

The Law Firm Side of AFAs

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Many clients are exploring Alternative Fee Arrangements (AFAs) as a means for controlling their legal spend. AFAs do present many opportunities for attaining this goal. However, clients will find that their best chance of meeting this goal is in partnership with their outside counsel. This approach makes the goal a shared one, and allows the law firm to focus the types of AFAs and its service directly towards that goal.

In pursuing healthy fee partnerships with their outside counsel, clients will benefit from a deeper understanding of how law firms are approaching AFAs. What follows is a brief description of the internal workings of how a firm might be responding to requests for AFAs. As part of this description, also provided are ideas for how each step in the process can be improved with better levels of trust and communication

The Request

Currently most law firm AFAs are generated at client requests. A partner receives a communication from a client about a potential matter. In addition to the legal issues, the client will request a quote on rates along with a note about being open to alternative fees. Sometimes the request is more direct, suggesting that the law firm “be creative in proposing some sort of AFA.”

This is a key point in time when a partnership between client and outside counsel should be established. Law firms can be creative and propose all sorts of fee options. However, for a fee option to be successful it needs to be crafted with a client’s specific fee concerns in mind. As a client, your fee drivers will change from matter to matter, for each type of legal practice need, and maybe even over time. Sometimes risk sharing will be the right approach. Other times monthly predictability will be best suited. The main point here is that to get the best suited fee type, you should meet with your law firms and have an open conversation about those needs. Without that information, your outside counsel is making a wild guess as to how best to help you meet your fee goals.

The Fee

Once a firm has an understanding of your fee needs, they can prepare a specific AFA proposal, including fee amounts as appropriate. Using best practices, the law firm should be modeling this fee arrangement to know whether it is profitable or not. I suggest you will want these to be profitable. Doing business with a low-cost provider who is not profitable is unsustainable. This is not to say that firms are not able to lower your fees while maintain profitability. In fact it is quite the opposite. Firms must find ways to meet this challenge and many are devoting expanded resources to this goal.

With a specific proposal in hand, another best practice is to meet in-person to present the proposal and discuss it together. Too many intentions can be lost with just the written word. As noted above, the best approach is one where you develop a common goal. A conversation about

the proposal leads to refinements and improvements that stay focused on the goal while generating a win-win option.

Providing the Service

Many clients have “efficiency” as a stated goal. However, much like the AFA request, efficiency can take many forms. This presents another opportunity to forge a healthy partnership with your outside counsel. With a fee arrangement in place, or perhaps as part of establishing that arrangement, you should consider engaging in a dialog about efficiency with your outside counsel. Efficiency generally means: a) doing less, b) doing more with less time, or c) doing the same, but with lower cost resources. Your dialog can explore each of these aspects, helping focus on which of these make the most sense for your situation. For instance, a firm could expand its use of staff lawyers (a.k.a. non-partner track lawyers) to move work to lower cost resources, but only if that approach aligns with your needs and goals.

Both the efficiency and fee dialogs need to be on-going conversations. In the past, a single conversation at the onset of a matter was too common. In this new environment, with these new dimensions, conversations need to be before, during and after. Too many things can change during the course of an engagement. What neither party wants is a big surprise when a course change is made, but not calculated in to the fee deal or the delivery model. For instance, a decision to join a third party to a litigation case, results in a substantive change. Regular conversations (e.g. monthly or quarterly) will catch these modifications and keep both the fee and the delivery model clearly aligned with the goal.

Law firms are committing a growing level of resources to concepts like Legal Project Management (LPM). These LPM efforts are focused on both efficiency and quality. Smart firms know that in order to help clients meet their changing goals, they need to change their approaches. An excellent question to add to your outside counsel conversations is: “What are your efforts related to efficiency, including process improvement and the use of technology?”

Concluding a Matter

Perhaps the single most important conversation about the fee and service needs to occur at the end of a matter, or in the case of on-going work, at the end of each year. These meetings should be open, honest assessments about how things went. The lessons learned from these conversations will lead to better defined goals for the next matter and continued success towards goals of cost savings and efficiency gains.

Conclusion

Law firms really want to help clients meet their legal needs in a cost effective manner. Most firms are trying very hard to adapt to changing demands and realign their business models to continue to meet client needs. The theme from this section should hopefully highlight that whatever steps are taken by both client and outside counsel, they will be best taken together. As I like to say, the keys to all successful fee arrangements are trust and communication.