
CLIENT MEMORANDUM

DISTINGUISHING YOUR FIRM

This is the second in a series designed to help law firms distinguish themselves in a legal market where their competitors are jockeying to better serve clients in a value-driven environment. The first piece discussed the benefits of conducting project-by project evaluations. This piece addresses an area in which enormous changes are taking place – billing practices.

HOURLY BILLING – ERECTING GUARDRAILS

For almost as long as lawyers have been plying their trade, legal fees have been a source of friction in the relationship between lawyers and their clients. In 1993, the American Bar Association issued a Formal Opinion in which it stated: “One major contributing factor to the discouraging public opinion of the legal profession appears to be the billing practices of some of its members.”¹ This opinion is reflected in the Association of Corporate Counsel’s 2011 Chief Legal Officer Survey, in which CLOs were asked what their top 5 concerns were - 66% responded with “reducing outside legal costs”². Similarly, in the 2010 ACC/Serengeti Managing Outside Counsel Survey, 83% of in-house counsel surveyed stated that “reducing outside counsel cost” was one of their most pressing concerns³.

One of the foremost concerns expressed by clients about legal fees is the use of billable hours as the primary means of calculating fees. The most prominent complaint of the billable hours model is that it gives law firms the incentive to work inefficiently ... to employ the “no rock left unturned” approach, which can significantly increase the client’s legal costs, without necessarily having a corresponding increase in the chances of a favorable result. In fact, in the aforementioned Formal Opinion, the ABA went on to state that “pressure on lawyers to bill a minimum number of hours and on law firms to maintain or improve profits may have led some lawyers to engage in problematic billing practices.”⁴ At the end of the day, as the argument goes, the billable hours model is not congruent with the interests of the client.

This “incongruity” has resulted in an ever-increasing number of companies and business groups pushing for alternative methods of billing. The Association of Corporate Counsel (ACC)⁵, for example, has launched a national campaign called the ACC Value Challenge. The stated purpose

¹ (ABA Formal Opinion 93-379).

² Association of Corporate Counsel’s 2011 Chief Legal Officer Survey, P. 43.

³ 2010 ACC/Serengeti Managing Outside Counsel Survey

⁴ (ABA Formal Opinion 93-379).

⁵ The Association of Corporate Counsel, with over 30,000 members, is, in my view, the most influential and effective association established for in-house counsel. As such, its initiatives should be taken seriously by the legal community.

of the ACC Value Challenge is to provide networks, tools and dialogue to bring law firms and corporate customers of law firms together to develop ways to reconnect value with the cost of legal services. New businesses have spawned in an effort to assist law firms and their clients in structuring alternative “value-based” billing models to better align the cost of legal services with the value provided to the clients.

While I support the efforts to find creative alternatives to billing for legal services, I do not subscribe to the proposition that the hourly billing model is irreparably broken. I believe that the hourly billing structure can be an effective way to bill for a variety of matters, *if properly managed*. A number of effective in-house legal departments have devised comprehensive policies to manage outside counsel and, consequently, their outside legal bills. These policies can effectively serve as “guardrails” around the hourly billing structure to contain costs and address some of the prevalent concerns about waste.

Most clients, however, have no such policies in place, thus lack protection from the risks associated with hourly billing. But law firms should not be waiting for their clients to construct these guardrails. The firms should be taking the initiative and incorporating many of these concepts into their daily practice. To affirmatively address the unease felt by many clients towards the hourly billing model, I suggest implementing billing commitments, memorializing them in writing and delivering them to the client at the beginning of each matter. The billing commitments should be delivered along with the engagement letter and should look something like this:

The firm is dedicated to providing ABC Corporation with highest level of service possible and ensuring that ABC Corporation reaps the most value from the services provided. To further its dedication to client value, the firm makes the following Billing Commitments to ABC Corporation.

BILLING MANAGEMENT

- *For every matter where the anticipated billings exceed \$10,000 or where it is anticipated that the work will be performed for a period longer than 1 month, the firm shall prepare a pre-project plan that will include:*
 - *A summary of the matter*
 - *A roster of lawyers*
 - *A communication plan*
 - *A budget*
 - *A summary of legal implications and strategy*
 - *A timeline*
- *The firm will provide client with frequent updates as to where the billings are vis-à-vis the budget.*
- *At the beginning of each week, the lawyer managing client’s matter will issue to client a narrative summary of the work that has been done on the file for the previous week, stating what accomplishments were achieved and what tasks were completed.*

INVOICES

- *The lawyer responsible for the file will review each invoice to determine that each line item clearly and succinctly describes the work performed and the legal reason the work was performed.*
- *Invoices shall include a narrative description of the work performed for each specific task by the person performing it. Invoices shall also include (1) name or initials of person performing work, (2) time spent on task, (3) the billable rate of the person performing the work, (4) the cost per line item (rate * the time spent on task), and such other information requested by the client.*
- *All time will be billed in increments of one tenth (0.1) of an hour.*
- *Discussions or conferences among the firm's attorneys shall be minimized and shall only be undertaken when that is the most efficient means possible to convey or obtain information. Billing descriptions for such conferences shall state specifically why a conference was needed.*
- *Where more than one person is involved on the same project – drafting documents, attending a meeting, etc. – unless clear from the circumstance, the narratives shall explain why each person's presence was necessary. General notations such as "attended meeting" will not be used.*
- *No lawyer shall bill more than 10 hours in one day on a single matter without the client's prior consent.*
- *Unless otherwise requested by the client, each invoice will be for services rendered during the prior month. Invoices shall be delivered to the client within 20 days after the end of each month.*

