DEAL LAWYERS

Vol. 13, No. 3 May-June 2019

The Culture of Counterparties

By Roger Griesmeyer, Partner of Hunton Andrews Kurth LLP

Increasingly, we hear many of the same comments and concerns from private equity (and other) clients pursuing acquisitions. There are record amounts of "dry powder" chasing common targets and industries. Auction processes continue to be intensely competitive and, often, the winner presented a bid quite similar to others.

Conversely, we also read about acquisitions that either failed to close or closed and only later revealed significant issues. Now, more than ever, the scope of due diligence must be expanded, and, indeed, even the approach to a target must be modified by private equity funds and other acquirers to include the significant consideration of the target's culture.

Clients are increasingly requesting creative advice and solutions in order to gain a competitive advantage in such situations. For thematic continuity and the sake of brevity, we will break this discussion into macro and micro cultural considerations in both approach and due diligence from the perspective of a private equity acquirer. However, these concepts and principles can be applied to almost any transaction and party.

Culture and the Approach

Common sense, experience, and basic psychology provide most seasoned private equity dealmakers with the tools to gain at least some small advantages in approaching a potential acquisition target. Humans are predisposed to like people to whom they are similar. Acquirers that emphasize actual or perceived similarities between themselves and decision makers at targets invariably find more long-term success in the competitive deal landscape.

The importance of cultural insight and understanding cannot be overstated. From a macro perspective, your deal team must first understand the cultural norms and traditions of the target's locale. On a micro level, a deeper understanding of the target-specific culture and the unique perspective of its decision makers is imperative.

Macro Culture. The most effective deal teams take the time to study a target's macro culture and expectations. A tired, but true, platitude is that you get many second chances, but only one chance to make a first impression. When doing business in a foreign country, learn the proper, formal, and customary business greeting in the relevant language with proper pronunciation.

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ISSN 1944-7590

While your counterpart may often speak English, there is no substitute for the sense of familiarity language can bring. Simply being able to say hello, thank you, and goodbye in the proper form and context will almost invariably elicit a warm smile and engender a sense of perceived similarity from counterparts.

Similarly, research more subtle, but important, cultural standards for business. For example, consider norms for business attire for in-person meetings. Outward signs of prosperity may be a crucial signal in some environments, while understated, thoughtful sartorial choices are more respected in others.

Learn about typical body language and movement; is measured, articulate stillness a cultural sign of confidence and authority, or does the relevant culture celebrate (and reward) passion and interest with increased gesticulation and specific body positioning? Are there indicia of interest or dissatisfaction that vary from our own culture, such as leaning forward or backward or crossing arms or legs? Like in a good game of poker, a fund's target will observe all cues and interactions to glean information about the acquirer's intentions, abilities, and fit.

Even domestic targets' macro cultures can and will vary by location. While the deal team may not need to learn a greeting in a foreign language, the tone and pace of one's speech can be modulated to breed a sense of familiarity and similarity. Be prepared to use common idioms and expressions that may be unique to the relevant locale. Slow down (or speed up) speech patterns to better match locals.

Considerations of applicable dress codes and body language apply equally in domestic situations to those described above in foreign acquisitions.

Deal teams already understand and incorporate much of the foregoing. However, there is a wealth of resources to aid in and supplement the implementation of these concepts. Many private equity funds have long understood the tremendous benefits of cultural diversity in their workforce.

When approaching a new target culture, the first, and often best, resource is an employee or consultant with deep familiarity with such culture. Actively seek such persons and their advice on each of the foregoing issues. Invite them to speak to the deal team about business decorum and their unique experiences and, if appropriate, incorporate them into the deal team.

Micro Culture. The foregoing notwithstanding, each target company inevitably has its own micro culture to which to adapt. Many of the same tools and skills will serve a deal team well, but significant and thoughtful observation and adaptation are required to gain an edge in a competitive acquisition process.

By necessity, the first interactions with a potential target will most often be with ownership or management. Most of us reflexively visit LinkedIn or similar resources to learn more about such people and identify resume-level details.

Similarities in experience (or concepts found in posts) can be used to facilitate a warm introduction. But dive further into any clues about such people that can be found online. Books, articles, or other content written by or about these parties can provide valuable insight about a variety of topics.

