

What Do Clients Really Want?

James T. Markus, Moderator

Markus Williams Young & Zimmermann, LLC; Denver

Steven Charles Krause

Owl Creek Asset Management, L.P.; New York

Anne M. Peterson

HSBC Bank USA; Buffalo, N.Y.

John J. Ray III

Greylock Partners LLC; Naples, Fla.

Cherie Schaible

AIG Investments; New York

Ronald M. Tucker

Simon Property Group; Indianapolis



AMERICAN
BANKRUPTCY
INSTITUTE

DISCOVER



VOLO
volo.abi.org

Access circuit court opinion summaries



***From the Courts to You
within 24 Hours!***

With Volo:

- **Receive case summaries and view full decisions**
- **Automatically have opinions in your circuit delivered**
- **Search by circuit, case name or topic**
- **Access it FREE as an ABI member**

Be the First to Know with Volo
volo.abi.org

66 Canal Center Plaza • Suite 600 • Alexandria, VA 22314-1583 • phone: 703.739.0800 • abi.org

Join our networks to expand yours:



© 2015 American Bankruptcy Institute All Rights Reserved.

QUESTIONS FOR ABI PANEL – “WHAT DO CLIENTS REALLY WANT?”

Selection of Counsel

1. How do you use outside counsel?
2. What factors do you consider in selecting outside counsel?

Expertise, location, size of practice group, rates, results, effective communication, other??
3. Do your views change if you are selecting a committee professional as compared to a professional you are directly retaining?
4. When you are interviewing prospective counsel, what gets your attention and what is effective in persuading you to retain restructuring professionals
5. What is the biggest mistake outside counsel can make in seeking work from you?
6. What is the single most important thing that causes you to use a lawyer or law firm or to use them again?
7. Marketing materials/handouts – do they matter?
8. What are your three most important expectations in dealing with outside counsel?
9. Has anyone here ever hired an in house counsel from one of your outside law firms? What was behind that decision/how did it come about?

How To Begin An Engagement

10. How do you delineate the scope of work when you retain professionals to insure that you and them are on the same page?
11. What do you want to see included in an engagement letter?
12. Do you encounter professionals sending engagement letters that are inconsistent with specified policies/procedures of your organization ?
13. Are there things you have seen in engagement letters that you would encourage outside counsel to eliminate

14. Are there things in engagement letters that you find useful and would encourage our audience to include in their engagement letters?
15. When a matter requires a conflict waiver, how should counsel handle it? Are there types of waivers your organization will not give as a matter of course?

Managing the Engagement

16. Do you want a primary contact at the professional firm? How do you choose your primary contact? What do you look for?
17. How do you get comfortable that associates are appropriately supervised by a law firm?
18. How do you convey your expectations for client involvement? For example, do you want to review every boilerplate general discovery objection
19. Do you require periodic status reports from professionals? Do you find them helpful?
20. Do you require use of budget or use a budgeting process to track/oversee costs? Do you find them effective?
21. How do you convey your timing expectations to your outside counsel? Would you be offended by an inquiry regarding the sensitivity of timing?

How the Client Works

22. Is it important for your professionals to understand and know their client?
23. Does your organization sometime participate in different roles (agent, lender, insurer, debt trader etc) in matters? Do you encounter issues with material non-public information?
24. Do your outside lawyers generally understand your internal resources?
25. Is information security a concern to you and your organization?
26. Do you want (or need) your outside counsel to consult with your GC? If so, under what types of circumstances?

