

About This Blog:

This blog is devoted to exploring issues that continue to challenge law firms and their clients and to sharing ideas and tips about how the profession can or is innovating to adapt to the changing world of the "New Normal".

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Posted by [Susan Saltonstall Duncan](#) on Wednesday, 07 November 2012 in [Legal innovation](#)

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Client Service and Value Innovations

This is the first in a series of four related articles that appeared in the ABA Law Practice Magazine – Volume 38 Number 6 – November/December 2012. It is reprinted with permission.

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Article 1:

How Firms are Profiting from Delivering Better Value to Clients

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Four years ago . . .



. . . the Association of Corporate Counsel (ACC) introduced its Value Challenge, "an initiative to reconnect the value and the cost of legal services." Even before this formal call to action by the largest association of in-house lawyers, clients had been demanding better service, efficiency and value for the money from their lawyers. According to Mike Roster, former chair of ACC, "In the past 10 years, costs to U.S. companies went up

20 percent ... except legal costs, which went up 75 percent. Both sides (that is, law firms and in-house counsel) should be concerned with these kinds of numbers. They represent a bubble within a bubble (that is, a legal industry bubble that was growing inside a nationwide/worldwide financial bubble)."

Now firmly entrenched in the driver's seat, clients continue to challenge their firms to:

- Deliver more for less.
- Establish and stick to budgets.
- Provide training and resources for free.
- Become proficient in the use of technology for greater efficiency and project oversight.

The benefits to clients are readily apparent, but are law firms benefiting from responding to these challenges? Are there opportunities for more revenue, or is all this just costing firms time and expense? The answer might lie in the fact that satisfied clients become loyal clients.

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As is well-documented by Frederick F. Reichheld, author of "The Loyalty Effect and Loyalty Rules!," only loyal clients lead to high growth and profitability. Merely satisfied clients are open season for other law firms, whereas loyal clients lead to higher retention rates and ultimately can lead to increased profits of 25 to 85 percent over the lifetime of the relationship. This occurs through repeat business, expanded representation and referrals of new business.

The demand for and nature of legal services is changing dramatically and rapidly, however. Jeff Carr, GC of FMC Technologies and a long-time innovator in legal management strategies, postulates that all legal services today fall into one of four buckets:

Advocacy: Representing clients' interests in relationship to external parties (dispute resolution, complex transactions, negotiations, regulatory matters)

Counseling: Proactive risk identification and mitigation. Advising clients on actions that achieve their business objectives and favor long-term elimination of legal risk over short-term interests without regard to such risks

Content: Providing information about legal issues (e.g., "black letter" law, regulatory requirements, templates and forms)

Process: Moving information from one place to another to create legal work product (generating or analyzing contracts, discovery-based work in litigation or investigation, due diligence)

Says Carr, "Not every legal problem requires a brain surgeon. A high percentage of needs are basic blocking and tackling, and many require just a form." The value that lawyers bring to the table falls almost exclusively into buckets one and two, where the need for the application of judgment is highest. Assuming that Carr is correct about these four buckets, there will be increasing pressure on firms to innovate and differentiate when it comes to the type of solutions they provide, and how value is measured and delivered.

Even if one does not totally buy into Carr's views, there is still a strong business case for why firms must initiate new client service and delivery models. Some firms have taken bold and substantial steps in innovation and are reaping the rewards (see article on page 40). Many clients have made substantial strides in initiating value practices within their departments and with outside law firms (see ACC's article, "[GC Value Insights: What Multinational General Counsel Value Most](#)").

There are several areas in which many firms are focusing their client service and value initiatives to ensure that clients are elevated to truly loyal promoters:

- Commerciality and client-centricity
- Value pricing/alternative fee arrangements (AFAs)
- Client relationship/account management
- Project management, knowledge management and process improvement
- Partnering and collaboration
- Staffing, training and development

Commerciality and Client-Centricity

Clients expect their law firms to understand their needs, problems, business and industry trends, and markets. It isn't just about understanding the business, however. Lawyers need to consider legal strategy and cases in light of clients' legal and commercial objectives. Other qualities needed by lawyers in this area include these:

- Empathy, the ability to put oneself in clients' shoes
- Pragmatism and practicality
- Creativity and bringing opportunities or threats to clients in advance, not reactively
- Flexibility and adaptability

A client-centered focus requires that firms become knowledgeable about the client's business, industry, objectives, organizational structure, competitors, threats, and organizational values and culture. Firms accomplish this by doing more secondary research about a client's industry and the company itself, as well as gathering competitive intelligence. The best way to conduct this deep dive is by interacting with the clients themselves through talking to them, visiting their facilities and meeting those on the business side.