EXPENSES (GENERAL)

- *Invoices from third-party vendors shall be paid directly by the firm and incorporated into the firm's invoice to client.*
- *When invoicing for disbursements and expenses, the firm shall provide client with an itemization of out-of-pocket expenses incurred by the firm on behalf of client and the purpose of those expenses if such purpose is not clear from the itemization.*
- *When submitting invoices for disbursements or expenses, the invoices shall reflect the actual cost and shall not include any mark-up. Where the firm has volume discount arrangements with a vendor, the preferred pricing enjoyed by the firm shall be passed on to client.*

TRAVEL & MEAL EXPENSES

- *The firm will obtain client's approval for all air travel and shall make its best effort to anticipate all air travel in preparation of any budget created for the matter in question.*

The firm shall seek alternatives to travel such as conference calls or videoconferences wherever practicable.

- *Airfare incurred by the firm shall be coach only on domestic flights, and business class for international flights. Where the firm has pricing discounts for airfare, such discounts will be used on client matters where possible.*
- *During travel, the firm will only rent mid-size cars, unless larger vehicles are more economical and/or otherwise approved by client. The firm shall only use hired cars if doing so is more economical than renting. The firm will not hire limos without client's prior approval.*
- *For any meals required during travel, the firm will provide client with an itemized receipt reflecting the food items purchased, the date, and the name of the establishment. The receipt shall be accompanied by a written description of the nature of the business necessitating the meal.*
- *The firm shall not bill client for time that a lawyer spends in transit, unless actual billable work is performed during such travel time.*

NON-BILLABLE ITEMS

- *The firm will not bill client for the firm's internal office expenses, such as faxes, copying, scanning, phone calls (i.e. line charges), ordinary postage, overnight envelopes, local travel, car services, and library subscriptions. The firm considers these costs of doing business, however, in exceptional circumstances where any of these costs are excessive, the firm may seek approval from client to bill such costs to client.*
- *The firm will not bill client for administrative services (including overtime) provided by any law firm personnel, including secretaries, word processors, librarians, proofreaders, managing clerks or information system technicians.*
- *The firm will not bill client for administrative costs or fees charged by electronic or other research services associated with electronic legal research (this does not include the time spent by a lawyer performing research).*
- *The firm will not bill client for work done by first or second year associates, except in cases of general legal work such as research, general drafting and document review. The firm will not bill client for first or second year associates to attend meetings or trials. The firm makes every effort to ensure that personnel billing to a file must be rendering valuable services based on existing expertise commensurate with their billing rate.*
- *The firm will not bill client for legal research to educate attorneys in the basic fields of expertise for which the firm is hired.*
- *The firm will not bill client for time spent preparing invoices, completing time slips or resolving billing questions.*
- *The firm will not bill client for time spent by paralegals performing clerical, secretarial or administrative work; or time spent by a lawyer performing paralegal work. The firm*

is committed to assigning work to the least expensive personnel for the most efficient and competent service.

- *The firm will not bill client for duplication of time caused by the transfer of a matter to a new attorney, double-teaming or education of one or more firm personnel, unless such duplication was necessitated by a request from client that such personnel be added to the matter.*
- *The firm will not bill client for file creation, organization & maintenance.*
- *The firm will not bill client for the use of air phones during air travel unless the firm can demonstrate that unusual circumstances existed that necessitated such use.*
- *The firm will not bill client for work that is not related to the matter for which the firm was retained, unless client specifically requested that such work be performed.*

OTHER COMMITMENTS

- *With the exception of legal and other research for an initial report and evaluation of liability and exposure in a new matter, any legal research and the need for any written memo or opinions based thereon shall be authorized by the client in advance.*
- *Any rate increase implemented firm wide shall not apply to any of client's open matters.*
- *The firm is committed to exploring and implementing new technologies that enable the firm to operate more efficiently and that facilitate the processing of clearer and more accurate billing statements.*
- *The firm is open to designing and implementing alternative fee arrangements where the firm and the client find value in doing so.*

The firm will implement systems and processes to ensure that the Billing Commitments are strictly adhered to. We welcome the input of ABC Corporation in our efforts to grow the Billing Commitments and to add greater value to ABC Corporation's business.

How many firms do you know produce this sort of affirmative commitment to providing value to clients? Why wouldn't they? One reason why many firms do not is because they're not structured to comply with the majority of these Commitments. Other firms prefer to maintain the status quo until their clients demand otherwise. The Billing Commitments outlined above are representative of a firm that understands that their long-term profitability is dependant on the value they provide to their clients. If your firm is capable of complying with some or all of the Billing Commitments, you should immediately implement them into your practice and train each lawyer on the value of the Commitments – the principles they support are at the heart of every client-centric law firm.

If you consider the Billing Commitments to be too burdensome or not worthy of adoption, be warned. There are powerful headwinds pushing against those firms who stubbornly bill in the same fashion they have for decades gone by. In the face of a legal climate that finds more law firms understanding the business proposition of aligning their interests with their clients', those firms that continue to focus on billing practices that solely benefit their bottom line, rather than their clients, will suffer the fate of having no one to bill at all.

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