



Law Firms at Work: How Legal Services Are Delivered

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Table of Contents

I. Introduction	1
II. How Law Firms Work	1
A. The Basic Economic Model	1
B. Pros and Cons of Large/Mid-Sized Firms.....	3
C. Pros and Cons of Small and Boutique Firms, and NewLaw.....	4
D. Pros and Cons of Alternative Legal Service Providers.....	5
III. Paying for Legal Services	6
A. In-House Counsel v. Outside Counsel	6
B. Retainers	7
C. Hourly Rates.....	8
D. Billing Transparency	10
E. Alternative Fee Arrangements	11
IV. Assembling a Legal Team	14
A. Evaluating a Lawyer or Law Firm	14
B. Legal Project Management	17
V. Conclusion	18
VI. References.....	19

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I. Introduction

Engaging a lawyer is often an intimidating experience. If you are unfamiliar with the cost of legal services, you may initially feel some sticker shock. And on top of that, you may wonder how to know you are getting quality work that is worth its cost. What's behind an informed decision? Transparent information about how law firms operate would help. Historically, the legal services industry has not been transparent with its economic model, profitability margins, and staffing structures. For this and other reasons, lawyers are not the trusted advisors they once were, and the industry's reputation is not one of truth and openness.

This white paper discusses how law firms work, what questions to ask when engaging a lawyer, and how to bring good stewardship to your legal services budget. First, it reviews law firm economic models generally. It examines the pros and cons of services from large firms, small firms, and alternative service providers. Then, the paper explains how lawyers commonly charge for their services, discussing various billing models and how to tell if you are getting what you paid for. Finally, the paper walks through how to build your legal team, discussing when it is a good idea to engage a lawyer, and what to consider to meet your unique needs.

II. How Law Firms Work

A. The Basic Economic Model

To make informed decisions about legal services, you must understand how law firms work economically.

Billing is the first economic driver. The following scenario sums up the idea:

If you are an attorney and develop a successful practice, at a certain point your reputation leads you to have more business than you can handle by yourself. You could take on employees and pay to train them, but there is little incentive for them to stay unless you pay them more money each year and provide some future hope that they'll eventually be your partner. Above all else you can't risk losing them to someone else or their own firm—you would lose all the training expenses, and you might lose the clients as well. So attorneys created a system where you get very hard work out of many associates, and promise that a percentage of them will be partners after a certain number of years. You're ensured competitive workers, low transaction costs, large profits, and an infinite growth in your firm, as long as the partner-to-associate ratio stays constant or increases.¹

¹ Marc S. Galanter and Thomas M. Palay, *Large Law Firm Misery: It's the Tournament, Not the Money*, 52 Vand. L. Rev. 953 (1999); see also Andrew Canter, Melissa Magner, Mehdi Miremadi, *The Law Firms Working Group Annotated Bibliography on Large Law Firm*



While exceptions exist, the quote above exposes the rationale for the basic billing structure undergirding most large law firms. They leverage the work of many attorneys to create economies of scale and higher profits for owners—usually with all lawyers billing at an hourly rate.² Many law firms, large and small, have adapted to this “BigLaw” economic model.

In this system, the longer the legal work takes, the more money the lawyer or law firm makes. So, lawyers are tasked to “bill” a certain number of hours each year, whether they actually have that much work or not. Common critiques of this system are that it incentivizes over-billing of matters, does not encourage transparency, and is not client-focused.³

A law firm’s profitability in this model depends in large part on its rates—the amount of money per hour charged for services. Primarily, this is known as the “billable hour.” The higher the billable hour, the greater the potential profit. Conventional wisdom and common business advice for lawyers suggests that law firms should raise rates annually. Historically, rates went up much faster than most firms’ increase in costs. More recently, however, market pressures have pushed back on these steady increases.

Realization is the second economic driver. “Realization is the percentage of money collected versus the standard rate.”⁴ Several factors can affect realization, such as discounts given to clients and writing off work either before the bill is submitted to the client, or after the client receives the bill. For example, an attorney may charge \$300 per hour, but she may offer clients a discount if they pay their bill promptly, so she does not actually collect \$300 per hour for the work. Or a client might push back on a bill, arguing that the attorney spent too much time on a project. If they settle at a 10% discount because of the dispute, the attorney realizes 90%.

