

Have You Heard About AFAs?

By **Larry Bodine**, a business development advisor with Apollo Business Development. He has helped law firms nationwide attract new clients and generate new business by using strategy, business development training and individual attorney coaching. See www.ApolloBusinessDevelopment.com. He can be reached at 630.942.0977 and Lbodine [at] LawMarketing [dot] com.



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AFAs are all the talk today in law firm marketing today. I especially see big firms -- like Drinker Biddle and Womble Carlyle -- offering AFAs as a point of distinction. "AFA" is the current buzzword for "alternative fee arrangements," such as flat fees, "all you can eat" concierge plans, blended rates, and conditional and contingency fees. Law firms offer them as an alternative to the billable hour.

One problem is that most lawyers in private practice are unaware of the "ACC Value Challenge," which is the principal driver for AFAs. A majority of lawyers plan to continue billing by the hour. The reason is that the billable hour has been in use since 1955, according to Gabe Miller, GC of Sokolove Law, and is very familiar. Also, law firms are built to bill hours and lawyers are notoriously resistant to changing their business model.

The other problem is that most clients haven't heard of AFAs either. Speaking at the recent LMA national conference, Reed Oslan, a partner at Kirkland & Ellis, said, "I do pitches all the time for clients who want me to do alternative fee; I can tell by the blank stares **that they don't understand them.** They call me back and say 'let's do this by the billable hour.'"

Yet Susan Hackett, the Association of Corporate Counsel's cheerleader-in-chief for AFAs, told Law.com that she thought there was now a window of "a year to 18 months" for firms and clients "to start figuring out how to get it right before clients start walking and talking to other firms ... and to non-lawyers" to take on their work. She said many firms don't recognize the underlying dissatisfaction felt by their clients. And their pent-up demand for a new definition of quality, namely one "defined as value, defined by results not hours."

The ACC has gotten through to the sophisticated marketing directors and CMOs of AmLaw 100 firms, but has not reached the law firms of Main Street, USA.

Nicky Mukerji, global director of LegalBill, a consultancy that provides help to clients structuring AFAs, told Inside Counsel that **only about 2 percent of total legal billings currently are being done on an alternative basis.**

"If it continues, I'd expect that almost 20 percent of all billings would be on alternative billing in eight to 10 years—that's really a lot of money," he says. "The question for in-house counsel and law firms is, are you ready for this?"

I have been encouraging law firms to get off the hourly bill and begin to offer AFAs in webinars, speeches and articles. See *Get on the Winning Side of the Alternative Fee Transition*. But if we have to wait a decade or two for the billable hour to be replaced, we'll all be retired and playing with our grandchildren.

For more on this topic, call:

Larry Bodine, Esq.

Business Development Advisor

Tel: 630.942.0977

E-mail: Lbodine@LawMarketing.com

Web: <http://www.LarryBodine.com>

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