

LAW FIRM MARKETING



BY SALLY SCHMIDT

The Pay Play

New views on how best to deliver the bad news indicates lawyers need to rethink always billing by the hour

The Association of Corporate Counsel (ACC) recently released the results of a survey of its membership, comprised of in-house legal counsel. While it should come as no surprise to private practitioners, the cost of legal services is an ongoing source of concern and, in many quarters, frustration.

There is evidence that pricing and billing strategies are more important than ever. In the recent survey, 52 per cent of in-house counsel identified “reduce costs” as the most important thing law firms could do to improve their relationships with legal departments. The study also reported that 65 per cent of the respondents require budgets at the outset of matters, and that “budget constraints” is the number one challenge facing legal departments.

Electronic billing is becoming very popular among in-house counsel, too. One article reported that “Electronic billing is the most common new technology being considered by in-house counsel; more than 35 per cent of corporate legal departments participating in a recent study had required their outside law firms to bill electronically.”

While many lawyers may not recognize it, how you budget, price and bill for your services is a marketing function. “Pricing” is a key component of marketing. Properly used, the pricing and billing functions can contribute enormously to both your firm’s profitability, and your clients’ satisfaction with the firm, by:

- Demonstrating creativity and flexibility.
- Showing clients you are on their side and willing to share the risk.
- Communicating progress.
- Highlighting good results and the value of your involvement.
- Demonstrating quality and attention to detail (clients use tangible “products” to evaluate the firm’s quality).

The State of the Art

The primary method of valuing and billing legal services remains the hourly rate. Even some “alternative billing” tech-

niques are actually variations on hourly billing, such as blended rates (i.e., all lawyers charged at one standard rate) or discounted hourly rates. In the study referenced earlier, law firms reported that variations on the hourly rate are the most popular alternative fee arrangement they employ, at 68 per cent.

Law firms favour the hourly rate for many reasons, among them:

- The firm can adjust its rates to recognize expertise and seniority.
- Hourly rates are easy for clients to review and understand. The firm gets paid for its efforts regardless of results.
- The firm’s systems (e.g., compensation or billing software) often are designed around hourly rates.

However, as we all know, there are many disadvantages to hourly billing, both to the firm and to clients:

- It does not reward the firm for risks or efficiency.
- It does not recognize value or good results obtained.
- It represents a rather arbitrary and imprecise way to account for value (for example, hourly billing doesn’t recognize particular expertise or turnaround time).
- It is hard to predict the cost of services.

Back to the Future

Alternative billing strategies have been discussed for years among corporate, commercial and defence-oriented firms, yet it seems the rhetoric far outweighs the application. In reality, many alternative billing methods are actually historical methods of billing applied to 21st century relationships. They include:

- Contingency fees (e.g., charging a percentage of the loan value for closings).
- Flat or set fees (e.g., charging for a lease based on the square footage of the project).
- Retainers (i.e., a set annual amount to cover all or certain specified services).
- Results-oriented fees (i.e., negotiated bonuses for good results or variable fees based on outcome or turnaround time).

These alternatives can be mixed and matched to create hybrid fee arrangements, such as charging for counselling or problem identification on an hourly basis, and implementing specific recommendations (e.g., trusts) on a flat fee basis.

There are compelling reasons to explore billing alternatives for firms and clients alike. For law firms, alternative billing techniques can:

- Enhance relationships with clients (i.e., a “win-win” approach).
- Be structured to provide rewards for expertise, efficiency, creativity and good results.
- Lead to a better, less competitive internal environment—encouraging specialization, client-sharing and delegation, sharing of information, and the use of technology.
- Result in fewer fee disputes with clients.

For clients, alternative billing techniques offer:

- Greater predictability or certainty of costs.
- A feeling that the firm shares their interests and objectives.
- An ability to compare firms and evaluate their performance.

Practical Considerations

Interestingly, despite the many downsides, many clients prefer hourly billing. Whatever method you use to bill clients, the following are some considerations in the matter of pricing services:

Communication is crucial. It is important to understand the client’s expectations regarding results and costs. Many lawyers do an extremely poor job of discussing fees with clients. Take a very businesslike approach before beginning work to discuss how the client will evaluate a good result and what the client expects to pay. Value does not always relate to cost: some clients want their day in court; some just want the problem to go away quickly and quietly. Once expectations are discussed, use an engagement letter or fee agreement to clarify and record your discussion. Clients *hate* surprises!


Offer alternative fee arrangements. Even if clients don’t accept them, they will appreciate your willingness to be flexible and creative.

Learn how to budget for your services. Most clients have budgets and want to know what something will cost. Ac-

curate budgeting requires historical tracking of data. Analyze past projects to determine a range of fees or develop parameters for costs, from negotiating and/or drafting real estate leases to conducting depositions.

Invoices are more important than you might think.

Invoices should be clear, timely and accurate. They should be in a form or format preferred by the client: some clients like fees broken out by project or business unit; some like tremendous detail. Use cover letters to explain unanticipated costs or good value, thank the client for the business, and assure the client the bill has been reviewed. Finally, if a client has issued billing guidelines, follow them closely.

Keep the lines of communication open. Let clients know how to resolve a billing dispute or question, and invite questions or concerns about your bills. 

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