Association of Corporate Counsel

ACC Value Challenge
Facing Up to the Challenge- The Transition

By Michael Roster

INTRODUCTION

Other papers in this series talk about the need to find better ways to determine profitability of law firms and some of the reasons the current economics aren't working for firms and clients alike.

This paper is focused on some of what is involved in the transition that is already far along.

DIFFERENT VALUE-BASED APPROACHES

Much has been written elsewhere about various alternative fee approaches, so let me simply add some brief comments about how these approaches can help facilitate reduced client cost, high predictability and significantly improved outcomes while actually maintaining and even enhancing firm profitability:

- ***Fixed prices by matter or stage*** – Once in-house and law firm attorneys find the patterns for various types of matters, they likewise find ways to quote a fixed price. And once they do so, they start finding ways to lower the cost of production for specific tasks while still improving quality. In those situations where there is concern about how a matter will evolve over an extended period of time, an easy approach is to fix the price for the current stage in the matter, budget future stages based on the best information available, and then lock up the price for future stages when reaching those stages. And by engaging in this type of budgeting and managing, both the firms and the clients quickly develop reliable data that can be used in the future.
- ***Contingency arrangements*** – The plaintiffs' bar somehow does very nicely with contingency pricing. Once corporate law firms learn how to measure risk and likely outcomes, they should do equally well. Their task will be to manage how much of the firm's work can safely be handled on a contingency arrangement and assure they have appropriate methods to manage risk and cash flow.

- ***Portfolios*** – This is the approach we used at Stanford and many others are starting to use it as well. For example, a client might give a firm all of its HR, environmental, real estate or similar work. Even better is if the portfolio includes both litigation and counseling since there then is an incentive for the firm to use its substantive expertise to start reducing exposures and improve efficiencies in a given area. This approach is probably the most risk-free of all value-based arrangements for both firms and clients. The reason is that the lawyers handing a given portfolio can start making rational decisions about the use of resources: When should specific matters move at a fast pace and when is it better to slow things down? How many depositions really are needed, or how much due diligence is appropriate? Who can best handle a given task at a given time?
- ***Consultation retainers*** – The concept here is that clients can call a firm and ask basic questions in one or more substantive areas without the meter running, subject to some pre-defined limits. Among other things, these arrangements encourage internal clients to resolve issues early on, they flag areas where in-house or outside counsel may need to intervene and they rapidly expand the sophistication of internal clients, thus allowing those internal clients to be more efficient users of legal services.

Here's What Others Think

"As with construction companies, law firms need 'estimators' to keep track of what things cost and help with the determination of the price, and 'project managers' to bring the job in within the fixed price."
– Law firm chair

"Our firm has had great success with reverse contingency arrangements as defense lawyers. We get a percentage of the amount by which the case is settled under an agreed-to target. This is especially true in patent infringement cases."
– Law firm chair

"One point of unease re contingencies: If a client says it's worth $X to settle a claim, contain the risk and hours and distraction and so on, why should a law firm have incentive to fight for a lower settlement cost? And doesn't the client have to rely in some meaningful way on the lawyer to say what is a reasonable target settlement cost in the first place? It reminds me of something another commentator said above – if a law firm agrees to 10% reduction in billable rate, they'll work 10% more hours."
– Mid-level in-house attorney

"Re Consultation retainers: Some research firms have fixed arrangements for access to databases and complementary support for understanding and querying the database. They provide custom professional research and even memo writing for free, if the client agrees to allow the firm to make the memos available for free to its other clients."
– Mid-level in-house attorney

SMALLER LAW DEPARTMENTS CAN DO IT, TOO

General counsel at smaller legal departments often complain they don't have the purchasing power to implement alternative fees, that law firms aren't interested in their companies' work or that they don't have the expertise to manage the necessary changes. One should remember, half of the ACC membership comes from law departments of five or few lawyers. That doesn't necessarily mean the specific client is small or doesn't have significant legal work.