Observe writing style and common patterns or phrases, as well as similarities in publicly available photos. Seek out speeches and interviews, if any, and marketing materials describing such people. Leaders are often sought after for their commentary and observations on their industries, trends, challenges, successes, and failures. They also have one or more favorite stories highlighting particularly impactful moments in their careers or lives. The seasoned deal team seeks common ground with these experiences and a way to elicit similarity to their own intentions and vision for the target.

As the initial approach progresses, whether through one or more meetings, phone calls, or emails, vigilant observation and adaptation should continue. Note whether the target's principals are more formal or relaxed, direct or indirect in their communications. Consider the patterns and structure of emails, as well as the timing and content.

Discern preferred cues from the way in which the target parties interact with you and with each other: Is speech measured and slower or gregarious and speedy? Do the parties interrupt each other without consequence or pause for one or more beats after the speaker is clearly finished? Are emails terse or lengthy, and is there a consistent grammar or style between the target's primary points of communication?

The sense of familiarity and similarity between the acquirer's deal team and the target's principals can deepen as minor adjustments are made in communication style. Rather, micro adaptations to the target's unique cultural norms can increase the opportunity for success, as well as elicit useful additional insights and information that may not otherwise be shared between the parties.

Culture and Due Diligence

Many cultures and industries have established standards for due diligence, and the wise deal team avails itself of the same. From the initial request to financial investigation to meetings with key customers and employees, the needs of the acquirer for information necessary to make an investment decision must be balanced against an understanding of the most familiar macro and micro processes of the target culture.

Macro Culture. Here, again, consistently successful dealmakers seek out all available resources for insight into the due diligence process. In some cultures, due diligence is commonly understood to be an arduous, invasive affair that continues unabated until the eve of execution of the purchase agreement. For others, efficiency, specificity, and speed are the expected norms.

While we all tout our ability to move swiftly to execution, the expectations and realities can vary greatly. In an auction process, virtual data rooms and management meetings usually comprise the bulk of the initial due diligence. In a specific approach, a request list or similar exchange of information will be required. In either case, take care to understand the larger perception of your organization and the expectations of the target as the process unfolds.

Requests for diligence items should be set forth in a familiar form more common to the target's culture and practices. If certain information is less commonly requested in the target's culture, take a moment to discuss the request and the reasoning for it in advance with the target's principals or advisors. Simply sending a standard form in an email without context can create persistent mistrust in advance of useful negotiations. Relatedly, additional requests for information should be previewed and presented in light of relevant concerns.

Also, take care to understand more mundane business practices. Some cultures require requests to be made and discussions to be had between persons of similar standing within their respective organizations. Certain topics may be considered inappropriate for discussion above or below a level of seniority. While rarely fatal, errors with respect to such matters can aggregate to an implicit bias among target decision makers regarding the acquirer's ability to understand the target's culture, market, and business and, ultimately, close a desirable deal.

Embracing and preparing for differences in common financial practices is another consideration. As a baseline matter, be familiar with common accounting treatments in the target's culture, especially relevant variations from US GAAP.Understand the format in which financial information is likely to be presented, and be ready to present additional inquiries and feedback in a similar format.

Likewise, take a moment to review the standard formatting and content of indications of interest, term sheets, letters of intent, and the like. Are the concepts of escrows, earn-outs, or carve-outs, to name a few, anathema or unfamiliar to the target's culture?

While these may be critical deal points that must be addressed, consider repackaging such concepts to be more palatable to the recipient. To the extent practicable, adjust your typical templates to incorporate culturally relevant terms, conditions, and stylistic elements.

Micro Culture. Ultimately, most final transaction decisions will come down to the specific target and its people. And this is where acquirers have the greatest opportunity during the diligence process to increase their odds of success. Each of the foregoing efforts and tools can now be utilized to maximum effect to win the deal or avoid a costly mistake.

Observe how employees at all levels behave and interact. Is information shared or compartmentalized? Are the tones of emails and conversations generally upbeat, reserved, argumentative, or harried? Is the workforce diverse (in all respects, at all levels)? How are employees treated by supervisors and those they manage?

There are myriad ways to obtain this information with varying effect and efficacy. You may consider it advantageous to employ or consult with industrial organizational psychologists to better assess employee morale and identify potential improvements, as well as red flags.

Read key employee reviews, when possible, both as reviewers and reviewees, to gain insight into management style, expectations, and strategies. Consider the impact and integration of such employees in your portfolio. Even more simple, read (with a grain of salt, of course) anonymous employee reviews and discussions about the target on websites such as GlassDoor and Reddit. One dissatisfied employee may not be significant, but a pattern or theme of consistent praise, behavior, or complaints may reveal insights (good and bad) of which even the target may not be generally aware.

