

Vinson & Elkins Provides a Helping Hand

BY MICHELLE ALDEN

Vinson & Elkins LLP has graciously donated \$25,500 to this year's Equal Access to Justice Campaign and has a long history of supporting pro bono efforts in Dallas. Including this gift, the firm has donated more than \$198,150 to legal aid for low-income people since 1998.

"For over 20 years, Vinson & Elkins has contributed to the EAJ Campaign. We are proud to participate again this year with our donation of \$25,500 to show our commitment to providing legal aid to low-income communities," Ellyn Josef, the firm's pro bono counsel, said.

At Vinson & Elkins, pro bono initiatives provide an opportunity to connect with the human side of the practice of law and to give back to the community. The firm's lawyers are guided by the principle that pro bono clients—like all of their clients—should be fully and effectively represented. As a result, they devote meaningful time and financial resources to the legal needs of individuals and organizations that cannot afford representation.

"Vinson & Elkins devotes significant financial resources and more than 20,000 hours annually to pro bono clients because we are guided by the principle that full and effective legal representation should be afforded to all individuals in need. Through our partnership with the Dallas Volunteer Attorney Program, our lawyers are able to participate in numerous pro bono efforts such as representing families seeking guardianship over their incapacitated adult children; Texas Applesseed to represent students in truancy cases and other matters impacting homeless youth; and the Human Rights Initiative of North Texas to represent immigrants in asylum proceedings," added Ms. Josef.

The firm's attorneys have been active volunteers with DVAP for many years, vol-

unteering at various neighborhood clinics and eviction clinics, as well as representing DVAP clients in a variety of legal matters. On January 8, 2024, Vinson & Elkins secured a major win for "Mildred," a pro bono client in an eviction proceeding, obtaining a dismissal through months of vigorous litigation, negotiation, and dedication to finding creative solutions no matter the circumstances. V&E was first introduced to Mildred at a DVAP eviction clinic in June 2023, where she—an elderly and indigent Dallas resident—was being forced from her home. The V&E litigation team agreed to take the case on appeal, which culminated in an initial settlement between the parties. However, after months of state agency delays, a second eviction suit began. When the case was set for a final hearing in January 2024, V&E was presented with a unique opportunity to moot the case: Mildred was finally afforded a new unit if only she could move out. As she was unable to find movers, the V&E team stepped up and volunteered their time and brawn to move her themselves. After hours of hard work, Mildred vacated the unit, resulting in an unappealable dismissal and ensuring that she could now turn over a new leaf in her new home.

The Vinson & Elkins team consisted of Paul Hill, Josh Jilovec, Becky Matthews, Elizabeth Ramsey, and Eugene Temchenko.

"Working on this case was a profound experience. It wasn't just about legal victories; it was about making a tangible difference in someone's life. Helping our client successfully navigate a legal crisis that would've likely otherwise left her without a home was incredibly rewarding and underscored the true impact of pro bono work," said Mr. Hill, V&E associate.

The problem of access to justice in Dallas County is one that DVAP works to correct every day. In a country based on justice for all and access to our court system, over 25 percent of Dallas County residents live near



The V&E team went above and beyond by helping their client move to her new home.

the poverty level, and 42 percent have a slim hope of affording an attorney. With annual poverty incomes of \$40,187 for a family of four, justice is a luxury for low and moderate-income families.

DVAP is a joint pro bono program of the DBA and Legal Aid of NorthWest Texas, which brings together the volunteer resources

of a major metropolitan bar association with the legal aid expertise of the largest and oldest civil legal aid program in North Texas. For more information or to donate, visit www.dallasvolunteerattorneyprogram.org. **HN**

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Focus M&A/Solo & Small Firm

Don't Underestimate the Power of a Letter of Intent

BY CANDACE GROTH

"We are in alignment on all the major issues. Just draft the final agreements for us. No need to do a letter of intent first."

Sound familiar? This article explains why using a letter of intent can benefit both the buyer and the seller in an acquisition transaction, and why neglecting it is often a big mistake.

A letter of intent, also called an LOI, memorandum of understanding, MOU, or term sheet, is a short document meant to outline the key terms of an acquisition transaction. An LOI typically includes the following provisions:

1. Structure of the transaction (e.g., stock/asset purchase, merger)
2. Purchase price and payment schedule
3. Earnout structure (if any)
4. Employment or independent contractor terms for seller owner(s)
5. Confidentiality or non-disclosure agreement
6. Exclusivity/no-shop period
7. Other key terms of the transaction (e.g., non-compete)
8. General terms (e.g., choice of law and venue)

The LOI terms are generally non-binding, with the exception of confidentiality, exclusivity, and the general terms.