If anything, smaller law departments are able to make decisions quickly and to implement them without unnecessary hurdles. Among other things, smaller law departments can:

- Suggest to one or more firms they will combine much if not most of their legal work in return for one of the targets (reduction in cost, predictability, outcomes) or possibly all three targets.
- Create strong, ongoing alliances with selected firms.
- Tell the firms the company will welcome having associates and junior and mid-level partners assigned to the company's matters, with the added benefit that those lawyers will develop a long-term, personal commitment to the client.
- Shop for new law firms if existing firms aren't interested in achieving the targets.
- Use other techniques that make the firms highly value the relationship (for example, have the outside attorneys spend time at a factory, meet senior management as part of an annual all-attorney retreat, etc.).

IT TAKES A PARTNERSHIP

Most of us who have made the kinds of changes discussed here have learned that the real breakthroughs also require a true partnership among the in-house lawyers, the law firm lawyers and other service providers.

With a true partnership (some call it an alliance), a lot of waste is eliminated while actually increasing the quality of services and outcomes. Although it seems counter-intuitive to the law firms, if they do it right they find that their profitability is maintained and even enhanced.

Among other things, with a true partnership there is no longer double teaming (that is, two, three or many more lawyers attending the same meeting or endlessly reviewing drafts without adding much of value). It means a continual focus on who has the right expertise and skills for a given task. It even means attorneys from otherwise competing law firms working cooperatively with one another for a given client.

At Stanford, the in-house and law firm attorneys were all listed alphabetically as a single group in the telephone directory that was given to clients. They attended the weekly staff meetings and annual retreat. They continually worked together as a single unit.

Here's an example of how this partnership delivered value: Participating firms had whole portfolios (all of our labor work, real estate work, etc.). We were doing a major transaction involving our two hospitals and one of our partner firms had most of the Medical Center portfolio but a particular area of expertise for the merger agreement was in the

portfolio of another law firm. So a partner at the first firm called a partner at the second firm, explained the paragraph she needed in the merger document, and even as they were talking, the second partner emailed to the person doing the draft the exact text that was needed.

"I can see why your system is working," the first partner later told me. "In the traditional model, I would have sent a memo to our tax department, explaining how Stanford is organized, what the transaction is about, what the issues are regarding certain assets to be transferred, etc. That would have taken several hours to draft the memo, and then the tax lawyers would have spent time reading the memo and asking questions, often a week after the inquiry started. Then they'd do some research and send back a memo (after doing a number of internal drafts) and hopefully include some proposed language. The cost of that might be $10,000 to $20,000. Here, I had the exact right answer in five minutes since all of us working on Stanford matters know all about the client and even the pending matters."

Similar interactions need to take place among the in-house and outside lawyers: who can best cover a meeting, who can best review a given set of documents, what's the highest and best use of each person's time? To achieve this level of partnership among the participants takes some effort up-front, but it's an investment well worth it.

Here's What Others Think

"To me "value" is a subjective concept involving both a recipient and a provider. It is often viewed in shorthand as a ratio of what is received over what is given up. Both the recipient and the provider look at the same facts in the equation and define value in their own terms. These perceptions make defining value difficult. Notwithstanding that assessment, you have the key elements… need (do both parties see the problem the same way), partnership (lawyer and client need to see the potential solution the same way) and understanding (fairness cannot be distorted in favor of one over the other)."
– Law firm senior administrator

"Thinking of our work as being in alliance with both the client and other counsel on the team would go a long way toward improving quality and value. But from a more junior lawyer's perspective, it's hard to see where such opportunities for alliance may lie."
– Mid-level in-house attorney

"This is a powerful example, for it demonstrates how alliances that are focused on the client's goal can have efficiencies and benefits for the firms too."
– Mid-level in-house attorney

"Maybe we need to think of the services we provide, to deliver value, as Dr. Gawande does in delivering health care services, as a pit crew: "The public's experience is that we have amazing clinicians and technologies but little consistent sense that they come together to provide an actual system of care, from start to finish, for people. We train, hire, and pay doctors to be cowboys. But it's pit crews that people need."
– Law firm partner

"Trust seems to be the key. Trust between client-lawyer and trust between partner-partner."
– Law firm partner

DETERMINING ATTORNEY COMPENSATION

Once a firm starts managing itself based on true profitability, it also needs to address the related question, how to compensate the partners and associates and in some organizational arrangements, the entire workforce (remember, efficiency and true breakthroughs don't necessarily all come from the lawyers). What is critical here is that the compensation system needs to be aligned with the institutional goals of the firm, the three targets and true profitability.

