

Pressure Points: Alternative Billing

## Firms, clients find common ground in billing talks.

by Keith Regan – April 22, 2011

When it comes to paying for legal work, business clients have more choices than ever, though the ultimate goal of many corporate counsels — to have predictable, fixed pricing — remains somewhat elusive.

**Many law firms have been offering alternative billing, or alternative fee arrangements, for some time, and interest in them did spike as a result of the lingering recession that prompted many businesses to examine every line item in their annual operating budget, said Ron Ruth, an attorney at Sherin & Lodgen LLP in Boston.**

**“I think all firms are moving toward being more flexible on fees because that’s what clients want and expect and the economic situations has only accelerated that in the past couple of years,” Ruth said. “What we’ve learned is that’s it’s not a one-size-fits-all situation any more,” he added.**

Many alternatives to an hourly meter running when an attorney works on a project have existed for some time, said Jeff Coburn, managing director of Coburn Consulting in Boston, which works with law firms to manage change. Chatter about them has increased as the economy sagged, he added, and focus has also shifted to fixed prices and cost predictability.

“Everybody is looking at the question of, ‘What’s it going to cost?’ ” he said. “What’s the fixed number.”

The nature of legal work makes fixed pricing inherently challenging, Coburn added, and it fits best for repetitive type of work that has clear parameters. “On the bet-the-company-type work like a major merger, clients are still willing to pay hourly rates and just accept the bill as part of the cost of doing that business,” he said. More straightforward work such as patent applications, is increasingly being handled for a flat fee.

In the middle lies a universe of work that includes employment lawsuits, raising money and smaller mergers. “That’s where there’s a lot of room for creativity in the way legal services are delivered and charged for but I don’t see a lot of movement toward true fixed pricing yet.”

The largest corporate clients, such as those with a large volume of litigation, are increasingly in a position to ask for not only a fixed fee but also declining annual costs as the client expects the firm to find efficiencies in how it handles the recurring work, said Mark Ross, vice president of legal solutions at Integreon, a legal process outsourcing firm in Cambridge.

“The demand from corporate clients is equally about cost clarity and predictability,” Ross said. Once law firms begin to separate the legal work into discrete tasks, it becomes much simpler to monitor and quantify what the different parts of end-to-end legal function consist of, information that can be shared with clients as well.

“Law firms have traditionally not been run the way the way leading corporate businesses are run, but firms are starting to embrace change and understanding that they need to re-engineer how they deliver their services,” Ross said.

Keith Brown, lead business consultant at Hartford-based TyMetrix, said the recession that started in 2008 prompted a fresh look at legal budgets inside many corporations.

“I have seen corporate clients who are ready and waiting for law firms to move in this direction and also talk to dozens of regional law firms who also say we’re ready to go and are waiting for clients to ask,” Brown said. “I don’t want to call it a standoff, but there is an odd dynamic going on.”

Law firms and clients alike benefit from technological advances that enable a truer look at what a type of case costs to see through, and alternative fee arrangements are prompting more law firms to engage in project management and other techniques to ensure the right work is being done by the right attorney at the right time, said Brown, who speaks on non-hourly rate approaches to groups such as the American Bar Association several times a year.

“The big question that always comes up is how to create win-wins for the firm and client,” he said. “It’s always a question of fit. I don’t believe the hourly rate will ever go away, it does have a place for certain things and is still the comfort zone for most law firms and corporate counsels.”