Throughout the diligence process, measure the quality, accuracy, and speed of the materials produced. Pay particular attention to consistently delayed or problematic disclosures and the areas and people from which such materials originate. Depending upon the subject matter, this may be inconsequential or extremely significant to the acquirer's comfort level (and negotiation strategy) at the purchase agreement stage, as well as with respect to future plans for the target.

Conclusion

More than ever, our private equity clients demand that we, as their counsel, understand their company, business, industry, and people in order to grow our relationship. In short, we must understand our clients' culture. Similarly, clients seeking to successfully acquire target companies in a competitive deal market must understand the targets' macro and micro cultures, especially when entering a new geographical region, industry, or relationship. In order to achieve these objectives, acquirers (and their representatives) must be resourceful, creative, and vigilant in observing and adapting to the target's culture.

Cross-Border Carve-Out Transactions: Conditions & Staggered Closings

This article is Part 3 in a series of 3

By Mark Davies, Partner, and Sawyer Duncan, Associate, of King & Spalding LLP

We have previously examined several key considerations in the context of planning and executing a cross-border carve-out transaction. In our final article in this series, we will focus on various concepts that impact parties' abilities to bring a complex carve-out transaction to a successful, timely closing. A confluence of factors, including the conditionality of the acquisition agreement, the possibility of intervening events and the receipt of required regulatory approvals, drive the timing of a closing.

When many jurisdictions are involved in a carve-out deal, many dealmakers find that certain parts of the target business are prepared for closing on different timetables than other parts of the business. This article will close by discussing deferred closings and related points to keep in mind when deciding whether a deferred closing is appropriate.

Applying Appropriate Conditionality to Closing

Drafting an effective acquisition agreement for a cross-border carve-out transaction requires careful attention to the conditions precedent to each party's obligation to close the transactions contemplated thereby. As in any M&A situation, sellers ordinarily place primary emphasis on receiving a maximal amount of the purchase price as quickly as possible, and they may therefore oppose inordinate closing conditionality in the acquisition agreement.

Buyers, on the other hand, generally want to ensure that care is taken during the separation and pre-closing organization process such that the whole target business is delivered in negotiated form on the closing date. In some instances, delaying the closing for as long as it takes to receive requisite regulatory approvals (or obtain third party consents) can be tolerated.

In other instances, however, a delay in closing of any duration subjects the consummation of the transaction to incremental uncertainties—including by, for example, giving an interloper more time to present a topping bid, by adverse movement in the credit markets that impacts the bankability of the deal, or an increase in the likelihood of a material adverse effect. Further, a lengthy interim period could distract the target management's focus on running the business.

The sooner a deal can be fully completed, the sooner the pro forma combined company can realize valuable synergies and become accretive to the acquirer's bottom line. As in any M&A deal, completion cannot occur until all closing conditions precedent are satisfied or waived—and determining the nature and extent of those conditions is usually the responsibility of counsel.

For buyers in carve-out deals where a pre-closing reorganization is undertaken, it is advisable to install a closing condition or required closing delivery whereby the seller must deliver conclusive evidence of completion of pre-closing reorganizational documents and any attendant ancillary agreements. But other tricky conditionality problems, many of which require a bespoke, factspecific solution, have emerged in previous deals.

Jurisdiction-specific closing conditions, such as works council approval or union-related filings or approvals, can be supplied by experienced local counsel. Confusion can arise as to approvals and actions that are critical for the operation of the target business in one jurisdiction, but not in others. Many times, conditions relating to regulatory approvals will be a contentious point among sophisticated parties:

- Should affirmative receipt of all required regulatory approvals be required as an express closing condition?
- Or should a regulatory closing condition merely require the absence of injunctions or orders restraining or enjoining the closing?
- In any event, how should the parties determine which regulatory approvals they may elect to "close over"? Does a jurisdiction-specific threshold for fulfillment of the regulatory approval condition make sense? Or should regulatory approval be required for jurisdictions in which the target derives a certain percentage of net sales?

- What if an unobtained regulatory approval is statutorily required in a remote, immaterial jurisdiction that is unable to grant it? Should the failure to obtain that kind of *de minimis* approval hamstring the larger closing if other material approvals have already been obtained?

