

CLIENT ALERT

VIDEO: Alternative Fees in Law

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Since the economic downturn in 2008, the legal market has been in a constant state of change. Companies are demanding budget predictability, shared risk and reward, improved efficiency, more transparency, and a new way to define value, and law firms have rushed to respond. Firms cannot rely on the billable hour as they once did. This development has led to the rise of Pricing Departments whose job it is to manage value-based billing arrangements, profitability, and legal project management. Law firms and in-house counsel need to understand each type of alternative fee arrangement, its strengths and weaknesses, how to accurately scope and budget an engagement, and how to manage it once it has begun.

In this three-part video alert series, Crowell & Moring senior director of practice management, **Matt Laws**, discusses the evolution of pricing and legal project management, how companies and their law firms can make alternative pricing work, and the growth and future of alternative fees in legal work. Matt covers several best practices to advance the use of AFA's for in-house legal departments, focusing primarily on fixed fees and success-based pricing options.

Part 1: Evolution of Pricing and Legal Project Management

Part 2: Making Alternative Pricing Work

Part 3: Growth and Future of Alternative Fees

Transcript

What gave rise to the pricing and legal project management function in the legal industry?

I think it goes back to 2008 time period when we had an economic crisis, and prior to that time period, law departments were really immune to any type of budget cuts, and as things got tighter and the economy continued to slip, those legal department budgets were reduced and in-house counsel said we have to do something different.

How do you define 'value-based billing?'

Value-based billing is any type of fee agreement where it's not tied to the hourly rate. So there are a lot of what some people call "value-based billing on training wheels" that are still based on the hourly rate like blended rates or volume discounts, but we really focus on fixed fees and success fees as the true definition of a value-based billing arrangement.

Does it take a firm longer to give clients a price for 'value-based billing' arrangements?

In terms of effort for the law firm, what we've done is created templates within our legal project management tool that cover all the typical engagements that we are faced with. So when a client is asking for a fixed fee, we can easily add the core team members to our templates and from those templates, develop a fee agreement by phase of work because we already have those phases outlined. So it really shortens the time-frame and what we find is that clients really are looking for law firms to take that proactive step to say, "we can do this for you, and we are here to help". In-house law departments are under pressure. They are short-staffed, and again budgetary constraints, so they are looking for the law firm to have that expertise and to bring solutions to them.

What does Crowell & Moring do in order to manage these value-based billing projects to ensure that they work?

Communication is key with the client, and when everyone is on the same page in terms of what scope of work we are going to undertake in the engagement, that is key. Then expectations as to where we are going, what is the end game for the goal of the client. The law firm may think it is one thing and do a scorched earth approach; whereas the client is just thinking: we would like to file a motion to dismiss and see where it goes. You want to ensure that the end game is the same, and that's key.

What process does Crowell & Moring use to manage the project and manage the budget?

We have a legal project management software that we built in-house. It has taken two years—really during the time period that I've been here at the firm—to build. A lot of firms are still waiting for that product to come to market, and given the importance of it, we just felt like we had to build it.

What is one of the more popular value-based billing arrangements used at Crowell & Moring?

In terms of popularity, we are seeing the monthly counseling fee, where a client basically has a hotline to where they can call our partners and ask any questions on say, privacy and cyber security, which is a hot area right now. So for \$5,000 or \$10,000, depending on the level of counseling they need in a month, we will do that.

What other arrangement is popular with clients?

Fixed fee by phases has come out of the argument that wow, we've got this litigation, we don't know the extent of the litigation or the significance of it, what the document population is, how many witnesses will be there. So what we have done as a firm is to say, OK, we'll take the initial case assessment and the pleadings phase, and we will come up with a fixed fee. We'll provide you a target budget for the other phases, and then we will solidify those target budgets once we know those additional answers to the questions as the litigation unfolds.

Are there legal engagement types that are not well-suited for value-based billing?

In terms of any engagements that wouldn't fit into value-based billing arrangement, I break it into really three categories when I think about it. And that's litigation, transactional work, and counseling. I feel that covers 99 percent of the engagements that we are faced with, and all of those really are conducive to a value-based billing arrangement. And we do it every day.

What sets Crowell & Moring apart when it comes to value-based pricing?

We are a leader in this space, and it comes from experience with 15 percent of our work on a success basis. We really look at how to structure these matters, and we have for a long time. We take a lot of risk on where it's difficult to get to that point where you feel secure in looking at the merits of the case, and proposing success-based pricing. We have been doing it for 15 years and it's 15 percent of our work. That's pretty much unheard of for both defense and AmLaw 100 firms. That experience has given us a great advantage, and that's where the market is going: success-based pricing. We are ahead in that respect.

What is the future for law firm pricing and legal project management?

Historically, pricing has been the focus and clients are becoming very savvy as well. They have e-billing software so they understand what things cost, and as law firms, we are able to use software to categorize matters that we have taken on that have similar scope of work. So we understand the costs. There is a greater significance of pricing sophistication on both sides which is really making things easier. The next piece is project management and having the clients have a view into the management of their work.

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