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Alternative Billing -- Win Win Strategies

By Dan Harris

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Better Legal Billing: Time Slips for the Future

Options Abound, But It's Often Up to Clients to Suggest Them

In the old days of legal billing, lawyer's invoices -- usually a single page of elegant letterhead--contained only the phrase, "legal services rendered," and a hefty dollar amount. No time breakdowns, no list of activities performed or equipment and supplies used--just a final, usually shocking, charge.

But client demands and the evolution of sophisticated billing software have led to more detailed invoices today. Itemized statements have triggered discussion among businesses about whether hourly billing is the best way to be charged for legal services. As the legal profession becomes more competitive and dependent on high quality customer service, lawyers need to embrace alternate billing methods.

Fixed or flat fees, contingency fees, non-refundable retainers with discounted hourly fees, blended hourly fees and variations on those themes are becoming increasingly common. But many law firms have been slow to join this trend -- lawyers still perform approximately 95 percent of their corporate legal work on an hourly basis.

What does that mean for your small business? If your company is currently working with a law firm or looking for legal counsel, try requesting alternate billing options. While many law firms rarely initiate different options, they'll negotiate when brought to the table. If you want something better than the old "bill by the hour" deal, try presenting one of these billing structures:

Project billing for routine issues

Questions To Ask Your Legal Counsel

Is the attorney experienced in business law or just practicing it between drafting wills and selling homes?

Does the attorney give advice in plain language or does he use a lot of jargon?

Is there good "chemistry" between you and the attorney?

Are the attorney's ethics and goals clear?

What's the attorney's track record with other businesses similar to yours?

If your legal needs include large but repetitive tasks, consider a flat-fee approach, also known as

project billing. If you need legal assistance on a large research project involving several repetitive tasks with a fair amount of predictability for cost estimation and time duration, request a dollar cap for predetermined services. Be sure to compare estimated costs at the equivalent hourly rate—a projected cap that far exceeds any likely bill is really no cap at all.

Once you get a project billing estimate, don't hesitate to shop around. Making an informed decision — shopping around, comparing prices and services with other law firms — is good business sense, especially if you intend to hire a firm for a single project. If you anticipate establishing a long-term relationship, mention this as you're negotiating a project amount — a firm may provide a better deal if it expects future work from your company.

Results-oriented options

Forget the image of personal injury attorneys taking a third of any verdict or settlement. Consider instead contingency fees — fees based on the outcome of the case and the performance of your counsel. Creative use of contingency fees can create efficiencies in even the most high-level corporate settings. If you retain a lawyer to help your company avoid litigation, couple a reduced hourly rate with a bonus for successfully lowering your litigation outlays.

You also can establish an incentive based on a percentage of money won or saved in trial. If you're a defendant in a case where the plaintiff has a strong shot at a \$1 million settlement, negotiate a flat fee if the case goes to trial, plus a bonus if the plaintiff ends up getting less than \$1 million. If you're a plaintiff and estimate your case is worth between \$1 and \$2 million, you might negotiate services for a flat fee plus a percentage of any settlement over \$1 million.

Contingency fees turn the matter into a shared risk or shared incentive, making the law firm your business partner, not just representation. Contingency fees can work well with both flat fee and reduced hourly fee arrangements. Because a number of variations on the "pay-according-to-success" theme exist, you should ask firms for the options they're willing to discuss.

Multi-layered tasks

If you're shopping for a firm for substantial legal work involving a number of legal specialties, consider using blended hourly fees. Rather than each attorney billing at the usual hourly rate, the firm calculates in advance an "average" rate based on the anticipated time each attorney spends on the matter.

The value of this arrangement is twofold—it helps define responsibility in a project and it provides a fair price schedule for the client, who avoids paying a senior partner's hourly rate for research that should be conducted by a junior associate

Legal "Insurance"

Firms without in-house counsel that frequently hire legal services might consider contracting with a firm. In this legal billing option, firms and clients agree to a specific charge per month in exchange for a predetermined set of legal services. The contract fee permits the client to pick up the phone and talk to the attorney without needing to eye the clock. This approach works like a legal insurance policy. It encourages companies to contact their counsel on non-litigation, non-crisis matters, and to save money in the long run by engaging in more preventive legal action.

Just as in business, the impetus for change comes from consumer demand. The sooner businesses take the lead in securing more effectively tailored billing methods from their legal counsel, the sooner they'll get better, more cost-effective legal assistance.

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Look for the win, win!

By Josh Hinds

Look for the win, win! by Josh Hinds

I'm absolutely convinced that if we look hard enough at any given situation we can identify a win, win situation in it. "So what's the big deal about win, win" you ask? Admittedly, I know a lot of people (many are friends of mine) that go day to day in their business dealings (and personal lives for that matter) looking for opportunities that only benefit themselves directly.

Now I am not saying there's necessarily anything wrong with this. Even so, I can't help but imagine that their personal level of success might multiply if they only took the extra time to explore ways to ensure that the opportunity was equally beneficial to all parties involved.

There's something magical about focusing on win, win scenarios. When we're fortunate enough to develop ourselves to the point where we are always looking for these types of opportunities it's as if they literally come out of the woodwork. The fact is people like to deal with those that don't have the "what's in it for me attitude", don't you agree?

Believe me, I'll be the first to admit that there are plenty of people who have done very well for themselves without adhering to the win, win approach. However, I wonder if one might really consider them successful? Keep in mind that success has so many facets to it. Just because someone has attained material wealth for instance does not make him or her successful nor non-successful.

It is all in the eye of the beholder I guess you might say. For me personally, I measure my level of success by how much I can give back to others.

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