

ACC Value Challenge

SUMMARY REPORT NEW YORK CITY SESSION- March 12, 2009

- A. 40 Great Ideas in 40 Minutes:** participants at the session were asked to identify good ideas/practices they are implementing that focus on value—to help improve the value of services to corporate clients.
- 1. Find law firms that are flexible-**in-house counsel should select law firms, which are flexible in the way they approach structuring relationships and setting fees or considering alternative work structures
 - 2. Use historical data-** outside law firms should use historical data to determine whether their billing practices are efficient.
 - 3. Use technology-**so long as it is effective to do so, use technology to reduce the scope of work needs
 - 4. Categorize work and shift to appropriate provider-** some work may require 'exceptional' efforts; some may require 'experience' (more routine work where experience/knowledge of the business is helpful); and some may benefit most from 'efficiency' (this latter bucket of work could be sent to a contract or outsourced legal service provider)
 - 5. Leverage efficiencies by unbundling and bundling work-** consider whether unbundling services (e.g., having e-discovery counsel and trial counsel to maximize expertise and efficiencies) or bundling services (e.g., having law firms supervise contract attorneys and other legal service providers) is most efficient and cost effective for a matter or portfolio of matters.
 - 6. Consider the competition-** look beyond law firms that you 'know' if they aren't adapting to new ways to work, and consider law firms who may be more flexible and offer services on a more efficient basis.

7. **Give outside counsel authority to make tough decisions-** empower outside counsel to make tough strategic decisions.
8. **Have regular budget discussions-** include in-house and outside counsel and have regular discussions regarding expectations and progress on budgets.
9. **Remove obstacles-** don't impose process that gets in the way of progress (example: don't require everything in writing when a phone conversation would be most efficient).
10. **Include success fees-** or some variation that creates incentives to achieve results and helps focus outside counsel on efficiencies.
11. **Perform end-of-case assessments-** discuss what went right, what went wrong and how to make more realistic budgets, expectations and case strategies.
12. **Seek certainty-** discuss expectations up front and progress along the way; avoid surprises from the firm, but also insure that clients help the firm understand what the client actually expects at the outset of the matter (not after it's not done the way they wanted it).
13. **Communicate to create efficiencies-** in-house counsel needs to communicate who is on point and who has authority to make decisions.
14. **Set fixed fees based on value-** fees should be based on achieving client's objectives—not on shadow billing.
15. **Set guidelines up front using a case-process tool kit-** discuss up front expectations on how matters will be handled (e.g., rules of engagement; no motion 'x,' etc.).
16. **Just say no to billing by the hour-** insist on no billing on an hourly basis, reward firms that comply/or go get a firm that will use alternative fee structures.
17. **Audit practices and make improvements-** outside counsel and in-house counsel should audit their practices and act on the results; if they are focusing on being more efficient, then look at existing process and find ways to eliminate inefficiencies.
18. **Mitigate risks via proactive lawyering-** outside counsel should help mitigate risks and costs for future cases or matters by being proactive and anticipating problem situations before they hit their clients' desks.
19. **Outsource to lower cost providers-** determine what services can be sent to lower cost legal service providers and use vendors who provide those services, including contract attorneys, outsourcing, offshoring.

20. **Have in-house staff do document review** (and maybe in-house staff does not need to be legal department personnel).
21. **Increase use of seconded attorneys-** outside counsel should consider approaching clients to ask if they would be interested in having a seconded lawyer on site; outside counsel gains a better understanding of client's business and in-house counsel benefits from having a service provider on site.
22. **Improve transparency in budgeting-** in-house counsel can be clearer with information provided to firms about client cost and financial expectations on a matter; need more information on expectations, fee targets, end-of-quarter projections/concerns, etc.
23. **Be aggressive with early case assessments-** in order to know whether a case should proceed or be "disposed" of, you need to have a good idea of what it is worth.
24. **Less vigor in budgeting for small matters** – focus on the top few and spend your energy there.
25. **Make more use of in-house expertise-** staff matters to leverage in-house expertise and enhance partnering between outside and in-house counsel.
26. **Conduct post-mortems-** evaluate how the case went and how to improve the process going forward (self-assessment).
27. **Survey on performance-** ask outside law firms for an assessment of in-house counsel performance; have in-house counsel assess outside counsel.
28. **Provide periodic updates of ongoing and expected costs-** communicate up front budget status to facilitate up front conversations on costs; communicate throughout the matter to help facilitate status so that business clients can receive updates and understand any changes—no big surprises at the end.
29. **Align interest to the client-** don't send rate increases without understanding the market/your clients.
30. **Match level of service with price – "A" projects versus "C" projects.**
31. **Be disciplined and stick to case assessment plans-** perform early case assessments and define parameters on how cases should run; stick to the plan unless a material change arises.
32. **Price commoditized work and knowledge-intensive work separately-** the first on a fixed fee basis, the second by the hour with a budget.