Utilization is the third driver. Utilization is the number of billed hours per attorney. Recent data collected reveals that lawyers as a whole spend much of their time on non-billable work: on average, lawyers spend only 2.3 hours in a typical 8-hour workday on billable work.⁵ Other time goes to administrative work, business development, or pro bono work. More time per day spent on work that

Economics, Stanford Legal Professions Workshop Under the Supervision of Deborah Hensler (Jan. 2007).

² Roger E. Barton, *Square pegs, round holes: Does the traditional law firm business model fit the needs of clients, or even most lawyers, anymore?*, Thomson Reuters (June 2017) available at <http://www.bartonesq.com/wp-content/uploads/2017/07/RogerE.Barton-Square-Pegs-Round-Holes-...-Thomson-Reuters-Westlaw-Journal-article-June-2017.pdf>.

³ Harrison Barnes, *Law Firm Economics and Your Career*, <https://www.bcgsearch.com/article/60408/Law-firm-economics-and-your-career/> (last visited Sept. 11, 2018).

⁴ 3 Geeks and a Law Blog, *The Economics of Law and the Future of Legal KM – Part 1-5* (Oct. 23, 2012), <http://www.geeklawblog.com/2012/10/the-economics-of-law-and-future-of.html>.

⁵ *Id.*



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can actually be billed to the client, or that can generate revenue, results in a higher utilization rate, and thus, more potential profits.

These first three profitability drivers relate to incoming revenue. A fourth driver relates to expenses. Regardless of its size or business model, a law firm makes money on revenue, minus operating expenses. Overhead can be very high for law firms. Actual expenses for a law firm include staffing costs (such as salary, benefits, or taxes for staff), real estate/office space, professional liability insurance, equipment, software subscriptions, marketing or business development, training, bar dues, recruiting, retreats, and library costs. Overhead varies based on the size of the firm. A solo practitioner working out of her home with no other employees will have very low overhead, which can either be passed on in the form of lower rates to clients, or result in more take-home pay for the lawyer. But that lawyer is also limited in how much work she can do in a year, even more so because she must not only practice law, but run a small business (her own firm) as well. As a successful law practice grows, so does overhead. The firm makes money when it can bring in more revenue than it costs to do the work—just like most businesses. For most firms, profitability is about finding the sweet spot between minimizing overhead and maximizing revenue generation.

So why does all this matter? Understanding the economics behind a law firm helps make sense of why lawyers charge what they do, as well as why there is so much discrepancy among lawyers' individual rates.

Most law firm economic structures are variations on this theme, depending partly on the size of the law firm. Different law firm sizes and structures have different pros and cons.

B. Pros and Cons of Large/Mid-Sized Firms

Large law firms are the most well-paid and are chosen for the most high-profile legal work. The reason for this pattern may very well boil down to two things: reputation and resources.⁶ First, reputation is one of the main things provided by a large law firm. Clients don't simply engage law firms; they hire brand names. Large law firms recruit some of the country's most brilliant legal minds (to the extent that brilliance equates to law school performance). They have vetted these attorneys and can guarantee clients some degree of certainty about quality. These firms spare no expense to ensure that the organization has hired the best of the best in terms of name recognition and reputation. Large corporations approach this intentionally as a way to insure against backlash if things go wrong. So, for "bet-the-company" litigation, hiring a large firm is usually viewed as a conservative decision. Others may also like the idea of working with a "top brand."

Another key advantage of a large law firm is resources. These can include both information and bench depth. Traditionally, access to resources was a key advantage for them. Large firms had their own law

⁶ Glenn Harlan Reynolds, *Small is the new Biglaw: Some Thoughts on Technology, Economics, and the Practice of Law*, 38 Hofstra L. Rev. 1, 6 (2009).



libraries and superior access to expensive electronic repositories with specially designed search engines. The information advantage has mostly disappeared. Nearly all legal libraries are now digitized, and powerful software is affordable for nearly everyone. Firms of all sizes have electronic access to much of the same information. Some “insider” information is uniquely available to the large firms, but that access comes at a high price.

Large law firms can still boast of greater bench depth. They have many lawyers on staff in a variety of specialties, or with extensive experience in a specific area. The collective value of the lawyers’ experience cannot be understated.

But large law firms also come with high price tags. Most obvious is the high cost of services. The average billable hour for a lawyer nationally is about \$260/hour.⁷ That number goes up in large metropolitan areas and goes down in regions with lower costs of living. Large law firms are typically double the average rate, and they may be over triple that rate or more for the work of respected equity partners. The number of hours billed at large firms is often quite high due to the pressures of the economic model already described.

