

Moving Forward - To Embrace Alternative Fees

And To Enhance The Value Provided Clients

Law firm leadership is being tested as never before. “Firms may be telling everyone how they’re on budget,” says one managing partner, “but the reality is that many will experience a decline in revenues again this year.”

In light of this, firms should focus their attention on securing relationships with their best clients, helping them do more with less. Unfortunately, many look at their client’s situation through the lens of their desire to increase revenues. Many general counsel sense that when their firm talks about “building relationships” it becomes nothing more than a euphemism for “give us more work,” while “providing added value” means, “at higher rates!”

The transition from hourly fees to alternative billing may be more evolutionary than transformational for many law firms. What will it take for more law firms to abandon the billable hour in favor of something that provides real value? Firm leadership that actually engages in a deliberate initiative to drive change, rather than forming internal committees to study alternative fee arrangements, has been lacking. Here are our recommendations for what capable leadership needs to do:

Provide clear evidence that times are really changing. Show partners how abandoning the billable hour can provide for competitive opportunities.

The “change” bus has left the station. Becoming more efficient in adding value to clients is fundamental to developing competitive advantage. To truly grasp this situation, you must appreciate the economics of corporate legal budgets. Microsoft has disclosed having to trim over \$100 million from its legal budget over the last 18 months. Microsoft is typical of companies whose legal budgets are being slashed, while the amount of work to be performed increases. Consider how Microsoft’s response followed the general counsel of Citigroup disclosing that they now handle 30 percent of their work under alternative billing arrangements. There is now ample evidence of corporations moving farther away from the billable hour in response to their economic circumstances. One may debate how fast the movement is happening, but not whether it is happening.

Publicize these examples to your colleagues. Explain how you cannot afford to ignore the needs of clients and rely on the security of past relationships. Show them that the current market provides a tremendous opportunity to differentiate yourself by offering creative fee arrangements and enhancing the value you provide.

Point to the successes of those firms pioneering new approaches. Your partners are always interested in learning about what other firms are doing. One firm you might tell them about is UK-based Eversheds. Eversheds has repeatedly hit the headlines for its willingness to experiment with value-based fees and has been a pioneer in having forged an £10 million innovative partnership with Tyco International (which boldly ditched between 175 and 200 firms

in favor of Eversheds). Eversheds has also become the sole adviser to six other global companies, including Samsung and Akzo Nobel, using this fixed-fee approach.

What is the secret weapon that Eversheds uses to get general counsel salivating with its reasonable and transparent costs? Sources at the firm explain it is two-fold.

First, *all* of Eversheds lawyers receive specialist external project management training, which also forms part of their advanced litigation skills training, and involves how to think about resources, timetables, and budgets.

Second is a proprietary computer software package. The 'Global Account Management System' program, provides a management system by which general counsel are firmly in charge of the purse strings and must sign off on fees *before* any work is started. The system breaks down the client's legal spend by country, jurisdiction, practice area, and provides an indicator of where money is either wasted or used efficiently.

Eversheds' quiet revolution is now sets the standard, as other firms scramble to be 'fast followers.'

Help your lawyers learn new ways to adapt to changing conditions. Train your lawyers to talk to clients about alternative billing and identify with clients what adds value. When first retained, we are likely hired to resolve problems that the client's legal department does not have the skills, resources, time, or inclination to handle. Your job is to ensure that your client's expectations are met.

To understand client expectations, have empathy for the environment in which they work. The average associate general counsel for litigation handles anywhere from 20 to 200 different matters in numerous jurisdictions. Even important matters may receive an hour's attention each week; other matters perhaps a few minutes. The matter that you are working on is only one that your client is juggling.

The ramifications are obvious. If we are to have any hope of becoming the client's trusted business partner, law firm leadership must: ensure that every lawyer has keen appreciation for the workflow and demands on the time of that in-house lawyer giving us the assignment; work to identify and distill the key factors that add value to the client's organization, and record those factors at the outset of every assignment; and initiate internal systems that ensure your lawyers are meeting with corporate counsel to lay out the commercial objectives, develop strategies to advance those objectives, and prepare an engagement understanding that can be reviewed and monitored as the matter progresses.

Your team should understand that there is nothing more valuable than starting every new matter discussion by asking, "Can we please begin with you telling me what you would like to accomplish as a result of litigating/settling this suit or closing this deal?" You must establish the objectives of the engagement, the ideal outcome, the results necessary, and why this client is seeking to have this work done. This needs to be done initially, before work is undertaken, not on a rolling basis. Clients too frequently delay the internal investigation needed to provide clear

direction, which makes preparing a budget and a strategic plan consistent with the client's objectives problematic. Further, we must resist the temptation to accept, at face value, our client's presentation of the problem. They may be able to articulate what they want, but sometimes they miss completely what they really need, or visa versa. Getting to the problem behind the problem is one of the more valuable things a professional can do.

Have each practice group examine how they could improve productivity.

Clients complain they must exert fee pressure because they see little evidence that law firms are concerned or invested in saving their clients' money. They are right.

Firms traditionally have not invested time, money or effort establishing ways to improve productivity, the cost of achieving an end, rather than the more traditional definition of productivity—how many hours each person is working. Many firms have senior professionals who spend time doing things that could be done by less costly resources, through training, organization and (perhaps) technology.

Any firm that can outperform its competitors in reducing the cost of doing a project will have a clear competitive advantage, whether or not it passes all the savings to the client. A top priority is to study how you perform your transactions/litigation and look for ways (including outsourcing, training, methodologies, tools, templates, etc.) to lower your costs. Firms also need to carefully examine leverage. The alternative fee operations model depends on experience more than body count; on profitability of work, not gross revenue.

Every leader must initiate a discussion with their group on examining productivity. The specific question worth posing for discussion and action planning is: "In what ways can we improve our efficiency, handling our transactions and litigation, and achieve results at lower cost?" The preparation of this list should be ruthless and exhaustive. Decisions about which items should be adopted may be tempered by other factors.

Explore creative methods and share best practices.

It is up to both the law firm and the client to agree on a fee structure that provides for better value from the relationship. Firm leaders should explore with their colleagues different ways to price their services. For example, lawyers in each practice group can determine fixed fees for each incremental stage of a transaction or litigation matter. The key to the process is to identify the savings the client wants to realize and then reverse engineer how services are provided to achieve specific results in a manner that provides profit to the firm. This is an entirely new way of thinking for most firms.

While there are various tools which can help you model your various alternative fee arrangements from a financial point of view, experience will be the best teacher since there are lots of variables you cannot always anticipate. Whether experimenting with fixed fees on full engagements or on phases, various retainer arrangements, risk sharing "collars", success fees, earnbacks or partial contingent arrangements, you need to constantly communicate new ideas and best practices across your firm. This needs to be a regular agenda item for those meetings where all of your group leaders are gathering to discuss their challenges and successes.

These are, in many respects, communication skills rather than technical legal skills. The goal is to identify value objectives from the outset, and effectively demonstrate the value of your contribution in terms that relate directly to client objectives, rather than ‘legal’ outcomes.

Could it be any clearer? Could it be any more daunting a challenge to implement? The answer to these questions is obvious!