

The ACC Value Challenge – Reconnecting Value to Costs

Delivering Value through the Boutique Law Firm Business Model

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Featuring:

Robert Banta - Banta Immigration Law

Charles M. “Mac” Cushing - Cushing, Morris, Armbruster & Montgomery

Jeff Kuester - Thomas, Kayden, Horstemeyer & Risley

H. Lamar “Mickey” Mixson - Bondurant, Mixson & Elmore

Market Analysis of the Legal Industry

The billable hour

How did the legal industry get to the point where a value challenge is needed?

- Pricing of legal services was arbitrary (“for services rendered”) prior to the billable hour.
- The industry was looking for a way to measure that for which they were being charged, and settled on the number of hours worked as a measurement.
- Firm profitability became a function of hours billed.
- Firms no longer produced results, they produced hours.
- In striving to produce more hours, firms:
 - Became bigger, adding more attorneys.
 - Assigned more attorneys to work on cases.
 - Created incentives, whether intentionally or unintentionally, to perform unnecessary work.
 - Became less satisfying places to work, resulting in increased turnover and even less efficiency.
- Although the billable hour was intended to allow clients to determine whether work had been performed efficiently, instead it has encouraged firms to work inefficiently by creating a business environment that rewards firms for billing the most hours.
- The goals of the law firm and the goals of the client have become misaligned through the billable hour system.
- The amount of time it takes to perform legal work has become disproportionately important in determining the value of that work to the client.

ABA rules on legal costs

What are the ABA’s rules regarding the factors to be considered in determining the cost of legal services?

- Rule 1.5 Fees (a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:
 - The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services properly;
 - The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
 - The fee customarily charged in the locality for similar legal services;
 - The amount involved and the results obtained;
 - The time limitations imposed by the client or by the circumstances;
 - The nature and length of the professional relationship with the client;;
 - The experience, reputation, and ability of the lawyer or lawyers performing the services; and
 - Whether the fee is fixed or contingent.

Law firms as businesses

- Many law firms have begun to understand that while practicing law is a profession, running a law firm is a business.
- Law firms operating on a billable hour model have only a few ways to become more profitable: increasing leverage, raising rates and finding ways to bill more hours.
- Law firms operating on a billable hour model will actually become less profitable by investing in technology or creating systems that will make them more efficient.
- This set of business circumstances has created the current marketplace for legal services.

The boutique law firm business model

- Boutique law firms have rejected the highly leveraged model and/or have adopted different strategies for achieving profitability.
- These law firms have common characteristics, which include:
 - More partners than associates
 - Slower growth / higher personnel retention
 - A focus on a specific area of the law
 - Low cost centers
 - Profitability through good results and efficiency.
- The rest of this document will outline the boutique law firm business model and how it can deliver great value for corporate clients without sacrificing profitability for the firm, thus better aligning the interests of the client and law firm.

Achieving Value through the Boutique Platform

What is Value?

- Better results
- Reduced costs
- Less time spent managing outside counsel
- Risk-sharing between the law firm and the client
- Trust
- Transparency
- Proper staffing
- Accurate budgeting and predictable bills
- Better responsiveness
- Access to the best attorneys for the matter
- Ultimately, whether the client feels that he or she has received more value than the cost incurred

How does the structure of a law firm affect the delivery and value of legal services?

- The structure of a law firm dictates which behaviors will lead to increased profitability.
- Firms structured under the highly leveraged billable hour model will become unprofitable when clients demand greater efficiency and reduced costs.
- To achieve value, there must be synergy between the quality of the lawyers and the business model of the firm.
 - Good lawyers in a bad model have trouble driving value.
 - Bad lawyers in any model have trouble driving value.
 - Good lawyers in a good model are the only ones capable of truly providing value.
- The basic structure of a boutique law firm:
 - More partners than associates
 - Major focus in a particular area of the law
 - Seasoned partner and business owner at the center of the matter
 - Low overhead
 - Appropriate matter staffing (the model cannot support overstaffing).
- Most firms structured in this way rely on results to drive revenue and are already used to working efficiently, since efficiency increases profitability.
- Firms structured in this way are also much more flexible and able to respond more quickly to client needs.
- Understanding the structure of a firm and what will increase its profitability is the key to understanding whether the goals of the client are aligned with the goals of the firm from a business perspective.

How does having a law firm with more partners than associates drive value for clients?