For the Seller

The adage that the seller has the greatest leverage during the LOI stage, and it all goes downhill from there, holds true here. The seller gains the most from a well-drafted and negotiated LOI for several reasons, including the following:

1. **Alignment on Financial Terms:** The LOI allows the seller to negotiate the total pur-

chase price along with the payment structure for the transaction. These terms can include:

- Purchase price and purchase price adjustment
- Size and duration of escrows or holdback
- Interest rate, security interest, payment terms, and other related provisions, in connection with any seller financing loans
- Earnout provisions, including specific definitions of key terms such as net profit,

continued on page 30



Inside

- 6** Managing Deal Fatigue and Expectations in Small Business Deals
- 14** Navigating a Successful Joint Venture
- 21** MLK Day Celebrated at the Arts District Mansion
- 30** From Counsel to Solo Practice: Tips for the Transition
- 34** Introducing the 2025 Class of DBA We Lead

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Managing Deal Fatigue and Expectations in Small Business Deals

BY MATTHEW GOOD, ROBERT WHITE,
SYDNY HELBERT, AND KATELYNN HICKEY

Whether exiting their life's work or looking for a turnkey business to acquire, clients in small business M&A transactions present unique challenges for their lawyers. Many small business owners and first-time acquirers have limited experience with attorneys or the intricacies of selling a business. This inexperience can lead to deal fatigue and the misunderstanding of concepts that can cloud the judgment of even the savviest of small business owners. Emotional elements can also contribute to the frustration: a client's excitement over a big payday, eagerness to grow an acquired business, or even simple anxiety over "retirement. Setting appropriate expectations from the outset, based on transparent and clear information, will help limit client frustration and promote a productive attorney/client relationship.

For a new client, transparency starts with the pitch and the engagement letter.

Establishing realistic expectations regarding transaction timing and expense builds your credibility and can prevent fatigue later in the deal process. It is essential for the attorney to create an informed timeline and budget and to identify items that may cause deviation from those initial expectations (e.g., delays in obtaining regulatory approvals or third-party consents). Identifying potential road bumps early in the process—thereby limiting what may constitute a "surprise" to a client—can avoid client frustration and potential conflict. Counsel should also advise the client to be prepared to walk away from the transaction if the counterparty presents unreasonable terms or if other insurmountable issues arise.

Working with the client to negotiate the letter of intent (LOI), to the extent possible, is another way to educate the client on transaction details and minimize client disappointment and fatigue. On the sell-side, counsel is often handed a signed LOI with little detail beyond the purchase price and an aggressive anticipated closing

date. In these situations, counsel should identify and discuss with the client material issues that will need to be addressed in the course of drafting and negotiating the definitive agreements, particularly those buyer-friendly provisions not covered in the LOI but sure to be included in the buyer's drafts (e.g., indemnification obligations, restrictive covenants, setoffs/escrows). When counsel is engaged at the LOI stage, it is important to negotiate comprehensive terms that draw out the counterparty's position on items that are likely "dealbreakers" for your client. For example, if your client is opposed to seller financing, learning that a buyer requires it is far less frustrating at the LOI stage than after having expended time and resources responding to due diligence requests while awaiting draft agreements. The more robust the negotiations at the LOI stage, the fewer points of friction will exist as the transaction progresses.

For buyers and sellers alike, deal fatigue and frustration often begin during the due diligence process. Counsel must make clear to the client from the outset that responding to due diligence requests and reviewing responses will be tedious and time-consuming, even in a small transaction. Counsel, however, cannot downplay the critical importance of the process. The due diligence process in a small business transaction is likely counsel's first opportunity to fully grasp the depth and breadth of potential issues to be addressed in the definitive documents. The unique diligence issues that often arise in small business transactions include: (i) a lack of written contracts with customers and suppliers, (ii) informal employment and contractor arrangements that may run afoul of applicable regulations, and (iii) a lack of GAAP accounting

practices or sophisticated financial statements. As due diligence progresses and issues come into narrower focus, counsel is presented with another opportunity to provide clarity and transparency on potential delays or unfavorable asks that the counterparty is likely to present and to manage client expectations accordingly.

Managing deal fatigue is perhaps most challenging as the parties approach closing. Counsel should frequently, and in clear terms that highlight adverse effects, advise the client of the risks of accepting unfavorable terms in exchange for an earlier closing. Frequently remind the client that certain items should be considered "dealbreakers," particularly if those items were discussed early on in the process as materially important to the client. M&A-inexperienced clients looking at closing date payouts or excited about their acquisition often underappreciate the gravity of the issues being negotiated at the eleventh hour. Clear explanations of the practical and economic ramifications from overeager concessions can help avoid later client disappointment and encourage patience when deal fatigue is at its highest levels.

Lastly, counsel should set their own realistic expectations of a client's sophistication and manage their own frustrations with a particular transaction. M&A-inexperienced clients are likely to mimic the messaging of a trusted advisor. Treating issues that arise as "par for the course" is a great way gain a client's confidence in your ability to navigate their life-changing transaction. **HN**

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Y'all.

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