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Successful business leaders understand that having expert legal help can be the difference between prosperity and ruin. Balancing legal costs with getting appropriate and strategic legal advice, however, can be a challenging task, one made all the more urgent given the "new normal" in the national economy. Businesses looking to put profits on the bottom line are often concerned about how best to contain the expense side of the ledger, particularly legal expenses, without sacrificing quality legal counsel. Increasingly, lawyers and clients are evaluating the best ways to address these issues.

Traditional Legal Expenses: The Billable Hour

For hundreds of years, lawyers have billed their clients by the hour. Because lawyers provide to clients their expertise, and not physical products, the sale of time translates naturally into billable time increments. A typical legal bill might show the tasks a lawyer performed on specific dates, with specific amounts of time, usually in increments of tenths or quarter hours. The billable hour makes sense in a variety of contexts, but for clients who require a measure of predictability and visibility regarding legal expenses the traditional legal bill presents challenges. As a result, many law firms and clients are exploring "alternative fee" arrangements. Here are several unique fee structures gaining traction.

Fixed Fees and Capped Fees

In some matters, particularly routine transactions and small litigation matters, fixed fees are an effective way to provide clients upfront predictability on legal costs. These engagements require law firms and clients to agree at the outset of a matter what cost will cover the legal work. Law firms bear some downside risk with fixed fees to the extent the fee ends up lower than the actual work required for the matter. Capped fees are a mix of traditional hourly billing and fixed fee arrangements. Essentially, client and lawyer agree in advance that fees for a particular matter will not exceed an agreed-upon amount. Capped fees give clients predictability, shift some downside risk to law firms, and require careful budgeting and analysis on the front end.

Phased Billing

In certain matters, fixed and capped fee arrangements prevent clients and their counsel from appropriately responding to unpredictable future events, such as unreasonably aggressive adversaries, significant amounts of data to analyze, or unforeseen changes in governmental investigations. One solution to this dilemma involves "phased billing." Here, a law firm outlines the typical "phases" of the representation. For the first phase, the law firm can predict with greater accuracy expected legal expenses, providing the client with a detailed budget and analysis. The law firm provides rougher estimates for future phases of the project. As one phase is completed, the law firm provides a new detailed budget for the next phase. Phased billing provides a client with visibility regarding its legal expenses, along with the flexibility to make adjustments as the matter evolves.

Success Fees

Clients who enter into "contingent fee" arrangements usually agree in advance to pay the law firm a percentage of whatever proceeds are collected from the opposing party. A "success fee," in contrast, usually results when the client agrees in advance to pay a fee for "success." The client and firm define in advance what "success" means. It might mean winning a trial or disposing of the case early on by motion, or, in the transactional world, successfully closing a deal. While success fees do not provide clients with the same sort of predictability as other fee arrangements, they often work to align client and lawyer incentives.

Reverse Contingent Fees

Reverse contingent fees operate similarly to a traditional contingent fee, but instead the fee is based on a percentage of the amount saved by the client in the litigation. Generally, these kinds of arrangements require clients and firms to agree in advance on the fair value of the potential exposure to the client from the litigation. The reverse contingency is set as a percentage of the difference between the estimated exposure and the amount the client ultimately pays in damages or settlement. While these arrangements shift some of the downside risk of litigation to the law firm, it allows firms to forge strong partnerships with the client and effectively manage the litigation to an outcome that is more satisfactory to both client and lawyer.

All Alternative Fee Arrangements Require Teamwork

The fee structures listed here are only examples of a wide variety of arrangements between clients and law firms. One size rarely "fits all." Clients considering these structures should evaluate law firms with alternative fee experience. Alternative fees require lawyers and clients to analyze up front their goals and expectations on a particular matter. They also require early case assessment, upfront planning and budgeting and, to eliminate problems down the road, a written agreement on how the fee arrangement will work. The structures that work the best generally encourage clients and lawyers to work collaboratively as partners to ensure clients get the very best legal counsel in a cost-effective manner.

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