



GIVING CLIENTS WHAT THEY WANT

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Let's start with a quick brain teaser. What do Alternative Fee Agreements ("AFAs") have in common with Project Management? Seemingly nothing. That's what I thought. That is, until I discovered that they basically mean about the same when it comes down to it.

Law firm administrators returned from this year's regional and national conferences of the Association of Legal Administrators all abuzz about "project management." Hmm, it seemed obvious to me what this meant, and I just didn't see what merited all the discussion. After all, legal administrators have been managing projects for law firms since day one. Only recently did I come to find that term in use when discussing how to make AFAs profitable for law firms. Aha!

Let's back up to the most basic question: do clients really want AFAs? Take a look at the *Altman Weil 2012 Chief Legal Officer Survey* (<http://tinyurl.com/cn9qbq4>). If you have or desire corporate clients, particularly large institutional clients, you would be wise to review their survey each year.

The highest management priority for CLOs in the 2011 survey was to control legal spend. That translated to a very proactive year in which CLOs took a number of steps to decrease costs. And they have been successful — often to the detriment of outside counsel — in this process. Externally, they have decreased overall budgets, consolidated work with fewer firms, negotiated discounts, and outsourced work to non-legal providers wherever possible. Internally, they have focused on efficiency (e.g. project management) through greater utilization of paralegals, implementation of greater procedural efficiencies, and making better use of technology, among other things. Importantly, greater use of technology was cited as the most *effective* methodology to control legal spend.

The pain for outside counsel is not over yet. In 2012 there was a significant rise in the percentage of clients increasing internal spending (46%). Internal staffing is predicted to increase by 38% of clients in 2013. Meanwhile there will be a simultaneous rise in 2013 in the percentage of clients *decreasing* external spending (29%). Translation? More competition for less work. And **higher expectations of outside counsel for value provided per dollar paid.**

Whether you're trying to hold onto, secure some, or increase your share of corporate work, you have to first figure out what clients want. And then examine the data. This is not a time to shoot from the hip, as many law firms tend to do. Venturing into the world of AFAs without proper data and analysis is a good way to work yourself into bankruptcy. Remember, from your perspective, it's not about volume, it's about profit. From the client's perspective it's not just about dollars, but about commensurate value received.

You need to start with a conversation with the CLO, whether client or prospect. You need to find out first and foremost what they really want. Perhaps they are not really looking for a non-hourly arrangement, but just a reduced rate, blended rate (probably not, since this usually does not work to their advantage), or volume discount. Find out what their concerns are. What efficiencies do they expect or want you to implement? In short, find out how you can help them to achieve their goal of delivering superior legal service to their organization while controlling cost. Don't wait for the CLO to start the conversation. (It may never happen. Instead, you might find your firm eliminated from the panel of approved firms.) Take the initiative to get it out there on the table for discussion.

Once you've had a chance to "digest" the conversation, and do the inevitable reading between the lines, it's time to take a hard look at how you've been servicing the client. Let's be honest, hourly work does not reward efficiency initiatives. And at a large number of firms, compensation systems do not invite effective delegation. Combine those two factors, and it's no wonder CLOs in both the 2011 and 2012 Altman Weil surveys pessimistically point out that most law firms have only paid lip service to helping them control legal spend. Most CLOs feel that any savings they've realized have been achieved by forcing change down the throats of outside counsel.

In order to offer clients AFAs, it is essential that the firm calculate the actual cost to create each billable hour. This will vary from one area of practice to another, so be as specific in your calculations as possible. Next, you need to carefully analyze as many matters as you can which are of the type you wish to offer under an AFA arrangement. You want to know, *on average*, the following:

1. How many partner hours are required, and on what tasks
2. How many associate hours are required, and on what tasks
3. How many paralegal hours are required, and on what tasks
4. What are the costs, and if there is variation, what creates it
5. What has been charged in total on each matter
6. What is the profit margin on these matters



7. For those matters which have been charged more than 10–15% above average, what differences existed which created the overage

Now you have the information you need to offer the client an alternative to hourly billing. Depending on the profit margin, you can offer a flat fee at or below the average of what the client has been paying. Of course, the client will prefer a savings, that goes without saying, but your firm realistically has to maintain a certain profit margin to cover downside risk, as well as to generate profits to compensate partners. Either way, the client has a set cost per assignment that ensures better control over their budget. They also appreciate the fact that the firm is assuming some of the risk, particularly for its own inefficiencies.

You will want to be extremely specific about what is outside the scope of the fee agreement. Those occasional contingencies identified in point 7 of your analysis above should, except when they relate to inefficiency or error on the firm's part, be carved out of what is included.

Once the AFA has been accepted by the client, the real work begins. It is time to begin to improve your internal efficiencies. Your methodology probably won't differ much from what CLOs have been implementing internally. Look for each opportunity where a partner hour can be transformed to an associate hour, an associate hour to a paralegal hour, or outsourced altogether at a lower rate. In most instances training will be required to effectively achieve your objective without sacrificing quality or increasing liability risk.

Take a look at your use of technology throughout the process. Are you using it at all? Are you aware there are software applications for improving workflow for just about every area of practice? If you have it, are you using it effectively? Most firms underutilize their software due to a lack of training, and sometimes due to a further lack of customization.

Codify workflow and procedures. Automate checklists. Update your forms bank. Make it easier to reuse existing work product. In short, create a finely tuned concerto of legal productivity, which leaves little to the imagination. The only creativity and originality involved should be in leveraging the intellectual capital of a partner when specific facts and circumstances dictate.

Here's a key point to remember: even though the hours you record may have no impact on the amount billed, it will be more important than ever to accurately record every increment of time, and every cost. You will need to recheck your profit margin again and again. If you are going about this process correctly, your profit margin should *increase*. What firms find out — those who undergo this exercise with proper due diligence and analysis — is that it becomes a win–



win for firm and client. Clients control legal spend, and probably even save some dollars in the budget. Plus the improvement in consistency and quality will provide them with higher value per dollar. Law firms win because they wind up earning *more* per hour than they would on a straight hourly billing basis.

Space limitations prohibit me from providing more details, but this process can be applied to just about any area of practice, including litigation. If your firm is not knowledgeable enough to complete the analysis on its own, remember that I am just a telephone call away, and can provide additional guidance.

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