

Value Practice:**Fixed-Fee Arrangements for Corporate Clients****Interview with George Foote, Bracewell & Giuliani LLP**

George Foote, a partner in the Washington, DC, office of Bracewell & Giuliani LLP, entered into fixed-fee arrangements with two clients for different types of work. Both arrangements added predictability to billings for each client, but also brought other positives to the firm's relationships with those clients.

Those arrangements with the two clients can provide some guidance as to how to approach and negotiate such arrangements in a variety of situations:

- **One arrangement, with a nonprofit**, began approximately fifteen years ago. During a discussion with the client's general counsel about bills and to address the client's expressed interest in being able to budget its costs more predictably and they agreed on a flat amount set at approximately the then-current level of hourly charges. They agreed to review the arrangement quarterly, though George reports that formal reviews are frequently skipped. During the years since that arrangement's inception, the amount of work done by the firm for the client within the scope of the fixed-fee arrangement has increased substantially, as has the fee.

The work involves **"general counsel" type representation and a variety of projects** that meet negotiated parameters. They agreed to such an arrangement after discussing the limits of the agreed-upon monthly charge and what it would cover. The client agreed that **extraordinary projects, including litigation, would call for further discussion** and the client would potentially be billed at hourly rates outside the flat-fee arrangement.

On several occasions, George has apprised the client that the firm had invested more time in the work than either had anticipated. After discussions in each instance, the **client agreed to pay an additional amount for that higher volume of work**. Similarly, their regular discussions have resulted in upward adjustments of the monthly fee. In most of those situations, the upward adjustment lagged the excess investment by the law firm and, overall, George estimates that a strict accounting of time and hourly rates would show slightly lower "return" for the firm under the flat-fee arrangement than would have been the case on traditional hourly billings. On the other hand, **the flat fee has helped to strengthen a long-term relationship and the extraordinary projects**

that have been billed outside the arrangement have been profitable for the law firm.

- **A second arrangement, with a utility company**, involves the preparation of contracts that are subject to regulatory oversight and approval. After approximately five years of traditional billing at hourly rates, the client initiated the discussion of an alternative fee arrangement in light of its interest in predictable billings. George and the client's general counsel **negotiated an annual fee, paid in equal monthly installments** that would cover all of the work on those contracts. The longstanding relationship with the client and his firm's familiarity with the work and its ability to regularize the process by which it could negotiate and draft the contracts all contributed to enable George and the client to enter into the fixed-fee arrangement comfortably.

This arrangement also includes criteria by which the **firm and client can determine whether a new project might not be subject to the agreed-upon fee**. In such a case, the firm and the client treat it as a project billed on the basis of hourly rates. Since a number of those projects have developed, the client and George are discussing ways to convert them from hourly billing to flat-fee arrangements along with the principal engagement.

In some months, the amount of work for that utility client has not met the anticipated level, resulting in the firm enjoying a higher hourly "return." Though the client did not ask for or receive a rebate in those instances, the firm declined to bill for some other matters that it was entitled to treat as new projects not subject to the agreed-upon fixed fee.

In each case, **the client enjoys greater budget certainty and predictability**. Even though each client has some matters arise that do not fit within its fixed-fee arrangement, the bulk of its work is covered by the single, negotiated amount.

For the law firm, the assured, regular revenues represented by the agreed-upon fee provide **assurance of stability and** in some months have resulted in **higher realization rates than hourly billing** might have. In addition, in each case the nature of the fixed fee and **the client relationship creates incentives** for George **to develop younger attorneys** within the firm on the client's business (always subject to supervision, of course) with the client's encouragement and approval. Each client's executives have been encouraged by the fee arrangement to call more frequently, knowing that a phone call will not result in additional charges. This has resulted in **more frequent and relaxed contact**

between attorney and client, with the attorneys who work on the files becoming more familiar with the client's issues and the client more comfortable with its counsel.

With each client, continuing communication regarding the firm's workload empowers the firm and client to identify and react to unexpected circumstances, whether due to unanticipated workload issues or otherwise, that they can address within the context of the fee arrangement. The firm still tracks the time of its attorneys for its own purposes (such as to determine how "profitable" the arrangement is and to monitor attorneys' workloads and make compensation decisions), and the **time is reported on regular client billings**, showing whether hourly charges would have exceeded or fallen short of the flat-fee arrangement. Thanks to experienced in-house counsel and executives managing the work, the bills serve as platforms for discussion of rate adjustments and staffing, but George reports that there is never any use of the statements by either client to complain about excess charges in any month. For each client, **the fixed fee "substitutes accountability for accounting"** (in George's phrase).

Some pointers

- The success of each fee can be attributed, at least in part, to the prior existence of a good relationship between the firm and the client and to in-house counsel who appreciate the benefits of maintaining a consistent, professional relationship. **No fixed fee is likely to cover all possible service needs** that will arise over time or all circumstances that could arise that change the context or dynamics of the situation. The client and the firm must adapt in such situations and, to do so successfully, they need to understand each other's perspectives, needs and expectations. The good relationship enables them to do so.
- In George's view, the existence of such a **prior relationship might not be as critical to setting up a flat-fee arrangement for work that is more repetitive and predictable**. In such a case, neither party takes too great a risk when entering into a fixed-fee arrangement, although the parties should set a relatively short period between reviews of the arrangement, in order to permit them to monitor its effects.
- **A smaller law firm might have more difficulty** with a fixed-fee arrangement of the sort to which Bracewell & Giuliani agreed because its profitability might be too uncertain to permit so much variation in its hourly return (as opposed to the predictability of its revenue stream). A small

client might also take a greater risk under such an arrangement on account of the smaller range of possible work volume subject to the arrangement.

Greater application of fixed fees in the future?

George is trying to move all of his clients' work to fixed fees and the amount so covered expands steadily. As to new clients, he tries to **break matters into discrete projects** and to apply fixed fees to those discrete amounts of work. In that way, the firm and the client both limit their risk under the arrangement and can review whether to expand the amount of work that the fixed fee covers and the amount of fee as the relationship matures. Recently, George was able to take such an approach for a new client that wanted the firm to assist it with respect to the client's prospective relationship with the federal government as a vendor.

Fixed fees and "value"

George has engaged the above-described clients in considerable discussion regarding their expectations about the firm's work on their behalf. Those discussions center around the concept of "value", if not the word.

The discussions that George has with existing and new clients about possible fixed-fee arrangements lead to a greater understanding by the firm of the client's needs and expectations and the client's understanding of the firm's position. Attorneys working for the clients understand the clients' goals more fully than might otherwise be the case. That understanding and each client's familiarity with the firm's expectations and needs stand the firm and the client in good stead as the relationship continues. The fixed fee and the reliable revenue stream enable the firm to invest in its attorneys, providing them greater education about the clients' needs and businesses.

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