27. How can professionals better understand your organization so that they can more effectively represent it?

Effective Communications

28. As a preliminary matter, how important is effective communication in your attorney/client relationship
29. What is your preference for how your counsel communicates with you? E-mail, office phone, cell phone, text messages (other) ??
30. How do you feel about the Friday afternoon emails?
31. It's the weekend and you are going out of town for your college reunion. How do you want/expect your lawyer to reach you?
32. Let's discuss some best practices about E-mail; first off, give the audience some background on how many email messages you get in a day?
33. How important is it to you that counsel includes some detail in the subject line of an email so that you can "filter" your messages
34. What about when outside counsel forwards you a detailed message or document and just says "FYI" or some other truncated note?
35. When you see typos in an email message, does this impact your impression of your attorney?
36. Do you find that sometimes people can be too informal in an email?
37. Have you had situations where information that was intended to be privileged or confidential was sent out to unintended recipients by your professional sent a "reply all" message? How was the situation handled?
38. How do you react to calls from lawyers placed by their assistants?

Billing Practices

39. Do you have any recommendations for billing practices? (detail, repetition, subject matter of research)?

- 40. Can you provide some examples of things that professionals should avoid doing in connection with billing?
- 41. Those of you who retain professionals that are subject to fee applications, are there practices that you encourage from your professionals?

Staying In Touch After a Matter/Cross Selling

- 42. How important to you is client entertainment? Is it something that you would recommend?
- 43. Do you find mailing/emailing of newsletters to be helpful?
- 44. What suggestions would you give to people on some best practices for staying in touch and/or marketing other practices ?

Final Thoughts

- 45. What was the best experience you have had with outside counsel?
- 46. What was the worst experience you have had with outside counsel?
- 47. What should a professional think about -- and do -- to provide outstanding client service?



**American Bankruptcy Institute Annual Spring Meeting
Washington, DC**

What Do Clients Really Want?
April 17, 2015

Overview

- I. Matter Management
- II. Communications Management
 - E-Mails*
 - Phone Messages*
- III. Relationship Management

2

I. Matter Management

- **Matter Priority:** internal counsel and business professionals have multiple matters which require their attention. Understand that your matter may not be a priority to the client at that time.
- **Responsiveness is key:** failure to return phone calls and emails is generally the number one complaint clients have.
- **Timing:**
 - If avoidable, don't leave matters to the last minute.
 - If you do have a last minute matter, give advance notice of a tight turnaround.
 - Failing to meet a deadline (even self-imposed), can often make your client look very bad.

3

I. Matter Management (continued)

- **Key Persons:**
 - Identify who the point person are on issues on your team.
 - If your client is going on vacation, ask if there is someone who should be copied on emails during your client's absence. Additionally, consider whether the issue can be addressed upon the client's return from vacation (exercise judgment).
- **Ownership:**
 - Take ownership of your work: if a mistake is made, own it and provide a recommendation to fix it. You may even consider an apology, if appropriate.
 - If you are conveying advice from someone else in the firm, make that clear and provide the contact information for person who provided the specific advice you are conveying.
- **Course of Action:**
 - When discussing matters provide options and a course of actions/ recommendation.
 - Avoid overusing "this is a business issue."
- **Issues:** Reduce issues to those that actually require client review, consideration and/or opinion.

4

I. Matter Management (continued)

- **Assistance/Support Services:**
 - Do not assume that the client has law firm type support services.
 - If a large document needs to be printed or documents need to be printed after hours, offer to hand deliver the documents.
 - Offer to send a messenger if an original signature is needed.
- **Sub-Management:**
 - If other professionals are engaged and you are the point person to manage those professionals, manage them efficiently and provide periodic updates on their work.
 - Delegate down but also up – know your limits and if you are afraid you will look bad to the hierarchy within your firm if you ask for help, remember it may be worse if the client complains.
 - Be careful about asking the client or other side for help.
- **Signature Pages:** identify as soon as possible documents that need to be executed and get signatures pages ready and signed to be held in escrow to avoid missing signatories.
- **Typos:** if you are missing typos what else are you missing?