Other transactional conditionality questions can arise as well:

- Should the target's closing condition regarding accuracy of representations and warranties be "brought down" to the same standard for all jurisdictions? What if there are material known diligence issues in only one jurisdiction? Would such an issue belong on the disclosure schedules (where it would typically be deemed an exception to the reps and warranties, and thus outside the confines of indemnification?) Or should it be subject to specific indemnification?
- Are there other parallel strategic transactions currently pending or proposed to be undertaken by either party while your cross-border carve-out is pending (such as an additional carve-out, acquisition, or refinancing)?
- How should the timing and execution of simultaneous strategic transactions be choreographed so as to optimize deal certainty for your transaction?
- How will the closing conditions in such parallel transactions, if any, interact with your deal?

Clearly, these permutations of considerations are highly fact-intensive, often depending on many factors outside of your and your client's control. Counsel should carefully think through the specifics of each transaction and not merely rely on precedents when applying and negotiating conditionality to a cross-border carve-out acquisition agreement.

A smooth closing depends on a contractual conditionality construct that is appropriate in relation to the materiality of the foreign assets and jurisdictions involved. Where a conditionality construct is not carefully tailored to the deal at hand, deal certainty is jeopardized.

Staggered Closings

As we have discussed, cross-border carve-out deal entails both separating the target business from its parent (whether via through asset transfer transactions or some other pre-closing restructuring) and doing so in a manner that complies with the requirements of each jurisdiction in which target assets or subsidiaries are located.

In a deal involving a global, multinational target business located across many jurisdictions, it may be difficult or impractical for all of these transactions to be completed (or recorded, evidenced, filed or funded, as applicable) on exactly the same date.

While many portions of the target business may be otherwise prepared for purchase and sale at one moment in time, other portions of the target business may lack regulatory approval or third-party consent to be validly transferred in a manner that strictly adheres to the terms of a welldrafted acquisition agreement.

Can transactions that span vastly different time zones be legally deemed completed on the same business day? Must the parties delay the closing indefinitely (and encounter the risks described above) while substantial parts of the transaction are otherwise ready to be completed?

Many times, parties will decide to stagger the completion of a complex deal into logically sorted mini-closings, organized by jurisdiction or by key asset for example. Most often, the parties will expressly contemplate and provide for adequate optionality and procedure for a staggered closing at the beginning of a transaction.

Where jurisdiction-specific approvals, for example, are expected to lag other aspects of the completion of the larger transaction, a staggered closing can be useful—if it is thoughtfully implemented. The benefits of a staggered closing include lesser likelihood that a topping bidder intercedes and allows counsel and advisors to hone in on the execution of the unfinished parts of the deal.

A staggered closing can also elucidate some of the confusion that arises when determining a conditionality construct for the overarching deal, where various closing conditions can be "silo-ed" in a logical order that corresponds to each staggered closing. Representation and warranty veracity and "material adverse effect" bring-down conditions can be neatly bifurcated, by jurisdiction, by subsidiary or otherwise. In these ways and others, a staggered closing can, under certain circumstances, present clarity during the often-murky exercise of conceptualizing when certain pieces of the target business pass to the acquirer.

A staggered closing, however, is not without considerable risk to acquirors—especially when it is not initially contemplated at the outset of a transaction process. In many cases, parties can do their best to estimate the likelihood of receiving regulatory approvals or fulfilling closing conditions by a date certain, but at the end of the day, an estimate is just that.

Any delay in closing can be value-destructive where the deal thesis depends on the achievement of meaningful synergies. If an acquisition agreement has been drafted only with a singular closing in mind, a subsequent decision to implement a staggered closing can become a tall order if not carefully planned.

Because a staggered closing entails that the delivery by the seller of certain pieces of the target's business would be deferred, these situations present heightened risk to buyers that they may not ever actually receive all of the target business that they believed they were purchasing at the time of signing.