Again, I'm not going to try to resolve the compensation problem here, nor am I going to try to present a grand unified theory. No matter what, the appropriate compensation methodology should no longer care if a given attorney, matter, practice group or whatever is billing by the hour or by some alternative fee arrangement. A simple starting point is:

- Compute the cost of a given practice group (or office, or attorney, or whatever unit you pick; practice group has lots of benefits as the starting point). This is mostly salary and benefits.
- Add the indirect costs of whatever you have picked (space, support staff and services, etc.). In the past, many firms have used a formula that the indirect cost is 1.5 times salary for partners, 1 times salary for associates, and .5 times salary for paralegals. Whether that is accurate and supportive of the goals here I leave to others to sort out.
- Compute the revenue (meaning actual collections) for the practice group (or office, attorney, etc.) This means actual dollars received, not what is billed, not what is in the pipeline to be billed, and not bills that haven't yet been paid. Only what has been paid should count.
- Deduct the all-in cost of the group you are considering (practice group, office, attorney, or whatever) from revenue attributed to that group. That is the profitability one would then attribute to the practice group, office, attorney, or whatever.
- Deduct some percent from that net profitability for redistribution firm wide as a way to encourage institutional behavior (many people tell me that 5% to 10% are reasonable ranges).
- Develop a methodology for distributing profits in some form of combination of practice group (or office, or whatever) profitability as well as firm wide profitability. And among other things, this doesn't mean getting rid of practice groups that by nature of their

Here's What Others Think

"For the law firms, this will be the most difficult part – how does a firm get there? If this process moves a firm that currently has a collaborative culture into an 'eat what you kill' culture, it will be enormously destructive to the firm's morale and the quality of day-to-day life at the firm. This is also an issue for the firm's clients. Many of us are convinced that, one way or another, clients pay more when their firms have an 'eat what you kill' culture."

– Law firm partner

"There are two ways that the current system can move into the value-based system you are discussing. First, someone can convince law firm managers that this will cause their firms to become more profitable. Right now, I suspect that, regardless of what they may be saying publicly, law firm managers do not believe that profitability will be enhanced. They think that this is all a thinly veiled effort by corporate executives and GCs to reduce the incomes of law firm partners. Second, the corporate clients can lead the law firms, kicking and screaming, to the new system. If this happens, the law firms will need to adapt or die. The best opportunity that corporate clients had to do this was at the height of the financial downturn, but they missed that opportunity. It will be more difficult, but not impossible, for corporate clients to do this in an expanding economy."

– Law firm partner

work (not their lack of effectiveness) produce somewhat lower profits, but rather develop a way that their compensation is appropriate to their area of practice (back to the dermatologist versus brain surgeon analogy).

- Include in this some methodology for distributing the 5% or 10% pool for institutional behavior (hiring, training, etc.).

And again note, the appropriate compensation system should no longer care if a given attorney, matter, practice group or whatever is billing by the hour or by some alternative. One of the benefits of this system is that it helps the firm make the transition (and for an indeterminate time, coexist) with a billable hours system and a value-based system. Some of the many secondary benefits of this system are that so-called books of business now have to stand on their own, there is no longer an incentive to stretch out the time to partnership and de-equitize partners who actually are highly profitable but don't rely on leverage, there is a premium on improving the skills of associates as fast as possible, there is a premium on having stability of the attorney workforce, and there even should be a premium on everyone being focused on the firm as an institution.

One of the benefits of this proposed system is that it helps the firm operate under both a billable hours system and an alternative fee/value-based system. Some of the many secondary benefits of this proposed compensation methodology are that so-called books of business now have to stand on their own, there is no longer an incentive to stretch out the time to partnership and de-equitize partners who actually are highly profitable but don't rely on leverage, there is a premium on improving the skills of associates as fast as possible, there is a premium on having stability in the attorney workforce, and there even should be a premium for institutional priorities, not solely individual or other more provincial priorities.

