

Deer in Headlights

Law firms faced with client demands for alternative fee arrangements and project management are having difficulty finding an appropriate reaction.

By Douglas Richardson

Much of our present work with law firms and legal departments focuses on a changing frame of reference: away from structuring legal work on the time it takes to produce it, and toward evaluating on the basis of the value it confers to the client - as seen through client eyes. Put more simply, it's a move toward value-based billing and away from invoices based on the billable hours.

This "value perspective" has triggered significant changes in the way many clients select legal counsel and monitor their performance. Convergence programs - winnowing the pool of law firms used by a legal department - continue to increase even as the recession appears to ease. In addition, RFPs have increased by 300% in the last two years, and today's RFPs have assumed a more demanding tone: rather than asking "what would you charge?", clients *tell* firms what they will - and won't - pay, and increasingly they require bidders to explain exactly how they will manage their legal work efficiently and cost-effectively. Alternative fee arrangements (fixed or flat fee billing approaches) are becoming more common as clients seek ways to control or cap their outside legal spend.

All these developments have led to the emergence of Legal Project Management as a tool for driving efficiencies and cost accountability into the provision of legal services. Firms and clients alike are instituting new legal process management and workflow tools and techniques. The best of these involve an unprecedented degree of collaboration between client and provider in terms of scoping, planning budgeting, monitoring and communicating.

Right now, the biggest firms and the biggest clients are defining the face of RFPs, AFAs and LPM. For them, the stakes are highest and the resources to implement these changes are readily available. The first-adopter law firms, notably Dechert, Orrick, Seyfarth Shaw, Reed Smith and Nixon Peabody, are creating large and visible tracks for first followers committed to updating their service delivery model. McGuire Woods, Sutherland, and Baker Donelson, to name but three, now are very far along in building the tools and implementing the training needed to bring them up to the front line in value-based performance.

Yes, there have been firms that resemble "deer in headlights." In both large and mid-sized firms, some folks claim that all this value-based stuff is just a passing fad or that *their* clients are perfectly happy to continue hourly billing and casual oversight. They hope and trust that as soon as economic factors permit, the profession will revert to time-honored relationships in which the law firms have the controlling hand. Leaders in some firms tell us they aren't sure when and if they should dive into value-based planning and metrics; they suggest that they will wait for their

clients to press them to change, rather than proactively suggesting value-based billing and service efficiency models.

While the push for AFAs and LPM are not overnight game-changers, we have little doubt that the trickle down effect to late-adopter firms will soon become a steady and powerful stream, soon to become a river. The signs of a pervasive paradigm shift are clear: the Association of Corporate Counsel, made up of 34,000 in-house lawyers, continues to press its Value Challenge, designed to create a new, value-based model for inside/outside counsel relationships. Numerous law schools have instituted LPM courses and programs, predicting that LPM will soon constitute the basic way of doing legal business. We continue to receive more and more calls at Edge: *How can we implement LPM in a firm our size?*

Even if clients don't ask specifically for LPM, they are demanding greater cost-accountability and efficiency from their firms, whatever the firm size. They are asking their firms for phase-coding, task coding, phase-based budgets and greater focus on actual-to-budget numbers.

Implementing LPM in mid-sized firms will prove a different challenge from the huge rollouts in megafirms, but it can be made a manageable and affordable process that doesn't break the bank or significantly disrupt firm culture. Increasingly, we are being asked to design lean and practical LPM implementation approaches tailored to the structure and budgets of mid-sized firms threatened with being marginalized as the value-based trend spreads across the profession.

The difference between a fad and a trend is that *trends matter*. They change the landscape and have lasting implications. The trend toward value-based service delivery most certainly *is* a trend, and those that don't hop on the bus will not be deer in headlights. They will be deer in taillights.

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