The pressure is often amplified for new lawyers who are paid high starting salaries at the largest firms but are still learning the ins and outs of legal practice. Here’s a handy illustration: In order to support a brand-new lawyer’s \$160,000 starting salary (and her share of firm expenses), a large firm might need bill that lawyer’s services at \$325/ hour and institute an aggressive billable hours quota in order to make a profit.⁸ While lawyers don’t come out of law school knowing nothing, they are essentially getting on-the-job training at high prices. In recent years, many clients have refused to support this model, and require more experienced attorneys or reduced rates for junior lawyers.

And, lots of money does not always deliver high quality or the best legal work. It may, or it may not, depending on the lead attorney’s ability and how the matter is staffed with respect to using less experienced associates. Many senior and highly experienced attorneys are poor supervisors. Also, in recent years, large law firms have often experienced high turnover of associates and partners, likely affecting legal team dynamics and performance.

C. Pros and Cons of Small and Boutique Firms, and NewLaw

At the other end of the economic scale live small and boutique law firms. Solo practitioners are single-lawyer operations. Small firms are typically those with ten or fewer attorneys. Boutique firms are often

⁷ See Clio, *2017 Legal Trends Report* (2017), <https://www.clio.com/resources/legal-trends/2017-report/> (hereinafter “Clio Legal Trends Report 2017”).

⁸ See Trenton H. Norris, *Law Firm Economics 101*, Arnold & Porter LLP (Presentation to Berkeley School of Law, March 13, 2012), available at https://www.law.berkeley.edu/files/careers/Law_Firm_Economics_101_Mar_2012_Berkeley.pdf.



small to mid-sized firms, but are categorized based on their specialty rather than on their size. Rather than creating economies of scale with efficiencies through volume, smaller firms tend to have lower overhead. Their models may be a smaller version of “BigLaw,” or they may have a higher proportion of partners with fewer associates to leverage.

Small firms will not have the reputation or resources of a large firm. Clients must work on the front end to “vet” smaller firms in order to be sure the attorney they are hiring is well-qualified to do the legal work. Some clients may find that research intimidating.

Some small firms cannot handle the size or scope of some types of legal work because they are unqualified to do so. They may also lack the bench depth to staff a matter for a specialized question, or to put together a team for litigation. But many small firms are willing to bring on other attorneys as co-counsel or contract workers to provide that depth to a client, so the client does not have to find an attorney for each different matter. Whereas such staffing would be done internally within a large firm, small operations must go outside the firm in order to provide those services. How each firm or lawyer handles such team building varies greatly.

Yet small firms have several pros. Typically, they can offer significantly lower rates. They usually have simpler offices and support fewer staff. They usually strive to be efficient, and to keep down overhead. They can pass those savings along to clients in the form of a lower billable hour. Smaller operations also typically get matters going quicker due to fewer conflicts and less internal bureaucracy. And, with less bureaucracy, they usually have more flexibility to offer a variety of fee structures and payment options.

Boutique firms, in particular, can bring a wealth of expertise and knowledge to a niche matter. They often use highly trained attorneys who are no longer working in “BigLaw” for one reason or another. Because of their specialized focus, they may bring a reputational advantage as well.

NewLaw has been described as “a flexible alternative to the BigLaw business model.”⁹ It seeks to move away from the traditional “BigLaw,” model, for example, by using more part-time attorneys and contracting outside workers, sometimes from companies that provide legal services on an as-needed basis.

D. Pros and Cons of Alternative Legal Service Providers

Alternative legal service providers have emerged recently. Some of these are law firms, but most are not. Some offer unbundled legal services in specialized ways. They might assist clients in finding a

⁹ Iliina Rejeva, *What is NewLaw and How It Is Changing the Legal Industry Forever!* (Apr. 26, 2016), <https://legaltrek.com/blog/2016/04/what-is-newlaw-and-how-it-is-changing-the-legal-industry-forever/>.



contract lawyer or create routine form documents (LegalZoom). They may perform tasks traditionally done by lawyers, such as document review in litigation.

The obvious pro of these services is how the cost becomes a fraction of what is typical for a law firm. Yet considerable risk accompanies using them. Most of these services disclaim all liability that might arise from using their forms. Law firms cannot dodge that sort of accountability. If you get in trouble because something was wrong with an alternative service provider's form, you may have no recourse—no valid claims for compensation or for assistance in correcting the errors. Unlike these alternative legal service providers, normal law firms have a legal duty to you and can be sued for malpractice if their advice was demonstrably wrong. Fixing mistakes can eat up all of what got saved by using “cookie-cutter” services and more.