Further, even if all of the component parts of the target business do eventually close in a successfully staggered manner, multiple closings can reduce an acquiror's leverage and relieve the seller of pressure to deliver the target business in full, negotiated form on the agreed-upon timetable. Buy-side counsel thus should pay close attention to the following considerations:

- How might the purchase price be affected in the event buyer must accept lesser ownership at an initial closing than anticipated at signing? Should the acquisition consideration be disbursed to the seller in correspondingly staggered payments?
- Would financing sources still be willing to lend the full purchase price, on the same terms and conditions, against acquiror's ownership, at the time of an initial closing, of only a portion of the target business?
- How would a networking capital adjustment mechanism be applied across staggered closings? Ideally, an adjustment for each jurisdiction would take place in accordance with the chronology of each closing—otherwise, if there is one single net working capital true-up at an initial closing, the acquirer risks paying for a working capital profile that it may not actually receive.
- How should the parties address the existence of other closing risks during the pendency of the deferred closing? Should the deferred closing event maintain the same conditionality as the non-deferred closing events?
- How should interim operating covenants in respect of the deferred assets or operations be shaped to accommodate a longer delta between signing and closing? To what extent can an acquirer "tighten" such covenants while not running afoul of applicable antitrust or competition law regimes?
- If a required closing condition cannot ultimately be fulfilled or waived in any delayed jurisdiction, can the acquirer nevertheless operate the business in the same manner it was previously operated? What should happen if not?
- How would the economics of the target business be allocated while a deferred closing remains pending? Must the acquirer take the aggregate profit and loss statement for the entire target business even if it fails to operate significant portions of it?
- How would investors and other stakeholders react? Would the announcement of a decision to stagger the closing affect the commercial contract consent process with vendors and customers?

Takeaways

- When advising on large-scale cross-border carve-outs, apply a conditionality construct that is appropriate in relation to the materiality of the foreign assets and jurisdictions involved.
- Deferred closings can represent a useful compromise when there are components of a global target business that become ready for closing on disparate timetables. However, a staggered closing can present additional complexities that must be carefully thought through.

California Consumer Privacy Act and Its Impact on M&A Transactions

By Lisa Sotto, Aaron Simpson, & Brittany Bacon, Partners of Hunton Andrews Kurth LLP

In June 2018, California enacted a new consumer privacy law that signals a significant shift in US privacy regulation and imposes first-of-its-kind data protection requirements on businesses that have California consumers.

The California Consumer Privacy Act of 2018 ("CCPA"), which was signed into law on June 28, 2018, requires covered businesses to provide increased transparency on how they collect and share personal information of California residents and establishes new privacy rights for Californians, such as access and deletion rights and the ability to opt out of the sale of their data.

Due to these new rights and obligations, the CCPA likely will require significant changes to many US businesses' data collection and sharing practices to honor California residents' privacy rights under the new law.

Evaluate CCPA Compliance Risks in Due Diligence

California's new privacy law warrants careful consideration in the context of M&A transactions. When conducting due diligence, it is imperative to evaluate the CCPA's effect on a target company's business and to assess key compliance risks associated with the new law.

Key components of the CCPA include:

- Access Right. Upon a verifiable request from a consumer, a covered business must disclose (1) the categories and specific pieces of personal information the business has collected about that consumer; (2) the categories of sources from which the personal information was collected; (3) the business or commercial purposes for collecting or selling personal information; and (4) the categories of third parties with whom the business shares personal information.

  A covered business that sells a consumer's personal information or discloses it for a business purpose must also provide the consumer specific information about the company's data sharing practices in response to a verifiable access request.

- Deletion Right. Subject to several enumerated exceptions, the CCPA will require a business, upon verifiable request from a consumer, to delete personal information about the consumer which the business has collected from the consumer and direct any service providers to delete the consumer's personal information.

- Opt-Out Right. Covered businesses must provide a clear and conspicuous link on their website that says, "Do Not Sell My Personal Information," and provide consumers a mechanism to opt out of the sale of their personal information, a decision which the covered business must respect. The CCPA broadly defines sale as "selling, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating orally, in writing, or by electronic or other means, a consumer's personal information by the covered business to another business or a third party for monetary or other valuable consideration."

  Importantly, the law provides certain exceptions for mergers, acquisitions and other types of corporate transactions provided that specific conditions are met. If the merger or acquisition, however, materially alters the way personal information of a consumer is used or shared such that it is "materially inconsistent with the promises made at the time of collection," consumers will need to be provided sufficiently prominent and robust prior notice of the new or changed practice that enables consumers to easily exercise their right to opt out.

- Transparency. The CCPA will require certain disclosures in a covered businesses' online privacy policies, including a description of consumers' rights under the CCPA (*e.g.*, the right to opt out of the sale of their personal information). Covered businesses must also disclose certain data practices from the preceding 12 months about (1) the categories of personal information collected about consumers, (2) the categories of sources from which the personal information was collected,

(3) the business or commercial purpose for collecting or selling personal information, and (4) the categories of third parties with whom the business shares personal information.