33. **De-leverage law firms – law firm associate staffing is broken and clients need partners to pay attention to associates they train, not churn.**
34. **Create trust and nurture long-term relationships-** implement practices to create trust and nurture long term relationships; viewed as important in supporting alternative fee structures.
35. **Reward early completion of work with appropriate outcomes-** reward efficiencies with incentives, such as success fees and break-deal fees; recognize that not every deal should go through and reward early recognition of this assessment—saves costs overall.
36. **Use historical data to convert hourly arrangements to alternative/fixed fee arrangements-** notion that alternative fee arrangements are easier to reach with several years of historical data (suggestion that 3 years of data is good); consider starting new firms on hourly arrangements and then convert over time to fixed fee/alternative arrangements.
37. **Consider using a single firm globally-** example shared is the ‘Tyco’ model; helps consolidate work and portfolios of work allow law firms to be more flexible and creative in setting fee structures.
38. **Tie fees to performance against budget:** consider success fees for matters that come in under budget (e.g., 30% bonus of delta between budget and actual invoices under budget) but pay only 65% of delta between budget and invoices over budget.
39. **Reform associate salaries-** consider paying lower associate salaries and paying a portion of student loans under a separate bucket.
40. **Adjust the law firm compensation model-** to reward results, efficiencies, client service.

***** Longer-term Strategic Ideas*****

41. **Tort reform-** a long term strategy suggested as helping to reduce total litigation costs.
42. **Reform law school education-** a long-term strategy designed to give lawyers experience as part of their legal training (e.g., the hospital residency model).

B. Alternative Fee Structures/ Game Plan for Success: participants were asked to create a game plan for successfully implementing alternative fee structures for three different types of legal services: (1) complex, multi-district litigation; (2) sophisticated transaction; and (3) counseling services. Following are ideas reported to the larger group.

1. Litigation context

- Multi-district litigation cases have similar modes; facts may differ but basic claims are the same; 98% settle; objective: get to settlement early
- Buy-in from client to want to settle early
- Plaintiff attorney buy-in: obtain a short form tolling agreement (120 days to 6 months); agree to exchange information; objectives are to resolve
- Win-win situation: success billing (Example of how to structure: fixed fee for the tolling period because you know what the discovery and time period are; if resolve within the time period, then provide the law firm with a success fee; if the matter is not resolved within the time period, then build alternative fees based on phases of litigation—success fee would be on a sliding scale based on phase)
- Pay a bonus when a matter resolves early-- provides incentives
- Flat fees on a phased basis
- Multi-tiered billing on hourly rate system
- Success fees depending on what point the case settles

2. Transactional Context

- Fixed fees for first drafts of documents
- Success fees on a deal; discount (70-80%) if the deal doesn't close, but 120% if deal closes
- Provide a fee estimate on the deal; if come in under, receive a bonus
- Pay success bonuses (for deals that close or don't—depending upon how success is defined for that given deal)
- If on target, then pay a bonus; if over target then pay a discount on a collar
- Challenges: concerns about what happens when you tell the client to walk away from a deal—forego the success fee? Does this place the right incentives? Whether a busted deal is a success or a failure depends on the deal. Some deals should not close; success bonus may be appropriate if a deal fails to close because success may actually mean that failure. Also, discounting for deals that don't close can be problematic for a firm unless there is a portfolio of business.

C. Alternative Fees; Assessing Value: participants were asked to identify information inputs necessary to assign value to matters and portfolios of work and to create a ‘how to’ for assessing value. Ideas follow:

- Value is not the billable hour
- Value is winning—what does winning mean? It depends on the client’s objectives
- Deconstruct /unbundle legal services and let the client decide
- Billable hour can be a possible measure of certain elements
- Need to have willingness to take reasonable risk—on both sides
- Care about value—not what you pay
- Get numbers from outside counsel regarding similar matters; consider an all-in hourly rate for big, large scale litigation; ask outside counsel to tell you their hourly cost on other large scale litigation matters
- Familiarize outside counsel with budgeting process
- Share goals and objectives (in-house counsel must share goals)
- Outside counsel must focus on the big picture; must understand goals and costs
- Outside counsel to provide alternatives (like a change order in a contracting situation—if you want to add ‘x’ it will cost ‘y’; if we go to ‘a’ it will cost ‘b’)
- Value, like beauty, is generally in the eye of the beholder