to his or her value:

- ◆ Avoiding exposure to risk (or possible ruin), such as losing all assets or going to jail, is value. Thus, lawyers can provide value in the form of enabling a successful corporate reorganization or a not-guilty verdict in a criminal case.
- ◆ Sometimes a brilliant idea or insight can produce great value, even though it results from a small amount of time. A simple solution to a complex and seemingly unsolvable problem occasionally results from a restructuring of the problem posed, from a burst of brilliance, or from the deep experience of the counseling lawyer.
- ◆ The ongoing process of supporting a client's needs can represent value. The lawyer's routine handling of a client's ongoing needs in a complex society gives the client peace of mind and frees him or her to pursue other ends, whether personal or financial. Representation by a strong, competent, loyal, well-established, and highly regarded lawyer can bring stability and credibility to the client's life.

- ◆ Wisdom is an elusive concept. But clearly a maturity of judgment, a steady hand, and a restraint on impulsive actions can translate to immense value. The lawyer's ability to persuade against unsound courses of action or in favor of preventive action may be of great benefit to the client.
- ◆ The lawyer's acceptance of responsibility can produce value. In high-risk transactions, having a competent lawyer act with knowledge of the risks involved and with a willingness to put his or her reputation on the line may in itself be value.
- ◆ The ability to communicate can be a source of value when used to help clients understand what is occurring or what is planned. To many clients, legal matters are a mystery. Consequently, the lawyer's ability to speak in terms that clients can understand helps dispel the mystery.
- ◆ Timely performance is value. Clients, too, have time schedules and appreciate services that are timely. Providing prompt service demonstrates that the lawyer gives priority to the client.
- ◆ High-level specialized expertise and skill create value. Some matters require unique skills and experience. In those situations, clients will seek out lawyers who provide highly valued specialized services.
- ◆ Exclusivity or unavailability to others can be value. The traditional retainer to ensure availability shows that clients recognize the importance of having a lawyer or law firm available in case they need legal services. The lawyer can serve as the client's anchor when the need for legal services arises, even if those needs only arise from time to time. Long-standing relationships are usually the foundation for successful law practice.
- ◆ A timely follow-up to see that there are no loose ends can be a most important source of value. Most clients want the transaction completed and the matter terminated, and they become restive when most but not all of the necessary steps are taken.
- ◆ A straightforward approach can be a very appreciated value. Lawyers provide value when they do only what is needed. This may include advising a client that nothing need be done, telling the client how to proceed without the involvement or expense of the lawyer, or finding a simple solution. Simple solutions are, by their very nature, often under-rated and under-valued. But providing a reasonably acceptable solution, even though deluxe alternatives might be available, is a true mark of professionalism and value when the client only needs a reasonably acceptable product.
- ◆ Guaranteeing satisfaction is certainly value. Clients stick with a lawyer when they know that he or she will "make it right" in terms of what is done or what is charged.

Dependability, integrity, evenness of performance, reliability of product, personal and professional stability, and many other factors all constitute value. A lawyer should never underestimate his or her value, whether as a recent entry into the legal marketplace or as a seasoned veteran.

Conclusion

All of the benefits named in this chapter, when viewed from the standpoint of the client's perceptions, are elements of value that create the basis for determining what the client will be willing to pay. As we shall see, two other factors affect value and the client's perception of value. The first is supply and demand. The second is communication, the ability of lawyer and client to understand each other throughout the whole of their relationship. The lawyer must understand the client's problems and needs and take appropriate actions, but in today's marketplace, it is not enough to merely provide value. It is incumbent upon the successful lawyer to deliver value, to communicate to the client the value that has been delivered, and to endeavor to insure that the client's perception of the value received is in line with the perception of the lawyer.