Something to consider along the way: a guaranteed base income for partners, and possibly for senior associates, with everything else linked to this variable compensation arrangement. By using this approach, while at the same time building in strong incentives that clients are clients of the firm and not of individual partners and that everyone's interests are firm-wide, a lot of other social and economic factors should fall into line as well.

Profitability will likewise be enhanced, even as the client's costs are stable and even reduced and outcomes substantially improved.

Here's What Others Think

"This phrase 'don't rely on leverage' is confusing me. Even in a non-billable hours system, success for the firm (and its owner partners) must depend on relying on leverage, in its classic sense, right? The task, in a fixed fee system, must be to take a given size and mixture of staff, drive its costs down, and maximize profitability per business unit. The firm's resources would need to be maximally leveraged…? I suppose I see that the idea might be to focus on effectiveness and Drucker's external value creation concept rather than efficiency and maximizing revenue per unit of cost. But that's an argument about winning a leading role in an industry. At the end of the day, profitability IS the difference between revenue and cost, and so leverage will be essential. Can you untangle that at all here?"

– Mid-level in-house attorney

THE BILL AS A CRITICAL CHANNEL OF COMMUNICATION

Value also comes from other ways to manage the relationship between firms and clients. The bill is an area that screams out for reform. It is, after all, possibly the single most important item of contact between the firm and client since the bill often is the only place where there is a summary of what is taking place, plus it arrives with monthly regularity.

Yet the bill is designed exclusively for the convenience of the firm – that is, it is structured so that time can be inputted as fast as possible, in any order, with a monthly printout to be mailed to the client. The entries are stacked one after another and come across as if written in a James Joyce stream of consciousness style. Visually, the bill portrays a process that looks totally random and out of control. And then it often quotes an unexpectedly high dollar amount that seems to confirm all of the foregoing.

And incredibly, no one running modern law firms seems to care. So even for firms and clients that continue with hourly billing, at least they should develop processes that make the bill something that helps in the management of matters and hopefully communicates value.

In fixed price and other value-based relationships, there no longer is need for the monthly bill. Rather, hours (assuming they are still kept) become a way for the client and the firm to jointly audit where resources are being spent and to consider if that is the highest and best use of those resources. But hours spent are no longer the determinant of value.

Here's What Others Think

"The problem is not adapting AFA billing arrangements or reducing "costs" but rather how do you solve the problem effectively and efficiently to the satisfaction of the client. What tools do you use (expertise, past experience, leverage, pricing mechanism, etc.) and how do you convey to the client that your tool kit is better than some other firm's tool kit."

– Law firm senior administrator

"I think the GCs, rather than the law firms, need to take the blame for the confusing bills. Back in the 1970s, each of our bills contained a coherent narrative summary of what we did for the client that month. Then, the GCs started demanding bills that contained daily billing descriptions. Those descriptions, read one after the next, are quite naturally incoherent. Both the firms and the GCs would be better off if we went back to the former approach – this will allow everyone to see what was actually accomplished during the month, which will make it easier to understand if the amount billed is justified by the accomplishments."

– Law firm partner

THE PRODUCT IS THE PRACTICE GROUP

When talking with general counsel and other in-house counsel, I urge that they stop saying "I hire the lawyer, not the firm."

Of course the lawyer or lawyers working on a given matter are important. But so is the firm. As already noted, leverage and turnover at a firm can be highly predictive of value. Firms that treat clients as institutional clients of the firm will perform in one way, versus firms where the culture is "you eat what you kill" (meaning, originating attorneys take a significant share of profits, often to the detriment of the people doing much of the work).

When in-house counsel say we hire the lawyer not the firm, we also empower law firm partners to sell our companies' work as part of their book of business. Absent unique circumstances, when a partner moves from one firm to another, he or she is typically making the move to increase personal income, but often at our company's long-term expense.

At most companies, succession planning for every division has high priority, including the law department. We general counsel are continually asked, if we are hit by the proverbial truck, who can take over and are we mentoring those possible successors properly? We should be demanding a similar process with our law firm providers: if a key partner is hit by the proverbial truck, who in the relevant practice group can take over, in which case, we want to see more of those candidates.