5

II. Communications Management – E-Mails

- **Appropriate Use of Email:**
 - Don't send emotionally charged emails
 - Consider litigation risk and context
 - Is an email appropriate or should you pick up the phone?
 - If there is a misunderstanding as a result of email exchanges, pick up the phone to work things out
 - Be as concise as possible
- **Subject Field**
 - Identify the matter name and topic of the email (i.e., "Project Email: Case Update).
 - Be sure that the Subject field accurately reflects the content of your email.
 - Note if urgent (but use appropriately and sparingly).
 - This field can determine whether or not your email is read and/or opened.
 - Do not keep using the same "subject" line on a reply email if the subject has changed.

6

II. Communications Management – E-Mails (continued)

- **Communicate as an educated adult**
 - Type in full sentences with proper sentence structure
 - Use proper capitalization and punctuation
 - Spell check
 - Avoid patterned backgrounds
- **Level of Formality:**
 - Avoid the assumption that email allows you to be informal – time and relationship building efforts guide when you can send informal emails.
 - Refrain from getting too informal too soon in your email communications and make sure you spelled their name correctly.
- **Response needed or status update**
 - Identify at the beginning of the email that a response is needed.
 - Note who you specifically need a response from if there are multiple parties on the email.
 - Indicate the timeframe for a response.
- **Issues:** clearly identify issues and provide recommendations/next steps.

7

II. Communications Management – E-Mails (continued)

- **Answer all questions, and pre-empt further questions:**
 - If you do not answer all the questions in the original email, you will receive further emails regarding the unanswered questions, which will not only waste your time and your client's time but also cause considerable frustration.
 - If you are able to pre-empt relevant questions, your client will be grateful and impressed with your efficient and thoughtful email.
- **Contact Information:** include your contact information in the email if you don't have an automatic signature which contains it.
- **Do not request delivery and read receipts.** This function annoys your recipient before he or she has even read your message and usually does not work since the recipient could have blocked that function or the software they use does not support it.
- **Forwarding:**
 - Do not forward an email that someone requests you not forward.
 - Write a personal comment to the person you are forwarding the email to and indicate why you are forwarding them the message.

8

II. Communications Management – E-Mails (continued)

- **Reply to All:**
 - Use this button with discretion! You need to carefully think about whether “all” really need to be aware of your reply.
 - Never use this button to CYA or eTattle.
- **Attachments:**
 - Clearly label attachments.
 - Check all attachments before you send them.
 - Do not send large attachments, unless necessary, over the weekend/after hours as you could fill the person’s in-box causing subsequent emails to bounce as undeliverable.
 - If you need to send a very large file, confirm first that it is okay to send the file or ask when they would like it sent.
 - Wherever possible try to compress attachments.
 - If you are sending a document for the client to review and comment, do not send it in “read only” mode.

9

II. Communications Management – E-Mails (continued)

- **After-hour email:**
 - Be aware of your client’s work hours. Do not assume your hours and the client’s hours are the same.
 - Include text of relevant sections in the email rather than referring to an attached document (if possible).
 - If super urgent, call.
- **TO:, Ccc, Bcc Fields**
 - **To:**
 - Use the To field for those you would like a response from.
 - **CC:**
 - Use the Cc field when it requires all parties to be on the same page/ have the same information.
 - In general, do not include the person in the cc: field unless you have a particular reason for wanting this person to see your response.
 - **Bcc:**
 - Use when you don’t want email addresses to be displayed.
 - Don’t use Bcc as a way of talking behind someone’s back.

10

II. Communications Management – Phone Messages (continued)

- Introduce yourself – don't assume they will recognize your voice.
- Try not to leave long messages (script your messages before dialing so you don't ramble).
- Provide contact information and repeat your phone number.
- Remember that messages can be forwarded too (least we forget the monkey scribe message).
- Do not leave a voice mail for the client at a time when you know he or she will not likely be in the office.

