

THE PRACTICE

Firms need to reinvent relationships with clients

Redefining the value firms provide clients is the only way to avert a downward spiral of commoditization of legal services.

BY KENT A. GARDINER

“We’re a profession, not a vendor.”
“We offer a sophisticated professional service, not a commodity product.”

These complaints are voiced increasingly by lawyers as they bemoan the economic recession and clients’ intense focus on cutting legal costs.

Law firms believe there is something special, something distinguished,

about our profession that should make it immune from economic downturn. Yet all our clients seem to want to talk about are bulk discounts, online auctions for legal services, loss leaders and outsourcing. The chief financial officers of some clients are becoming as important as general counsel in making hiring decisions. Clients increasingly view legal services as just another commodity, and are pressing their firms to provide those services cheaply and efficiently.

Our clients are right to challenge us in this way. Having generally suffered far worse than their law firms in terms of budget cuts, layoffs and reduced earnings, clients have made clear that ever rising billing

rates, inefficiencies in the delivery of legal services and other misalignment of interests between law firm and client will no longer be tolerated. They are shifting business as never before in search of greater value. Even long-term relationships are under siege.

Many firms already have begun to accept the reality that they must offer meaningful alternatives to billable-hour-based pricing, and both firms and clients are becoming more accustomed to working in alternative fee arrangement relationships. Firms likewise have begun sticking their toe in the water of “project management,” learning new tools and processes for the more efficient delivery of their services.

But these are simply the foothills in the challenge that lies ahead of us as law firms. The real challenge—the mountain rising before us—is to entirely reinvent our relationship with clients. That reinvention needs to forge a true partnership, in which firms offer their clients extraordinary



value that cannot be replicated by data-management software or contract lawyers in India, and cannot be purchased “off the shelf.” Redefining the true value we provide our clients is the only way we can avert the downward spiral of commoditization of our services and escape the current trend toward being viewed as “just another vendor.”

Commoditization need not be our fate. Some firms will see competitive advantage in this assault on law firm economics, and use these market pressures as a catalyst for creating a new model of law firm service that better aligns incentives and meets clients’ business needs. To “win” in this environment, however, everything—from service to pricing to how we develop talent—must be on the table. This two-part article explores the core attributes of this new partnership. Part One discusses why law firms must redefine their core offering around clients’ business needs, as opposed to areas of legal expertise. This involves a fundamental shift in thinking by firms



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toward substantial up-front investment in learning their clients' businesses, and designing value-based solutions tailored to particular business challenges. Firms must also move far beyond the current approach to alternative fee arrangements, which remain closely tied to billing rates and billable hours. In a true value alignment with clients, firms will derive most of their compensation from achieving their clients' definition of success.

Part Two of this article will explore the fundamental challenge to the law firm "leverage" model. This component of our economics—a large base of junior associates with high billing rates performing increasingly commoditized tasks—must be entirely rethought if firms want to both market this young talent effectively to clients and develop lawyers to ensure long-term institutional client loyalty. And a redesigned leverage model also depends on best practices in "project management" and more robust "knowledge management" aimed at delivering high-end expertise to clients.

REDEFINING WHAT WE OFFER

For far too long, law firms have had the luxury of reactivity. Problems arise in our clients' businesses. The clients identify those problems. They call us, we respond, try to solve the problem and send a bill.

No more. This model has led, not surprisingly, to clients viewing even complex projects as "piecemeal" amenable to requests for proposals sent to many firms all too eager to bid ever lower to capture a one-off litigation or transaction engagement. The auctioning of piecemeal legal work disserves the clients, who, besieged with shrinking budgets, are left to manage a revolving door of firms that understand neither their business nor their legal services history. Law firms instead must forge the kind of relationship with clients that creates an embedded and well-earned competitive advantage. To do that, firms need to become much more proactive in identifying client-specific risks and opportunities, including those the client has not yet anticipated. This requires a substantial investment—without charge—by firms in understanding their clients' businesses, the industries in which those companies operate and the legal and regulatory environments they must navigate to be successful.

At our firm, this sort of deep knowledge of our clients' businesses and industries has been aided by an array of regulatory practices, which augment the firm's litigation and corporate practices. Regulatory expertise means industry expertise, and industry expertise means we often can anticipate the risks and opportunities that lie ahead for our clients.

But that is not enough to achieve enduring partnerships and effectively start new ones. Even long-standing institutional knowledge of our clients' past legal needs is by definition obsolete in relation to whatever is top-of-mind for our clients at the moment. Volatile economic and political conditions, on an increasingly global scale, mean our clients' most important legal problems are happening to them in real time. We cannot be effective partners with them, in providing sound judgment, counseling and advocacy, if we do not keep pace with their evolving reality.

It thus has become virtually a requirement at our firm that, when meeting with both existing and potential new clients, our lawyers invest advance time and effort researching the client's current business challenges. This has required us to make substantial investments in building a nonlawyer professional staff with sophisticated financial and corporate expertise. This internal partnership of practicing lawyers and business professionals helps us better understand and forecast clients' business demands.

In short, the legal services offering of a law firm that is a true partner to a client is one that comes with a deep and current understanding of clients' cutting-edge business needs. Law firms must bring that to the table at the outset, rather than asking clients to educate them on the clients' nickel.

In the traditional legal pricing model, firms are paid the same amount by a client, win or lose. This built-in insurance policy by definition broadens the competitive field for clients' work. Great firms, good firms and even average firms compete for the same business, because remuneration is not staked to excellent results. So clients, not surprisingly, have made price the differentiating factor in choosing firms in an increasing range of engagements.

In our view, the way to escape this particular commoditization trap is to bet more heavily on ourselves and our ability to win. We thus believe it is not the case

that some client engagements are suitable for success-based pricing. All are. The norm—the routine, standard offering of a truly excellent law firm—must be a tailored value proposition, built not around the commitment to try to solve a problem, but rather around the client's definition of success. At Crowell, we call them "Value Based" billing arrangements, because we believe they are no longer "alternative."

As often as possible, such a value proposition should mean that our lawyers do not get paid unless they help the client achieve success. That has led us to offer our clients a whole array of success-based fee arrangements, from reduced flat fees with performance bonuses, to full or partial contingent fee arrangements, to "holdbacks" in which the client gets to decide—entirely in its discretion—whether we have enhanced value. We believe this affords us a substantial competitive advantage, because it gives our clients a truly aligned value proposition.

This sort of pricing relationship between lawyer and client requires an extraordinary level of trust. It tends to work best when there is a long track record of the successful delivery of high-quality services, rather than episodic "piecemeal" for clients that otherwise are strangers to the firm. That is why our most innovative pricing offerings have been made to our longest-standing clients. It is with those clients that the partnership bonds are the deepest, and the knowledge base the greatest, thus making it easier to find common, aligned ground on definitions of success, valuations of that success and thus appropriate risk sharing.

Client demands for more solution-oriented value—and for more aligned, success-based pricing—hardly seem like "opportunities" for law firms. But they are. In an environment in which general counsel have declared that "all the business is on the table," firms that invest heavily in reinventing their client service will forge new relationships, get the best work and be paid well for delivering extraordinary value.