Which leads to the key point: at the end of the day, clients are shopping for and ultimately selecting and using practice groups. I might send much of my company's labor work to one firm because I like that practice group, but I might not even consider that firm for tax because the firm's tax group doesn't have what I need. The closest analogy is: no one shops for Proctor & Gamble. We shop for P&G's individual products: Tide, Gillette, Crest, Pampers, etc.

As firms look at marketing and branding, the greatest value they can project usually turns on practice groups. Likewise, as firms look at profitability and efficiencies, the analysis that is most workable is likely to be by practice group, at least as a starting point. And once managers understand this fundamental dynamic, they also have the ability to develop profitable ways to implement value-based relationships, including how to manage matters, quote fixed prices, determine compensation and partnership promotions and the like. A practice group likewise can now better understand its profitability models and, with that knowledge, develop methods to deliver equal or higher profits even as client costs are reduced and outcomes are improved.

Here's What Others Think

"Selling the practice group, and the firm, will be much easier if and when the firm organization, culture, etc. are modified, or if the trust is already in place to make this a reality."
– Law firm partner

"Hear, Hear!!!" *– Law firm chair*

"Very good." *– Law firm chair*

"When a partner moves from law firm A to law firm B, he/she typically receives an increase in income. In part, this is to reflect the risk in moving. But, it also reflects the expectation that law firm B will be able to increase the revenues from the partner's book of business. If the partner does not maintain the revenues from his/her book of business, or, better yet, increase that revenue stream, he/she is in danger of having his/her income cut by law firm B. I am sure you can guess what happens as a result."
– Law firm partner

"WHAT IF" VERSUS "SO WHAT"

I once was in a meeting where two very prominent lawyers briefed the board of directors of a publicly traded company on a difficult and very important matter. At the end of the briefing, one of the directors said what was on the minds of all of us, although in a way that was somewhat startling to both his follow directors as well as the two visiting lawyers:

> "I know it makes you lawyers feel good to do all of your hand-wringing," the director said, "and you've been covering your rear ends along the way, which I understand. But now why don't you tell us what you think we should do."

When I mentor junior lawyers, I try to contrast the "what if" factors with the "so what" factors. Yes, one of the jobs for us lawyers is to continually ask ourselves, what if this or that should happen? That's a module that should be running full time in our heads. All too often, however, we simply dump all of the "what if's" on the client and assume we've done our job, and that it's the client's task to then make what we cleverly label as the "business decision."

But that ignores an equally important module: "so what?" As counsel, this second module should also be running full time in our heads, thereby guiding us as to whether a given risk is significant, how likely it is to arise, and does it even fall within the sphere where we need to spend time on it with the client?

One of the benefits of fixed pricing, portfolios and other value-based arrangements is that the "what if" versus "so what" factors automatically become part of the interactions between the firm and the client, and with great success for both sides.

Here's What Others Think

"An [actress] who does leadership communication workshops once said, when confronted with a workshop full of managing partners: Lawyers are 'Yes, But' people, not 'Yes, And' people. Every proposition is challenged rather than built upon."
– Law firm chair

"I am not so sure that changing to value-based arrangements will result in 'so what' factors becoming part of the interactions between the firm and the client. Value-based arrangements may facilitate this, but there are many cultural changes that must be made to move to 'so what.' In my experience, inside counsel have also become tremendously risk adverse in many instances, and they also will need to change. Part of the process of becoming a 'so what' lawyer is simply the result of growing in expertise, experience and maturity, which can take many years."
– Law firm partner

IT'S ABOUT MANAGING RESOURCES, NOT TRANSFERRING RISK

Some law firm managers and third parties argue that fixed pricing and other AFA's are simply a way to pass risk onto the law firms. They say this isn't fair since the firms can't control what the other side (plaintiffs, courts, government agencies, etc.) will do, let alone how efficient or inefficient the client might be.

Those of us who have used some form of fixed pricing or other AFA's know that shifting risk is not the purpose and virtually never takes place, especially in a properly established alliance. The real benefit of fixed prices and other AFA's is that the arrangement forces both the law firm and in-house lawyers to properly manage what they are doing.

If lawyers can simply "do whatever it takes" on a matter with little or no regard to whether something is worth doing in the first place, or might be done with higher efficiencies, then of course you can be happy with the billable hour. But if you want a firm to manage a finite resource, then some form of fixed pricing has inescapable benefits, and again to both sides.

