THE FOURTH 'P'/By Sally J. Schmidt

Making 'Pricing' a Marketing Priority

STUDENTS OF marketing are intimately aware of the "Four Ps" of marketing: Product, Price, Place (Distribution) and Promotion. It seems that most law firms carefully choose to ignore pricing as a viable marketing tool. Wedded to the billable hour, they often fail to see pricing as an effective business development and client-relations technique.

In the future, pricing strategies will become more important and visible components of law firm marketing programs. Increasingly, clients want to know in advance what legal services will cost them. They are becoming more sophisticated and are beginning to request more information related to fees and billing. Below, several types of billing are discussed.

Value Billing

Before instituting new systems prior to billing, the firm will want to check bar associations for regulation or restrictions on pricing lawyers' services.

The basic premise of value billing is to determine: What is the value of this service to the client? The concept is that price is based on what the client believes the service is worth, not on how many hours the attorney expended or on some internal formula. For example, a lawyer who saves his client tens of thousands of dollars by filing successful real estate tax protests could probably command higher fees.

Value billing requires active communication between attorney and client to determine a fee that is acceptable to both parties. It is most effective with a result-oriented matter, such as in acquisition or litigation.

Some law firms have negotiated bonuses with their clients, i.e., extra payment for an extraordinary job. The law firm continues to bill for the legal services rendered at the usual hourly rates, but if the desired (or better than desired) result is obtained, an additional amount, determined in advance, is also billed.

One law firm was retained to obtain a charter for a client's "non-bank bank," a task that would prove quite difficult. The client company agreed to pay a $25,000 bonus, in addition to the regular hourly rates, if the charter was obtained. As with value billing, bonuses require up-front communication with the client as to their expectations and desires.

One in-house counsel queried, "If I am asked to pay a law firm's normal exorbitant fees and perhaps even bonuses for positive results, why can't I receive some benefit if the result is less than hoped for?" To illustrate this point, consider a medical situation where, after providing you with information on the risks and probability of success of a certain operation, the physician said, "If the operation is successful it will cost $10,000; if not, you need pay only for the tests taken and material used." This would certainly seem to provide the physician with additional incentives to do everything possible on the patient's behalf.

Law firms might consider discounting their bills if a less than desired result is achieved for a client. This would communicate a virtual partnership between client and law firm, where each shares not only in the benefits but also the risks of a particular matter.

Set Fee for Service

Set fees, used most commonly in creating wills and incorporating businesses, are a good marketing tool because most clients would like to know in advance how much their problem will cost them. The fee can be based on a specific dollar amount (e.g., $250 for a will) or on a percentage basis (e.g., 1 percent of the value of a loan for each closing).

Establishing a set price means a law firm must do an excellent job of tracking historical costs and time expended. It also means that margin may vary. In some cases, firms will receive a much higher-than-average profit; in others, the margin may be reduced if a matter requires more attention than usual.

For certain types of matters, set fees may be difficult to establish because of the number of variables which exist. However, the concept can still be used if charges are set for each step of the legal process.

One law firm created a program to challenge violations of companies' restrictive covenants by terminated salespeople. Combining set fees and incremental fees, the law firm charged new client users of the program $10,000 to "get in" and receive its benefits (such as access to case law from all 50 states). Subsequent matters had pre-established fees attached; each additional matter (or violation of a covenant) was an additional $XXX, each deposition was $XXX, etc. In other words, clients knew in advance what each step of a challenge would cost, which helped them analyze the opportunities or risks in proceeding.

Next month: Budgets, discounted rates, blended hourly rates, and using invoices as a marketing tool.

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