WEBINAR

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PERSUIT and Value Strategies LLC Present:

AFAs 101: an intro to value based pricing

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Presented By: PERSUIT

Agenda

1. Hourly Rates – the advantages and disadvantages
2. Fee Arrangement Models – Pros and Cons
3. Getting to Value Based Arrangements
4. Value Based Fee Structures
5. Q&A

Pros and Cons of Hourly Rates

Advantages

- Familiarity
- Rate Transparency
- Subjectivity not required
- Itemized History
- Don’t need to define value or success
- Billing process established
- Works regardless of volume or service rendered

Disadvantages

- No fee predictability
- Client carries all risk (cost, bad outcome)
- Fee may not match benefit
- Penalizes the efficient/productive attorney
- Discourages efficiency
- Discourages attorney/client communications
- Promotes duplication of effort
- Firm not compensated for high risk/value services
- Creates conflicts between interests of the attorney and client
- Causes clients to focus on hourly rates
- Time consuming billing process and review
- Inherent lack of trust
- Focus is “cost” vs. “value”

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POLL

1. Capped Fee

Sets a capped budget such that the law firm bills hourly up until a cap upon which they can no longer bill the client.

Pros:

- Some containment on hourly billing
- Can be an effective way for firms to provide some predictability
- Effective if obtained competitively in an RFP

Cons:

- All of the risk is on the law firm
- Firms tend to set the cap high
- Still dependent on hourly billing and the review of invoices
- Firms frequently aim to hit the cap
- Poor incentives are created when the cap is hit

Example- The total fee cannot exceed $100K for the matter

2. Collared Fee

Provides a "fixed fee" and sets a "collar" around that fee such that if the hourly billings exceed the collar, additional work is provided at a discounted rate. If billings finish under of the collar, savings are shared.

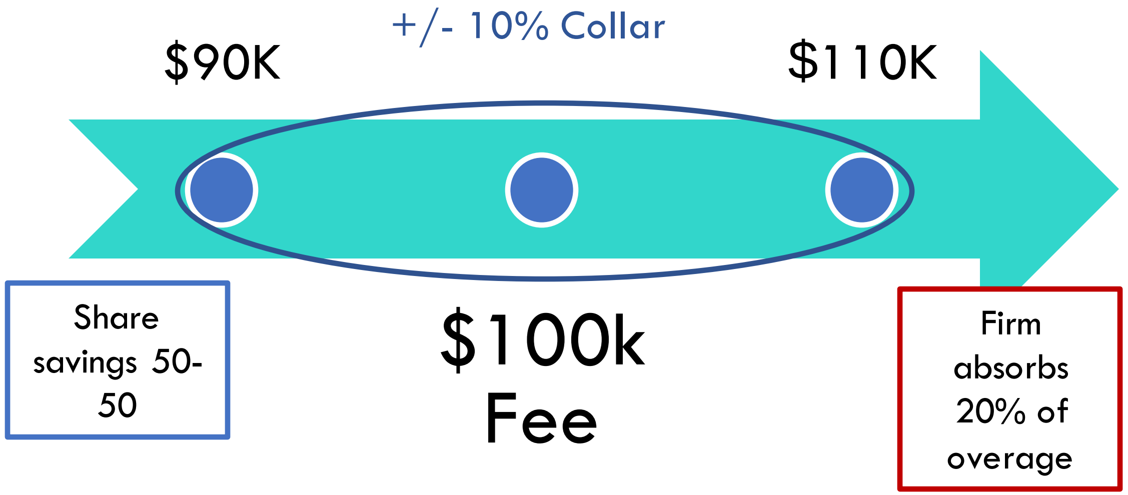
Pros:

- Provides some incentive for the firm to come in close to fixed fee or less
- Guarantees the firm that it will continue to be paid even if the fixed fee is exceeded

Cons:

- Still dependent on hourly billing and the review of invoices
- Effective result is an hourly rate with a buffer (10% in this example)
- Firms may not care about the added discount if their rates are already above market

Example – $100K fixed fee +/- 10K. If billings finish at $70K, firm gets paid $80K (bonus = 50% of the savings between total and the low end of the collar). If billings finish at $120K, firm gets paid $118K (20% discount on billings past $110K).



II. Fixed Fee Models

1. Portfolio Fixed Fee

Law firm fixes an annual fee for a portfolio of work that can include multiple matters and bills the client monthly 1/12 of the total portfolio fixed fee.

Pros:

- Avoids frequent monitoring of tasks
- Cost predictability
- Less administrative burden

Cons:

- Can set up poor incentives (e.g. handling of case settlements)
- Firm could deploy low cost-resources if staffing is not decided up-front
- Lose billing data over time and struggle to know when to adjust YOY without shadow billing
- Both parties bear risk of over/under billing based on actual volume of work realized

Example – $10M for all employment litigation cases in 2019 billed monthly

2. Matter Flat Fee

Flat fee that will be paid to the firm to represent the client for the duration of the matter.