And no, the client isn't going to stick it to the firm if something wholly unexpected and truly extraordinary wipes out the budget and the assumptions on which the budget is based. Such unexpected changes are fully understood by the CEO and the rest of senior management, and no one on either side typically wants to hold to the original agreement. No companies I'm aware of that have successfully implemented value-based relationships have encountered difficulties when the truly extraordinary event arises.

SHADOW HOURS ARE GUARANTEED TO BE LOSE-LOSE

Many firms and even clients who have shifted to alternative fee/value-based relationships nevertheless measure everything they are doing by use of shadow hours. That is, the firm attorneys keep track of time the old fashioned way and then the firm and often the client compare the fixed or other alternative fee arrangement with what it would have cost with traditional hours.

If you think about it, if you are measuring success via shadow hours, the only way the new alternative fee approach will work to everyone's satisfaction is if the work is delivered at exactly the same price as it

Here's What Others Think

"Upon reflection, I was a little surprised to not see anything about out-sourcing to India or another country where very skilled people will work for a lot less than individuals in the U.S. I know some of the accounting firms are doing this in the tax preparation area and it would seem there might be an analog for some legal services."

– Law firm chair

"The eradication of 'shadow billing' is a noble pursuit. It eliminates a sizable administrative burden for both law firm and client and is a rational extension of a value-based dialogue. However, even our most progressive clients, who have embraced AFAs in every other way, often insist on performing retrospective, 'what if' analyses."

– Law firm senior administrator

would have been under the traditional hours arrangement. Because if the work comes in at less than the cost of production via hours (which it should, assuming the firm is now focused properly on expertise, effectiveness and efficiency) then clients will feel they have been screwed. And if the work comes in higher if it had they been billed with traditional hours (which often will be the case during the transition year), at least some in firm management will say, "see, this isn't working."

This is why the three targets are so important. With the three targets (25% reduction from historical cost, near certainty in cost and/or significantly improved outcomes), both the firm and the client are no longer looking backwards at cost of production. Rather, they are looking forward at what outcomes are desired (see Appendix A for a superb discussion of this dynamic in another industry).

Once the firm and the client have settled on at least one of the targets if not all three, there should be no reason whatsoever to care about how the alternative arrangement compares with the traditional billable hour arrangement. The focus is on the three targets, and in fact, it is in everyone's interests that the firm actually be as profitable or even more profitable under the value-based relationship as compared to the traditional hourly relationship. If the client's costs are significantly reduced from its historical cost, it is getting the benefits of fixed (or incentive, contingency and similar) pricing and/or the outcomes are measurably and significantly improved, the firm's cost of production (it's "hours") are no longer relevant.

A law firm administrative participant at a recent conference on alternative fee/value-based relationships came previously from an engineering firm that provided consulting services for the automobile manufacturers. When the group got into a discussion about what to do when clients want to see shadow hours, he said he had been through a similar transformation in the auto industry. He said his engineering firm simply refused to give an hours report to the auto companies for whom they were working. "We're meeting and even exceeding your expectations for what we are producing; we are no longer pricing our work to you by hours; so no, we're not going to show you our hours, even if we still keep them for internal purposes." It was a scary approach, he reported, and one of the Big Three threatened initially to pull its work. But the auto company stayed with the firm and within a year, no one was asking for hours.

Here's What Others Think

"I completely agree. Asking for shadow hours is a sign of bad faith."
– Law firm partner

RFP'S

Requests for proposals can be helpful when a whole portfolio or other large segment of work is to be assigned to a winning firm for an ongoing period of time. RFP's make little if any sense, to either side, for matters one at a time.

Most law firm leaders tell me the all-in cost (that is, the allocated cost for the marketing department combined with specific costs for a specific RFP) now comes to $30,000 to $50,000 for each RFP response. Firm managers often complain that the matter typically goes to a predetermined firm anyway, and that even though most RFP's request a discussion of possible AFA's, in the end the in-house counsel just request a discount.

