

# CLIENT DEVELOPMENT



## A NEW WAY TO DEFINE VALUE

Alternative fee arrangements help firms separate from the pack

By **SHANI MAGOSKY**  
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There are dramatic changes occurring in the legal profession. Some changes are the result of economic pressures and others are forced upon lawyers and law firms by the clients they serve. These days, being a lawyer is less about the practice of law and, out of necessity, more about the business of law.

At the heart of these changes is a question plaguing managing partners, practice group chairs, chief marketing officers, and every service provider in the law firm – “How do we define and market our value?”

Many believe the answer lies in the philosophy and application of alternative fee arrangements, a topic of much discussion, criticism, and confusion as more corporate counsel seek to hasten the elimination of the billable hour.

Alternative fee arrangements can be a bitter pill for many firms to swallow. Prospectively, firms will have to alter the ways in which they approach the handling of cases, but they will not be able to do so, at least not profitably, without thor-

oughly examining historical revenues and costs to accurately forecast fees of future cases. This process may even require new roles, responsibilities, and hierarchies within the law firm.

Although rarely discussed as a marketing issue, law firm billing rates have always had a marketing/business development/client satisfaction consequence, but usually not until the invoice crosses the client's desk, or worse, when the firm is trying to collect its fees. As attorneys who have fielded billing calls from angry clients will attest, those situations aren't the best settings in which to promote the firm's value proposition.

Today, the issue of pricing – and law firm value in general – is one that firms face not only at the beginning of new client relationships, but also with existing clients who are weighing their options among a growing supply of legal service providers.

The topic that is at the top of any client-led agenda is a requiem for the billable hour. Hourly rate pricing has become the elephant in the room that firms don't wish to discuss, but given the perilous state of the economy, are forced to now.

The billable hour offers the client no certainty vis-à-vis budgets or anticipated matter costs. On its surface, it poses no hard incentives for a firm to streamline workflow efficiencies, outsource routine tasks to lower-cost service providers, or seek quick resolution or closure to a matter.

Given today's economic environment and the outlook for legal services, embracing the value points most important to the client will be the differentiator of truly successful firms in the future. These law firm value points are the fundamental drivers behind alternative fee arrangements:

- Efficiency and appropriate allocation of resources
- Alignment with client risk
- Cost of legal services relative to matter results

### Marketing And Public Reputation

For firms that have a strategic marketing plan in place, integrating tactics for alternative fee arrangements need not be taxing. For firms



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that haven't developed a marketing strategy or haven't addressed alternative fee arrangements within their strategic plan, alternative fee arrangements provide the impetus to assess their value propositions and produce a plan accordingly.

Successful alternative fee arrangement adoption and implementation at any firm requires two critical ingredients – thorough preparation and a dedication to building trust.

Experts agree that a firm must do its homework before beginning any conversations with clients and prospects about alternative fee arrangements, including:

- Analyzing different types of matters to determine historical costs, possible alternative fee ranges, and savings opportunities
- Aligning compensation and recognition to alternative fee arrangement performance
- Gauging whether the firm is equipped with the personnel, vendor support, culture, and mindset
- Supplementing current knowledge systems – primarily, time and billing applications
- Dissecting the philosophies of the leading firms using alternative fee arrangements
- Assessing the threat to current client relationships from competitors that promote alternative fee arrangements

Once the firm is well-informed and well-versed in alternative fee methodologies and practices, executing an alternative fee engagement that fulfills everyone's expectations requires commitment from both client and counsel.

Alternative fee arrangement advocates within a firm must include colleagues and firm management as the targets of their marketing efforts. And for good reason – alternative fee arrangements represent a shift in the practice of law itself.

### Build A Marketing Strategy

Alternative fee arrangement modeling cannot happen in a vacuum; rather, it is accomplished through direct experimentation and refinement. The optimal place to begin is with the firm's best clients. In this safe harbor, attorney-client business relationships are more secure, with more open communication.

Once you've beta-tested your alternative fee arrangement models and outlined the process, you need to determine the messages and means by which you will promote your alternative fee arrangement proficiency.

First, the firm needs to add an alternative fee arrangement piece to its internal business development training and coaching curriculum. Attorneys responsible for test cases with best

clients should be enlisted to prepare or at least contribute to presentations to other attorneys, developing a brief “elevator pitch” for staff attorneys, preparing an internal handbook and a checklist for attorneys and billing/accounting staff to evaluate new alternative fee arrangement opportunities prior to a formal engagement.

The main thrust here is to have attorneys comprehend the business implications of alternative fee arrangements for the client, the firm, and themselves. It is imperative that alternative fee arrangements are endorsed by firm leadership as a strategic decision, and not painted as a sales gimmick.

Next, consider revising the formal documents that clients will see first – proposals and engagement letters.

Proposals to provide legal services, including responses to requests for proposals, are unquestionably marketing tools, and as such, need to identify and acknowledge clients' needs while thoughtfully and adroitly explaining how the firm will alleviate that pain.

Alternative fee arrangements are inherently relationship-oriented and are extremely well-suited to be a discussion topic in a proposal. They require the firm to match the value of its services to the specific client and matter.

Once the firm succeeds in communicating its value with a proposal and other business development activities, the engagement letter should keep the momentum going and provide a written road map for the ensuing relationship.

Along these same lines, firms must consider how to design or revise content for other written and electronic communications.

A law firm's public reputation encompasses all of its promotional work to build, manage and sustain its outward image and foster growth.

The good news is that after the firm goes through the steps to assemble a communications plan, much of the hard work of developing a public reputation management strategy is already done.

### Conclusion

Without question, alternative fee arrangements will change the legal profession. Interestingly, some experts predict a new set of roles within the law firm responsible not only for ascertaining the economic feasibility of fixed-fee and other alternative engagements, but also for managing the teams doing the work under those structures.

Pricing specialists and project managers will have increased importance as alternative fee arrangements replace the billable hour and become the new billing standard. Those people will be tasked with selecting and overseeing internal and external resources, helping to guide cost-efficient strategies, and ensuring matter profitability.

As with any shift in the marketplace, those who see opportunity rather than hardship stand to reap the benefits, and the law firm that recognizes alternative fee arrangements as a means to differentiate itself will outdistance the competition. ■

For more information, please visit [www.tinyurl.com/jaffeafa](http://www.tinyurl.com/jaffeafa).

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Once a firm successfully completes this internal due diligence, it must then incorporate alternative fee arrangement approaches and philosophies into its public reputation management plan. Now is the time for firms to re-think the value of the professional services they provide.

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