If the covered business sells consumers' personal information or discloses it to third parties for a business purpose, the notice must also include lists of the categories of personal information sold or disclosed about consumers in the preceding 12 months.

– Specific Rules for Minors. If a covered business has actual knowledge that a consumer is less than 16 years of age, the CCPA prohibits the business from selling that consumer's personal information unless (1) the consumer is between 13–16 years of age and has affirmatively authorized the sale (*i.e.*, they have opted in); or (2) the consumer is less than 13 years of age and the consumer's parent or guardian has affirmatively authorized the sale.

– Non-Discrimination and Financial Incentives. Covered businesses cannot discriminate against consumers for exercising any of their rights under the CCPA. Covered businesses can, however, offer financial incentives for the collection, sale, or deletion of personal information.

– Enforcement. The CCPA is enforceable by the California Attorney General ("AG") and authorizes a civil penalty up to $2,500 for each violation or $7,500 for each intentional violation. The CCPA also provides a private right of action but only in connection with certain "unauthorized access and exfiltration, theft, or disclosure" of a consumer's nonencrypted or nonredacted personal information, as defined in the state's breach notification law, if the business failed "to implement and maintain reasonable security procedures and practices appropriate to the nature of the information to protect the personal information." The consumer may bring an action to recover damages up to $750 per incident or actual damages, whichever is greater.

Conclusion

By performing due diligence on a target company's CCPA compliance in advance of a potential transaction, businesses can effectively identify and manage key compliance issues associated with the target's failure to honor California residents' new privacy rights. Depending on the nature and scope of the target's business, these compliance risks ultimately may impact the relevant deal from an investment, reputational and operational perspective.

The Millenials Strike Back: 29 Tips for Older Deal Lawyers

By John Jenkins, Editor of DealLawyers.com[1]

I wrote an article for Sept.-Oct. 2017 edition of this newsletter that I called "29 Tips for Young Deal Lawyers." I recently shared that article with a couple of our firm's transactional associates and asked if they could come up with a list of their own to share with us older lawyers.

I promised not to hold anything that they said against them, and since nobody at the firm listens to me very much anyway—I think they were comfortable speaking frankly. I offered them a by-line, but they opted for anonymity, which I can certainly understand.

Anyway, what follows comes from two young, hard-working and very promising deal lawyers. In my opinion, a lot of what they have to say has merit, and we ought to pay attention. So, without further ado, here are their tips for us old folks:

1. Don't be *that* partner—you know, the one nobody wants to work for, the one the seasoned associates warn new associates about on the first day, the one who might be brilliant but is a total jerk. In other words, treat others the way you would like to be treated. They call it the Golden Rule for a reason.

2. Young lawyers know our role is to do whatever you say, and despite what you may have heard, we're not looking to be praised for everything we do. Still, it takes approximately zero effort to share a kind word, and for associates, who are constantly struggling to figure out what the heck is going on, a simple "thank you" can go a long way.

3. Take time to learn the latest and greatest in technology, whether it be running comparisons of documents, saving old documents as new versions, or sending scans from your phone (yes that is a thing!). It might seem foreign and intimidating, but you aren't as incapable as some of you let on, and taking advantage of these programs saves time and increases efficiency.

4. Speaking of tech, consider seeking our input on firm technology decisions. We've grown up with tech, and we have pretty good insights on what's likely to be useful to lawyers on the production line and what isn't.

5. If we leave the office at 6:30 p.m., this does not mean we stop working at 6:30 p.m. It just means we are working in our sweatpants, from the comfort of the couch, with our dog curled up next to us.

6. Face time is sometimes necessary, and when it is, we will be here until 3 a.m. But face time isn't always necessary. If working from home had been an option when you were a young lawyer, wouldn't you have taken advantage of it? I will answer that for you—yes.

7. Please keep us updated and in the loop. When possible, copy us on emails. Not only will we be able to learn from your interactions with the client/opposing counsel, we'll also know where things stand—which helps us manage our schedules.

8. Please don't silo us on a deal. It's tough to know what's going on in a deal if we are only privy to some of the communication going back and forth. It'll also give us context when you ask for something and lets us be proactive and do things without being told (rather than waiting for you to forward us an email asking us to do something).

9. It was decades ago (kidding!) but try to remember what it felt like to know so little that you didn't even know what you didn't know. Then remember that's how we feel every day.