Both in-house and law firm attorneys owe it to our corporate clients to bring greater efficiencies to the RFP process. Most of us on the client side wince when we get huge notebooks as part of the RFP response, and yet the firms are concerned that absent this heap of material, we won't think the firm took the request seriously. The push back especially comes from individual partners who think more is better, notwithstanding all the advice the marketing department and senior management have to the contrary.

So maybe we could informally agree that RFP responses, absent a specific client instruction for more detailed information, should be limited to five to ten pages total, possibly with this outline:

In a single page state, all things considered, the total price for this project/matter (as a specific number, as a range, by stage and/or by describing in no more than a single paragraph the variables you believe will affect the determination of that price).

- In a single page list all costs, if any, that will be passed on to the company (for example, telephone, travel, photocopying, electronic research, etc.) and the likely total for these items (as a specific number or as a range).
- In no more than __ pages, describe the practice group(s)' expertise for this matter/project.
- In no more than __ pages, describe the attorneys and, if applicable, other professionals who will work on this matter/project.
- State the firm's (or if you prefer, relevant practice groups'):
  - leverage (that is, the ratio of associates to partners)
  - retention (that is, the percent of first year associates who started six years ago and who are still at the firm or in the practice group)

Here's What Others Think

"Firms have found that RFPs are very expensive. Often, the client has already decided who is getting the work and is using the RFP as a club to force the selected firm to reduce its price if one of the competitor firms comes in with a lower bid. The whole thing is tremendously demoralizing for the lawyers at the firm who spend their nights and weekends preparing the RFPs. The RFP process is a great example of how the client-law firm relationship has broken down."

– Law firm partner

"The best RFP process I'm aware of was for a large company that wanted to select their principal outside counsel in a specific area. Rather than ask the five or six firms they were already using in this area to participate in the RFP process, they conducted the process without informing the firms in question. The client figured that they knew everything of importance about the firms, prepared the RFP responses on behalf of the firms (which the firms never saw) and then did the analysis. This process took several months. The client determined that doing the process in-house saved them (and the firms, of course) a tremendous amount of time and effort. Our firm only found out about this when we received a call from two senior lawyers at the client telling us that our firm had won the contest."

– Law firm partner

ACKNOWLEDGEMENTS AND DISCLAIMER

The opinions expressed in this article are my own, and the sidebar commentaries are likewise solely those of the commentators. I have benefited greatly from the wisdom and ideas of steering committee members and senior staff involved in the ACC Value Challenge as well as other law firm and in-house counsel with whom I have worked through the years. Anything with which readers agree no doubt derives largely from these other professionals; I'll take the blame for anything that is in error or with which readers disagree.

ABOUT THE AUTHOR

Michael Roster has served the past four years as the voluntary steering committee chair and co-chair for the Association of Corporate Counsel's Value Challenge. Until 1993, Mike was Managing Partner of Morrison & Foerster's Los Angeles office as well as co-chair of the firm's Financial Services Practice Group worldwide, resident in both Los Angeles and Washington, D.C. and a member of the firm's policy committee. He subsequently served as General Counsel of Stanford University and Stanford Medical Center and then of Golden West Financial Corporation. Mike also has been a chair and outside director for a number of publicly-traded, startup and non-profit companies and thus has had the joy and frustration of also being a client

ABOUT THE COMMENTATORS

- ***General counsel*** *includes attorneys who are or were a general counsel or chief legal officer or performed similar functions for one or more companies within the U.S. or elsewhere. Virtually all also were previously partners and associates at law firms but are identified here solely as GC's.*
- ***In-house attorney*** *includes any attorney who is or was at a company within the U.S. or elsewhere but not as a general counsel.*
- ***Law firm chair*** *includes current and former law firm partners who headed a law firm and/or were part of the top leadership group for the entire firm.*
- ***Law firm partner*** *includes current and former partners at various law firms, some located in a single city and some that are regional, nationwide or worldwide. Many of these partners also are or were practice group heads, office managing partners, etc.*
- ***Mid-level attorney*** *includes people who graduated from law school within the past 15 years and may currently be law firm associates, working at companies or government agencies, solo practitioners, business people, etc.*
- ***Senior administrator*** *includes a variety of non-attorneys who currently are or previously were senior administrators and other non-attorney managers at either law firms or in-house corporate law departments.*