Although what they can offer is somewhat limited by regulations governing the legal industry, these kinds of providers are expanding in the marketplace.

III. Paying for Legal Services

A perplexing aspect of engaging legal counsel is understanding how legal services are purchased. This process is not always transparent. You can purchase legal services in several ways.

A. In-House Counsel v. Outside Counsel

An organization can staff its legal services through in-house counsel. Such counsel is on staff with the organization, and usually handles the routine legal questions and matters that the organization confronts on a day-to-day basis. In-house counsel can provide many benefits to an organization. Counsel is familiar with the organization. He or she understands the operations and challenges. And in-house counsel can manage outside counsel for broader legal projects, provide business advice, anticipate legal needs, and respond quickly to legal questions.

For some organizations, in-house counsel might save costs, but some experts say such saving is actually rare. While bringing your legal spend in-house may provide efficiencies, some factors may make costs go up. Having a trained legal eye in the organization may uncover legal issues that should be addressed, leading to more focus on legal work (but perhaps also to a better-run organization). In-house counsel will often not have the experience or specialization of an outside firm or team of lawyers and will still need to consult with outside attorneys on certain matters. Some matters, such as defense litigation, will need more resources than can be devoted internally. And you may have to pay in-house counsel a generous and constant salary whether or not legal matters arise.

Successfully using in-house counsel requires several conditions. First, the organization must actually have enough legal work to keep the full-time lawyer busy. Second, the organization must be willing to pay the salary commensurate with a high-quality lawyer who would, of course, otherwise be able to



command a high salary in a law firm. If the organization cannot afford that salary, it has two options. One, it can hire a high-quality lawyer who is willing to be underpaid because that lawyer believes in the mission of the organization (much like all the other professionals in the organization). Alternatively, it can hire less highly qualified counsel.

Because having in-house legal counsel is not for everyone, and you may at times need outside counsel anyway, managing legal spend on outside counsel still must be evaluated. Understanding aspects of how lawyers and law firms typically charge for their services and how clients can ask for transparency and accountability in this process is a first step to good management.

B. Retainers

Work with lawyers often involves retainers. A retainer is a sum of money provided to the lawyer for a specific purpose. The three main types of retainers are: availability retainers, hybrid retainers, and security retainers.

The availability retainer ensures the lawyer is available for a certain period of time, and it is usually paid on a monthly basis.¹⁰ These retainers pay for the lawyer to make the client a priority, or to ensure the lawyer will be able to take on a client's matter if an occasion arises. For instance, the lawyer will not take on any other client where there would be a conflict of interest. These retainers do not pay for the actual legal work provided. They are not fee advances or prepayments for future legal services. This type of retainer is earned by the lawyer when it is paid and is nonrefundable.

In practice, these types of retainers are rare and are disappearing due to the competitive nature of the legal profession. Many lawyers are willing to be available to their clients as the cost of doing business. The rise of in-house counsel may also have something to do with the decline of this practice. Companies who might have once kept a lawyer on retainer now move that spend in-house and have a lawyer on staff to answer quick questions. The availability retainer would typically only be used for attorneys whose services are irreplaceable and are likely to be desperately needed.

For organizations that are not quite ready for in-house counsel, firms have developed hybrid availability retainers where clients get a little more than just the lawyer's availability. In exchange for a monthly fee, the client will get a set number of hours of the lawyer's time each month. These hours can be used for legal questions, attending board meetings or other important organizational meetings. The hours disappear (sooner or later) if not used. Such retainers benefit the attorney by guaranteeing a predictable and consistent spend for legal work. The benefit to the client is less clear for retainers at full rather than discounted rates. In some versions of the model, the monthly legal hours are discounted and can roll over fairly generously if not used. The client may also get discounts for further legal services. Retainers

¹⁰ Douglas R. Richmond, *Understanding Retainers and Flat Fees*, 34 J. Legal Prof. 113 (2009).



that provide discounted services can be a good solution for organizations that consistently have legal questions and want some consistency in legal spend but cannot justify the expense of full-time in-house counsel.