[1] John is also a partner in the Cleveland office of Calfee, Halter & Griswold LLP

10. Turn our mistakes into teaching opportunities. We know we have a lot to learn—and we truly do want to learn. But with our inexperience comes mistakes. Be patient and explain your comments/changes. It'll help us become better lawyers, which ultimately helps you.

11. Let's face it—the practice of law has changed because of technology. Emails and cell phones have made the legal profession a 24/7 gig, but oftentimes it doesn't need to be. To the extent you can avoid sending an email or requesting something after hours or on the weekend, please do. We understand that you can't control timing most of the time—but when you can, choose business hours.

12. Technology has made it nearly impossible to ever truly turn work "off", which can take a major toll. Every once in a while, we need to truly unplug and nothing is worse than having a vacation ruined because of work. Chances are we're smart enough to have given you advance notice of our vacation plans and we've likely helped line up people to cover for us, so please try to respect our time off. We understand that emergencies happen and client needs take priority, but please don't send us an email asking for something that would only take you a few minutes to hand off to the person covering for us (or to do yourself).

13. Be clear with timing expectations. As junior associates, it's assumed that everything is urgent and should be done ASAP. Obviously, that's not always the case—but understanding the timing and priority of different tasks comes with experience. When giving an assignment, especially at night or over the weekend, be very clear on when it should be completed (*e.g.*, "Tomorrow, can you please draft…").

14. We know you need to review our work product, but don't create false deadlines. If you want something by Monday, we will work over the weekend to get you something that's in good shape. But subsequently discovering that you don't plan on looking at it until Wednesday isn't exactly great for our morale.

15. Let us know if your timing expectation changes. Want to make an associate's day? Poke your head into their office and let them know if you've learned that something you thought was an urgent project can wait a few days.

16. Take us out to lunch or to a baseball game, not because we love free food and tickets (although we do), but because we want to get to know you outside of work, and we want you to know us. Everyone has an interesting story, and while there is no need to be best friends with everyone in the office, it is nice to at least know *something*.

17. Remember that we have multiple (a plethora, even) of bosses, who each think that his or her work is the most important. To the extent possible, touch base with us and the other partners we are working with to help us triage and rank our work. Because at the end of the day, not all assignments and tasks are created equal, and something has to take priority.

18. If you ultimately decide to pull rank on somebody to get us to put their work aside and work on your project, it's not fair to put us in the position of delivering the message. You need to deliver the bad news. If you make us do it, it's way too easy for the other partner to "shoot the messenger" come review time.

19. Help us get involved in and with pro bono work, associations and committees. Invite us to networking events and fundraisers. Encourage our involvement in the community.

20. We understand that clients aren't always willing to pay for us, but we need at-bats in order to develop as professionals. We're more than willing to devote non-chargeable time to client projects, but please recognize that this kind of investment benefits the firm as well as the associate.

21. Try involving associates that you haven't worked with the next time you're looking to staff a project. Don't keep going back to the same well time and time again.

22. Along the same lines, you may find yourself more comfortable using associates that have backgrounds similar to yours. If you only use these associates to staff your projects, you're not being fair to other associates or to the firm. Sometimes, it's not just associates who need to get out of their comfort zones.

23. Give us a chance to assume more responsibility on the transactions we are involved with. If we do nothing but prepare disclosure schedules for five years, we'll be way behind the curve when you need us to sit first chair on a project.

24. Encourage us to cultivate relationships with our peers in client organizations. Many of those people will become part of the client's leadership team in a few years.

25. Push us to do things we aren't comfortable doing, and encourage us to push ourselves.

26. Remember all your colleagues who went on to senior positions at clients or potential clients? That may be us in a few years. How do you want us to remember our time at the firm?

27. Because nobody is more attuned to the pecking order than our staff personnel, absent instructions to the contrary, our shared assistant is always going to drop what they're doing for us in order to do your stuff—whatever it is. So, if what you need done can wait, would you please say so? We may have another partner or a client breathing fire down our necks to get a document turned.

28. Do tell us how long you think a project should take when you assign it. That will help us make sure that we don't go off on a frolic and detour that nobody's going to pay for.

29. Don't give us a project you know will take 10 hours and tell us that we can only write down 2 hours. That's not fair to us or to the law firm.

A sister publication of the popular newsletter, *The Corporate Counsel*, *Deal Lawyers* is a bi-monthly newsletter for M&A practitioners to keep them abreast of the latest developments and analyze deal practices.

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