- Law firms with more partners than associates have no choice but to staff matters with experienced partners.
 - “There is usually great value in an extremely busy and very experienced partner, but less value in a \$350/hour entry level associate who is desperate to fulfill the hourly requirements for the year.”
Susan Hackett, ACC Vice President & General Counsel
- In boutique firms, there is always a seasoned partner at the center of the matter who does most of the work. This partner therefore knows the case inside and out and can make quick and informed decisions (In a litigation matter, the seasoned partner is usually the one arguing the case to the judge or jury).
- In most boutique firms, every partner is an equity partner (business owner) and therefore has the authority to make decisions about alternative billing arrangements, staffing, scope and anything else the client would like to discuss or negotiate.
- Boutique firm partners are able to work in a way that results in lower overall costs for the client (whether hourly or through alternative fees), because the partner is experienced and is not burdened with having to find work for numerous associates.
- Boutique firms rely more heavily on paralegals and legal secretaries instead of associates for tasks that do not require the seasoned partner’s time.

How does having a law firm devoted to a specific area of the law drive value?

- Most boutique law firms practice in a specific area of law, which drives value in the following ways:
 - The attorneys become more knowledgeable of that area of law and are able to spot relevant issues and respond appropriately early in a matter.
 - The attorneys become more efficient by repeating similar tasks.
 - The attorneys become more familiar with the external entities that affect the matter, for example:
 - A litigation boutique will become very knowledgeable about the different courts and judges, so it can set the case strategy and evaluate risk appropriately.
 - The attorneys do not switch practice areas, which requires retraining, often on the client’s dime.
 - Young attorneys in boutiques have to get up to speed quickly because the model cannot support a lengthy learning curve.
 - The attorneys in boutiques chose the area of law and are passionate about it.

How do boutique firms staff matters of all sizes and how does this drive value for clients?

- Boutique law firms staff cases with only the number of attorneys actually needed to achieve the client's objectives by using subject matter knowledge, experience and technology.
- Under the billable hour model, much of the overall cost of legal bills results from too many timekeepers rather than the hourly rate.
- Reducing the amount of timekeepers on a matter will instantly reduce costs.
- Assigning only the number of attorneys actually needed to properly work the matter leads to better results.
 - It is a myth that you need to staff a \$100 million dollar case with 50 attorneys – this certainly leads to high bills, but not necessarily to better results.
 - Overstaffing cases creates confusion, duplication of effort and inefficiency, all of which lead to worse results and higher bills for the client.
- With the technology and resources available today to law firms, there is almost no reason a matter of any size should have more than 2-3 attorneys working on it.
- Most boutique firms are used to working on alternative and contingency arrangements that have taught them how to be efficient and effective.
- The amount of savings derived from a properly staffed matter increase exponentially with the size and scope of the matter.
 - If you save \$50,000 on a \$100,000 matter through proper staffing, imagine how much you could save on matters that cost over \$1 million?

How do the cost centers in a law firm drive value for clients?

- The major cost centers in firms of all sizes include:
 - Operations
 - Office space, staff, insurance, technology, etc.
 - Marketing/Client entertainment
 - Lunches/dinners, sponsorships, sporting events, concert tickets, listings like Martindale and Chambers
 - Recruiting
 - Laterals, associates, summer programs
 - Firm events
 - Retreats, holiday parties
- All of the cost centers in law firms increase with the size of the firm.
- All of the costs are passed on to the clients so that the firms can remain profitable.
- Boutique firms have to maintain a low cost structure to remain profitable.
- The boutique firm model results in less cost that needs to be passed on to the client.

Why do boutiques have much lower attrition rates and how does that lead to value for the clients?

- Boutique firms have lower attrition rates for a number of reasons:
 - The attorneys know what kind of law they are going to practice before joining the firm.
 - Boutique firms must be more careful and discerning in their hiring decisions due to the low cost structure.
 - Boutique firms hire attorneys with the goal that each attorney will one day become a partner.
 - Boutique firms generally have lower billable hourly requirements and compensation is less dependent on the hours billed.
 - Boutique firms have a more collegial work environment.
- Low attrition provides value in the following ways:
 - Clients can count on the same attorneys being available for the duration of a matter and for future matters.
 - New attorneys whom the client has never seen will not unexpectedly appear on the bill.
 - Attorneys who have been doing the same type of law from day one gain experience much faster than those at firms where associates are constantly shifting practice areas or firms.

The Future of the Legal Industry

What place will alternative billing arrangements play in the future of the legal industry?