Value Pricing

"The first year of using AFAs is hell. It is often a money loser because no one knows how to do it initially. But once you make it through the first year, you tip into considerable effectiveness from then on. If the firm has done it before, it can then help other clients do it. If a client has been through it, it can help its firms." —Mike Roster

Most now agree that hourly billing detracts from efficiency and too often focuses outside lawyers more on utilization and profits than on process and results. Although many clients seem to prefer the hourly rate as a way to monitor what their firms are doing, the trend is definitely continuing to move in the direction of alternatives to the hourly model. Roster estimates that "there are a number of major companies that now have 40 percent, 80 percent, even 95 percent of their legal work being done on a fixed-price basis, and worldwide. Slowly but steadily, the changes are taking place, and many suspect we will eventually reach a tipping point." According to Altman Weil's 2012 Law Firms in Transition Survey, 80 percent of firms think that non-hourly billing is a permanent change—a dramatic increase from 27.9 percent in 2009. Additionally, according to the survey, "Thirty-three percent of firms that are proactive rather than reactive in their use of AFAs are more than three times as likely to enjoy higher profitability on their non-hourly work."

Interestingly, even in firms that use flat fees with or without hold-backs and bonuses, hourly rates may be used for some of the preliminary case assessment and strategy development. According to both Karen Klein, GC at Kayak, and David Graham, senior counsel at DSW Inc., this approach allows clients to evaluate and articulate objectives and strategy with their lawyers before establishing whether to pursue litigation or settle. Once objectives and strategies have been determined, pricing can be established based on the approach and desired outcome.

According to Bill Lee, former managing partner at WilmerHale, in 2011 the firm produced \$110 million to \$120 million (15 percent of its overall billings) using AFAs. Lee, who initiated the use of value pricing at WilmerHale, believes "AFAs put the incentives in the right place, enhance predictability of cost to our clients and the predictability of fees to our firm. We definitely experience fewer battles over time spent." Lee acknowledges that it can be difficult setting a price that is consistent with effective deliverables, and achieving better alignment between the cost to clients and the value they receive. A total price for a matter is built up from costs and the significance of the matter (including risks). The real challenge for firms is distinguishing between their actual costs versus costs plus partner profit. AFAs help ensure that firms are efficient so that costs reflect an effective process.

To allow clients to determine whether or not they received value, several firms permit clients to make the final decision about what the firm gets paid. Summit Law Group, a 32-attorney firm in Seattle, pioneered the concept of the Value Adjustment Line, which is now also used by Valorem Law Group. Bartlit Beck allows clients to measure and reward on the basis of perceived value and outcomes, and since 1980, Mark Robertson of Robertson & Williams has successfully used a fixed fee with success feature option—a results-oriented agreement made up front that an additional amount would be paid on top of the flat fee based on a specified desired result or outcome.

Client Relationship/Account Management

As stated earlier and discussed in earlier post [Strategic Account Management](#)

As stated earlier and discussed in earlier post **Strategic Account Management Must Be About Client Value First, Not Sales**, loyal clients lead to greater long-term stability and profitability for law firms. Firms that understand this have instituted many initiatives to ensure continuous improvement and optimal service. Leading best practices include:

- Designating one partner as a central point of contact who is accountable for oversight of the relationship (as distinct from matter/case oversight)
- Key client teams focused on service plans developed jointly by the firm and the client, not those designed only to cross-sell or sell more services
- Regular feedback through formal interviews, after action or end-of-matter surveys and debriefings, where the feedback is shared and acted upon. This also includes client-hosted evaluations and 360-degree reviews done among the Pfizer Legal Alliance firms
- Client advisory boards
- Client service plans, protocols and standards
- Client and customer service training for lawyers and staff

FMC Technologies provides several types of feedback to its law firms using its **Alliance Counsel Engagement System (ACES)** framework centered on six core competencies: understanding FMC Technologies' goals, expertise, efficiency, responsiveness, predictive accuracy and effectiveness. These are the same evaluation criteria used in the Serengeti Tracker matter management system as well as in the ACC Value Index.