11

III. Relationship Management

- Know the business
 - If you work with the same client know their issues/stances on key issues.
 - Set up your team so you leverage your existing knowledge of the client.
 - Avoid asking the client questions you should have the answer to.
- Know your client
 - Understand the other demands on your client.
 - Are they in the restructuring business? If not, be sensitive to jargon use and educate them (privately, not publicly) and share insights.
 - If they are a debtor, understand internal resources are limited and they are not likely organized for a filing.
 - Understand your client's personalities and quirks, (i.e., do they like you to control the meeting or do they want to run the show while you assist?).
 - Learn where they have authority for and be patient when they need to take things up the ranks but do not go over their head.
 - If you have a regular client that you work with and have a good relationship with that client, ask for feedback on your work.

12

III. Relationship Management (continued)

- Be Proactive and Creative
 - Avoid being pegged “Mr. / Ms. No” – attempt to always identify alternative ways to get the job done when you recommend against a course of action.
 - Cross-thinking: think beyond the narrow issues and consider all the questions your client should have asked.

13

III. Relationship Management (continued)

WHEN DEALING WITH NON-BANKRUPTCY PROFESSIONALS

- Educate the client in a non-condescending manner.
- Don't speak in bankruptcy jargon or section references.
- Understand it can be a scary and/or frustrating process.
- Walk your client through next steps and process in a structured way.
- Provide applicable circular precedents to client.
- Use other well known restructurings to illustrate how the process works.

14

III. Relationship Management (continued)

WHEN DEALING WITH A FIRST TIME DEBTOR

- Pre-Filing
 - How to convince your client it's time to plan for a filing: We're not there yet are we?
 - ♦ How willful blindness can make contingency planning difficult:
 - If we prepare for it, it will happen but if we ignore it, the problem might just go away.
 - The gravitational pull of the status quo is very strong:
 - » We have a preference for everything to stay the same (in other words a fear of change); and
 - » An aversion for conflict/
 - ♦ Legacy: Not wanting to be remembered as the one who bankrupted the Company.
 - ♦ Job insecurity
 - ♦ Corporate Politics: doing nothing is always safer than doing a bold move (someone else will take the risk).

15

III. Relationship Management (continued)

WHEN DEALING WITH A FIRST TIME DEBTOR (continued)

- How to assist your client in getting organizational buy-in.
 - ♦ Counsel needs to assist the Company in getting the message across in their organization:
 - » One step at a time: this is a back-up plan. Must prepare even if may not need it.
 - » Be gentle but relentless: If we don't start now, we won't get ready. If we are not ready in time, we will face another chapter of the Bankruptcy Code entirely.
 - » Get allies internally. One at a time.
 - » It may be helpful to your contact to be told resistance is normal and to be expected.

16

III. Relationship Management (continued)

WHEN DEALING WITH A FIRST TIME DEBTOR (continued)

- Assist your client in the preparations:
 - Understand that organizations (especially large ones) have multiple sectors from which they need to gather information.
 - The filing systems and record keeping of institutions is not as organized as law firms so be patient when requesting information.
 - Companies do not have the internal resources that law firms have so offer your services (copying, editing, etc.).
 - The covert nature of filing preparedness often complicates the process.

17

III. Relationship Management (continued)

WHEN DEALING WITH A FIRST TIME DEBTOR (continued)

- Post-Filing
 - What happens next? You need to help your clients understand their new post-filing reality.
 - What decision may we make on our own as a debtor in possession & what requires a court order?
 - What happens to our litigation?
 - What exactly is stayed?
 - What payments are to be suspended to employees/retirees?
 - Who is the UCC?
 - Am I still subject to my reporting obligations?
 - What about financial covenants?

18

III. Relationship Management (continued)

WHEN DEALING WITH A FIRST TIME DEBTOR (continued)

- Take your client through the next steps in the process in a structured way
 - Explain each step in the process: main phases and key deliverable for each.
 - Provide reasonable timelines for emergence.
- Restructuring fatigue: When do we get out of here?
 - It will become a recurring question, an obsession really.
 - Entire task forces will be planning their emergence work around your estimate of the expected timeline (especially if corporate reorganization are called for by the plan).

19