- Alternative billing arrangements have the ability to transform the legal landscape by better aligning the goals of the firm with the goals of the client.
- A smart alternative billing arrangement includes the following elements:
 - An aspect of risk-sharing between the firm and the client
 - A predictable budget from the outset of the engagement
 - Incentives for the firm to achieve specific results as quickly and efficiently as possible.
- How do alternative billing arrangements make managing outside counsel easier for clients?
 - Alternative billing arrangements make the value challenge the law firm's problem.
 - It is up to the firm to properly staff cases.
 - It is up to the firm to perform only necessary tasks.
 - It is up to the firm to achieve desired results and client objectives.
 - It is up to the firm to invest in technologies that make it more efficient and effective.
 - Corporate counsel will spend less time fly-specking bills and arguing with outside counsel about whether work was necessary, and will never have to explain to their executives why they unexpectedly received a bill five times more than the previous month.
 - Boutique firms are ready to take these responsibilities away from corporate counsel and are willing to bet on their own ability to perform work on sophisticated corporate legal work in an efficient and effective manner.
- There is no reason that law firms cannot manage pricing and scope the way other service providers do.
- Alternative billing arrangements have the added benefit of creating trust and transparency between the firm and the client by eliminating the reverse incentives in the billable hour model.
- Alternative billing arrangements keep a firm from doing work outside of its area of specialization and encourage it to do work it has done before in the most efficient and effective way possible.
- If more law firms and clients begin using alternative billing arrangements, there will be a ripple effect throughout the industry that will cause firms to adapt and become more efficient and effective service providers.
- The more firms and clients use alternative billing, the better both will get at pricing and budgeting for different types of matters.
- Boutique firms are ready to offer these arrangements now. They are willing to share the risk with the client in achieving better results while controlling costs.

What is a specific example of an alternative billing arrangement that aligns the goals of the client with that of the firm?

- A flat monthly fee with a hold back for results (works for plaintiffs or defense cases)
 - The firm and client work together to determine a fair monthly price for handling a matter based on similar prior cases, complexity, chances of winning, etc.
 - The client holds back a percentage (20-25 percent) of the monthly fee.
 - Milestones and desired outcomes at each phase are agreed upon in the engagement letter, such as:
 - Win motion to dismiss
 - Win summary judgment
 - Settle case quickly for less than x amount
 - Win case at trial.
 - If the firm meets the agreed upon objectives, the client releases the hold back and pays a bonus that is left to the client's discretion.
 - If the scope of the case changes, a "change order" is requested and both sides amicably agree to adjust the arrangement, not out of altruism but because the arrangement must be a "win-win" to be successful and able to be repeated.
 - Such arrangements are predictable, align the goals of the client and the firm, and make the issue of efficiency and staffing the firm's problem, not the client's.
 - An added benefit to these arrangements is that the firm's use of less experienced lawyers comes out of the firm's profit and is not the responsibility of the client.

Who is responsible for driving change? How do firms and corporate counsel overcome the dilemma of executive pressure to hire the larger and usually more expensive law firms for important matters?

- Boutique firms believe it is not up to the client to innovate; it is up to law firms to figure out how to deliver better client service while maintaining profitability.
- Law firms must learn how to create a business model that can thrive without the problems that are inherent in the current legal marketplace.
- The innovative law firms with a better business model need to work with corporate counsel to help them make the business case to their executives for hiring a boutique firm instead of a large "brand name" firm for an important matter.
 - One way to do this is to explain how alternative billing arrangements better align the goals of the law firm and the client.
- Corporate counsel need to test these smaller firms and allow them to be part of "beauty contests" and RFPs to see how they would staff and handle matters differently.
- If the non-leveraged, leanly staffed boutique firm can meet or exceed expectations, it should be rewarded with more quality work (which will lead to even more efficiency).
- When corporate counsel reward the firms that can deliver on this value proposition, this will draw the best lawyers out of the large firms and into specialized boutiques – some of which is already happening due to the current state of the economy, but will not continue without real change.

What does the future hold for the law firm business model?

- Once there are enough law firms with business models focused on results and client service instead of how long it takes to do something, change will be forced upon those who try to cling to the old ways.
- Corporate counsel have the power to dramatically speed up this process by engaging high-end boutique firms and working with them to make even more adjustments.
- There are enough business-minded and innovative thinkers in the legal industry that this change is inevitable.
- High-end boutique firms will be on the forefront of this change and hope to build lasting relationships based on trust and transparency.

For more information on the INBLF or to discuss with some of the Georgia Chapter member firms the topics presented in this document, please contact Geoff Frost at 404.881.4166 or frost@bmelaw.com.

INBLF Overview

The International Network of Boutique Law Firms (“INBLF”) is an organization of highly credentialed single-discipline (boutique) law firms, each of which, after a great deal of research, has been identified and hand-selected as prominent in each firm’s respective field of practice.

Each member firm practices, and has achieved preeminence, in only one or two specific substantive areas of practice, none of which overlaps with any other member firm’s area of expertise in that specific geographic market. The INBLF is organized such that individual chapters have been established in every significant city and geographic market throughout the United States and Canada, thereby ensuring that all major practice areas in every major market are covered by a highly credentialed INBLF member.