For every matter, expectations are established up front and the in-house lawyers input evaluations quarterly to ensure timely collection of performance data. At the close of the matter, evaluations are done by both the in-house team and the outside lawyers and discussed with the lawyers on the specific matter. Annually, the FMC Technologies Legal Team attorney responsible for the relationship with the firm reviews with each alliance firm their ratings on all their matters —which are up versus down, individuals who might need coaching, specific areas of concern and ways to address any issues. Carr also allows firms to see how they are doing relative to the other alliance firms the company works with. Carr believes that if performance reviews are done correctly, "they are not about the past but about the future, with a focus on continuous improvement."

Project Management, Knowledge Management and Process Improvement

Firms continue to experiment with and implement better methods of matter management, budgeting, information sharing and knowledge management. Although extranets have long been used, there are new platforms to enable multiple firms working collaboratively on behalf of a client to share work product, case strategy, precedents and other resources. The Pfizer Legal Alliance knowledge-sharing platform does this. Many firms are using technology to enable better budget and project planning and oversight, to enable monitoring in real time of costs versus budgets, and also to conduct the first level of discovery analysis. Cisco has invested substantially in technologies to enhance efficiency, reduce labor costs and develop a robust knowledge management platform. Cisco, through Legal OnRamp, now licenses its knowledge management tool, OnRamp Exchange (ORX), to other legal departments and law firms.

At the cutting edge of process improvement is Seyfarth Shaw, which for years has invested substantially in Lean Six Sigma, a process used by manufacturers to eliminate errors and waste in processes. All the lawyers and staff have been trained in basic Lean Sigma, and senior leaders of client teams continue to receive advanced training. The firm has more than 30 Project Management Professional (PMP)-certified individuals on staff who participate on client teams and help oversee project management.

Other firms offer online legal services and resources in areas such as compliance, e.g., LawInContext, a global compliance tracker and training platform developed by Baker & McKenzie; an import/export restrictions online resource and wireless spectrum due diligence workflow system, both at Bryan Cave; and many automated processes, service offerings and databases at Littler Mendelson.

Staffing and Collaboration

As noted earlier in Carr's model, much legal work does not require highly experienced lawyers. Not only are clients balking at paying to train new associates, there are several staffing alternatives that now bring better cost-efficiency to clients:

- Virtual law firms such as Clearspire that have invested heavily in technology and non-lawyer professional management to reduce costs to clients and virtual law partners
- Legal Process Outsourcers (LPOs) such as CPA Global, Office Tiger, Novus Law and Pangea3 to provide routine contracts, legal research, document review, discovery and IP
- Experienced former BigLaw and in-house lawyers provided on a project basis directly to clients by companies such as Axiom, Outside GC, General Counsel on Demand, Paragon Legal and Zent Law. Montage Legal provides high-level project-based lawyers to law firms.
- Lower-cost contract lawyers employed in law firms for e-discovery and routine tasks. In some cases, these are housed in less-expensive markets as are WilmerHale's team in Dayton, Ohio; Orrick's in Wheeling, W.Va.; and Herbert Smith's in Belfast, Ireland. Others employ them within their existing offices, e.g., BuckleySandler, Freshfields and Eversheds. In the case of Berwin Leghton Paisner, this is a separate subsidiary of the firm called Lawyers on Demand. Womble Carlyle launched its Case Management Facility in 2007 and has worked with more than 200 law firms as well as the law firm's clients.
- Legal automation and e-discovery vendors
- Content providers such as Practical Law Company, LegalZoom and Lex Machina (for IP trends and reports)
- Knowledge management aggregators and training consultancies such as Legal OnRamp and LRN
- Law firms are experimenting with ways to maximize teamwork within their firms. Eversheds uses an open office plan. Summit Law Group gives every employee of the firm an office but no one gets a corner office, and like Bartlit Beck, there are no firm committees or bureaucracy.

Clients are asking firms to work collaboratively with lawyers in other firms—not just in the traditional way of national and local counsel. They want to build the best team of lawyers for each case or transaction, without regard to what firm they come from, and require them to share strategy, knowledge and resources. Most firms have responded well to this, and in the case of more-formal collaborations such as those imposed by the Pfizer Legal Alliance, they are reaping genuine benefits from these team approaches.

Not every law firm will have the appetite to engage in all of the service and value innovations being explored today. But no firm can afford to ignore the shift in what clients expect from their firms and what is now available to clients through alternatives, including technology and other staffing models. No one can afford to stand still and not at least try to apply better methods to project management, the pricing of services and the value they deliver.

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