Pros:

- Avoids annual rate increases during the life of the matter
- Matter-level cost predictability
- A competitive RFP process can be effective in providing market prices

Cons:

- Client bears the risk of overpaying if the matter completes early
- Very tough to price at the start of a matter (requires good historical data on similar matters)
- Need to provide detailed scope and assumptions up front

Example – A fixed fee of $1M in total for the matter

II. Fixed Fee Models (cont.)

3. Phased Fixed Fees

Fixed amount for each phase of a matter worked. Fee is prorated if the case is resolved prior to the completion of a phase.

Pros:

- Less risk on client in case of early settlement or dismissal
- Cost predictability
- Eliminates invoice review and accruals
- Market pricing when engaged using a competitive RFP process

Cons:

- For many matters, it's hard to determine the scope of work prior to the start of a matter
- Still need to provide specific assumptions for each phase
- Could overpay if phases are defined too broadly because firms will price in all contingencies

Example – $1M total price estimate for matter based on a fixed fee of $100K for early assessment, $100K preliminary motions, $300K discovery, $200K pretrial, $300K trial

4. Task-Based Fixed Fees

Law firm charges a fixed amount per task or deliverable (i.e. utility patent, H1B visa) and bills the client with fixed line item amounts for the activities completed.

Pros:

- Provides cost predictability per task and billing transparency
- Less frequent re-negotiation because less dependent on accurate assumptions
- Fair for both sides as volume of activity fluctuates in parallels with fees

Cons:

- Lack of total cost predictability if volume of work is unknown
- Hard to manage complexity and value variations
- Tough to account for all activities as some work falls into the "white spaces" causing firms to fill in with hourly rates

Example – $12K per utility patent, $5K per real estate lease, $3K per HIB Visa

III. Success and Contingency Fees

Success Fee

Law firm charges client a fee that is only paid upon the achievement of a predefined outcome. The success fee is often provided on top of another fee model in order to incentivize the right outcome.

Pros:

- Motivates firms to achieve the optimal result for client
- When used in conjunction with a high discount or reduced fixed fee, client pays less for a bad result and more for a good result
- Incentivizes the firms to take on some of the risk of the matter
- Aligns incentives between client and firm possibly providing a win-win situation

Cons:

- You are already paying the law firm to obtain a good result, why would you also pay a success fee?
- How do you define success? Could lead to contentious discussions later if not well defined

Example – $50K success fee for winning motion to dismiss without leave to amend

Contingency Fee

Law firm charges a set % of the amount recovered in the case.

Pros:

- Only pay for successful outcome
- Don't need to track hourly billing
- Client can take on matters that would be otherwise cost-prohibitive

Cons:

- Firm may choose to limit resources or drop the matter if the cost is getting too high and/or the probability of outcome or recovery is reduced
- % of fees requested by the firm can be significant
- Firms may choose not to take the work if the numbers are not favorable

Example – 30% contingency fee such that firm will be paid 30% of the total amount recovered.

IV. Hybrid and Value-Adjusted Fees

Hybrid AFA

Multiple fee structures combined to achieve a specific outcome

Pros:

- Provides flexibility to structure a fee arrangement that meets specific needs of the client and the matter

Cons:

- Can be complex to create, engage and administer
- Firms may not understand the complexities of the structure causing billing errors and frustrations

Example – Fixed fee per phase for each phase of litigation except using discounted hourly rates for discovery with a 5% contingency based upon recovered amounts

Value-Adjusted Fees

Fee varies dynamically based on results and/or a number of agreed performance factors. Fee amount can also be solely up to the client depending on the perceived value received.

Pros:

- Client more likely to perceive that they received good value for the services delivered
- Client has significant influence on the final amount of fee paid

Cons:

- Requires true trust and partnership between the client and the firm
- Firm must be prepared to accept a much lower fee if the client does not agree that the work performed was of value.

Example – A fixed fee is agreed for a scope of work. This fee can be adjusted up or down by the client based upon the firm's performance (as provided by the client) on six performance factors.

Establishing Value Based Arrangements

- Fees based upon matter value and type, firm type and jurisdiction
- Goal is to pay less for effort and more for results
- Encourage firms to share in the risk of the matter
- Lowers outside counsel spend by 20% - 50%
- Eliminates in-house invoice review and accrual process
- Provides budget predictability

Value Based Fee Structures

Matter Value Estimation:

Matter Value Assessment

- Estimate of economic, perceived and strategic value of a significant matter

Matter/Firm Value Alignment

- Build matrix to align matter value with law firm price-point

Practice Area Specific Approaches:

Litigation	Fixed/ Success	By Phase (some tasks may occur more than once – e.g. depos)
Transactions (e.g. M&A, real estate)	Fixed	By Phase
Discrete Projects (specific scope and deliverables)	Fixed	By Deliverable or Milestone
Ongoing Legal Work (advice and counsel)	Fixed	By Period (month, quarter, etc.)
Task-Based Legal Work (e.g. PP)	Fixed	By Task/ deliverable

Common Questions regarding the use of AFAs

- Will we get the same quality of work under an AFA as we do under hourly rates?
- When using a fixed fee model, should we also ask for a shadow bill?
- Why use an RFP selection process when implementing an AFA?
- How do you measure the success of an AFA engagement?

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Q&A