The purpose of the INBLF, among other things, is to ensure that each firm’s clients will receive only the very highest quality legal representation -- irrespective of the nature of the legal issue or the jurisdiction in which it arises -- should that client elect to retain an INBLF member for legal counsel or assistance.

In addition, the INBLF operates to provide a healthy and vibrant referral network among the preeminent single-discipline member firms.

On the international front, the INBLF has cultivated strong relationships with some of the world’s most well-respected full-service firms throughout Central and South America, Europe, Australia and Africa. In addition, the INBLF has embarked on an aggressive campaign to identify and recruit similarly positioned full-service law firms in Asia and the Pacific Rim; these efforts are ongoing. The INBLF’s relationships with our international strategic partners guarantee that the coverage our members can offer their clients is, indeed, truly global in scope.

Please visit www.inblf.com for more information.

Speaker Biographies

Robert Banta • Immigration Law

Firm

Banta Immigration Law Ltd. (www.bantalaw.com)

Contact Information

Email: rbanta@bantalaw.com

Phone: 404.249.9300

Education

Davidson College (B.A.)

Duke University (M.A.)

Universite de Dijon (Graduate Fellowship)

Vanderbilt University (J.D.)

Background

Robert Banta founded Banta Immigration Law to combine the highest standards of performance and service he had learned at his prior firms with the efficiencies of a boutique firm focusing solely on immigration and nationality law.

Since 1980, Mr. Banta has practiced business immigration law, representing a wide range of employers, including Fortune 500 companies, start-up businesses, investors, professional athletes, movie and television actors, actresses and other personnel, and high net worth individuals.

H. Lamar “Mickey” Mixson • Business Litigation

Firm

Bondurant, Mixson & Elmore, LLP (www.bmelaw.com)

Contact Information

Email: mixson@bmelaw.com

Phone: 404.881.4171

Education

Washington & Lee University (B.A., *magna cum laude, honors with exceptional distinction in English*)

Harvard University (J.D., *cum laude*)

Background

Mickey Mixson has represented individuals and corporations involved in a wide variety of business disputes for more than twenty-five years. He has successfully presented countless complex commercial disputes to juries, arbitration panels and judges.

In addition, Mickey has obtained substantial confidential settlements of numerous commercial and business cases. Mickey has an excellent record on the defense side also, having obtained summary judgments, dismissals and defense verdicts of major claims.

During recent years, Mickey has recovered awards and settlements for clients totaling over one billion dollars.

Mickey is currently the President of the Atlanta chapter of the International Network of Boutique Law Firms.

Charles M. “Mac” Cushing • Corporate and Real Estate Transactions

Firm

Cushing, Morris, Armbruster & Montgomery (www.cmamlaw.com)

Contact Information

Email – cmc@cmamlaw.com

Phone - 404.614.8101

Education

Washington & Lee University (B.A., *magna cum laude*)

Washington & Lee University (J.D., *cum laude*, order of the coif)

Emory University School of Law (LL.M., Taxation)

Background

Mac Cushing is a founding partner of Cushing, Morris, Armbruster & Montgomery. Since 1978, he has represented large and small companies in a broad range of transactions and day to day services in the business arena. Mac’s clients represent many different industries and include private equity companies, institutional and private secured lenders, commercial real estate developers and investors, telecom companies, specialty food retailers and a wide variety of service businesses.

Jeff Kuester • Intellectual Property

Firm

Thomas, Kayden, Horstemeyer & Risley (www.tkhr.com)

Contact Information

Email: jeff.kuester@tkhr.com

Phone: 770.933.9500

Education

Georgia Institute of Technology (Bachelor of Electrical Engineering, *with honors*, Computer Engineering Certificate)

Georgia State University (J.D.)

Background

Jeff Kuester is a founding partner at Thomas, Kayden, Horstemeyer & Risley and has experience in many aspects of patent, trademark, copyright and Internet law. Currently he concentrates his practice in the areas of patent preparation and prosecution in the fields of software, telecommunications, and electronics.

In addition, for a number of years, Jeff has been serving as an Adjunct Professor of Intellectual Property Law at the Georgia State University College of Law.

Before entering the legal field, Jeff worked for IBM and Georgia Power Company in the Cooperative Education programs. He then worked with Louis Isaf while obtaining his law degree.

He is currently a member of the Advisory Board for the Bureau of National Affairs' (BNA) Electronic Commerce & Law Report, and he serves on the Board of Editors for American Lawyer Media's Patent Strategy & Management.