A security retainer is the third type. “A security retainer is intended to secure the client’s payment of fees for future services that the lawyer is expected to perform.”¹¹ These retainers are paid up front and deposited in a lawyer’s trust fund account for safe-keeping. Then, as the lawyer does work for the client, the money is earned and becomes the lawyer’s property. One type of security retainer is an “evergreen retainer.” Rather than billing down the retainer as the fees are earned by the lawyer, the lawyer separately bills for the services and keeps the retainer intact. At the end of the engagement, the lawyer then bills the final amount out of the retainer or refunds it all. This type of retainer minimizes risk that the client will not pay. Whether these retainers are required depends on the structure of the law firm and the strength of the client relationship. But until the money is earned, it is still the client’s money.

For the most part, retainers operate within the billable hour model, although they may also work with some alternative fee arrangements, as discussed below.

C. Hourly Rates

The vast majority of lawyers charge for their services on an hourly basis: the “billable hour.” This model, however, was not always the way lawyer services were charged. Historically, lawyers operated like many other service providers and simply quoted a price up front, or submitted a bill at the end of the matter based on the lawyer’s best guess as to the value of the work. “It was not until the 1950s and 1960s that timekeeping became routine.”¹²

The shift occurred for several reasons. As clients became savvier and more cost-conscious (and likely lost a level of trust with counsel), they began to demand more transparency into why they were being charged a certain amount. The billable hour is one of the easiest ways to provide such transparency because it relies on straight time spent on the matter with the lawyer describing how that time was spent. In addition, lawyers discovered that by keeping accurate time records they could actually make more money through hourly billing.

The pendulum is now swinging back in the other direction, with clients wanting more alternative fee arrangements that are not tied to the billable hour, reminiscent of the days of old. But the billable hour is still the primary model.

One reason for this model’s staying power is the uncertainty of legal disputes, and in turn, how the time required to resolve a matter may be impossible to predict. For instance, when might an employment

¹¹ *Id.* at 116.

¹² Commission on the Billable Hour, American Bar Association, *ABA Commission on Billable Hours Report*, (2001-2002).



discrimination matter end? Will it resolve after just a few emails, or will it take months of negotiating with many emails and long phone calls? Another reason is that clients still dislike being handed a bill with a round number that captures what the lawyer thinks the matter was worth. For example, is a short email with legal advice that helps the organization avoid serious trouble worth \$50? \$500? \$5000? \$50,000? Because of these and other practical realities, the billable hour is still ubiquitous.

So how do lawyers typically set their hourly rates? Billable hours vary widely but are typically based on factors like the size of the law firm, the individual lawyer's experience and credentials, seniority at a firm, geographic location, practice area, firm overhead, and, perhaps most importantly, the market (what clients are willing to pay). Some say that rates are really set by the market, based on three factors: (1) geography; (2) firm size; and (3) years since graduation.¹³ Lawyers may have different rates for different clients, or for different types of matters, such as a discounted rate for nonprofits.

Most law firms build overhead into the billable hour. So, the hourly rate includes, at least to some extent, the overall cost of doing business. Firms with high overhead need their lawyers to bill at a higher rate to support it (or, alternatively, take home less profit). As explained above, profitability for a firm is closely tied to the rate it charges.

Based on recent data, average hourly rates for the largest metropolitan areas around the country are as follows:¹⁴

- ✓ Los Angeles: \$323
- ✓ Dallas: \$300
- ✓ Houston: \$276
- ✓ Chicago: \$312
- ✓ Atlanta: \$293
- ✓ Miami: \$310
- ✓ Washington DC: \$304
- ✓ Philadelphia: \$245
- ✓ New York City: \$344
- ✓ Boston: \$287

In Colorado, hourly rates for lawyers average about \$240 per hour. More experienced lawyers will charge more, while less experienced lawyers may charge less.¹⁵ Lawyers in large metropolitan areas like

¹³ Jay Shepherd, *Small Firms, Big Lawyers: How Do You Set Your Billing Rates?*, Above the Law (Apr. 18, 2011), <https://abovethelaw.com/2011/04/small-firms-big-lawyers-how-do-you-set-your-billing-rates/>

¹⁴ Clio Legal Trends Report 2017, *supra* n.7.

¹⁵ *See id.*



Denver on average will be more expensive than lawyers in rural areas. Larger firms will typically charge more than smaller ones. So, in some ways, the average rate means little.

Charging for legal services by the hour has pros and cons.¹⁶ When determining whether an hourly billing model is best for a particular project, consider these factors.

Pros	Cons
A simple way of measuring productivity	Rewards inefficiency
Law firm gets paid no matter the outcome	Creates budget uncertainty for clients
Familiar and comfortable for lawyers	Doesn't differentiate the value of the work
Easy pricing method for clients	Stressed and overworked lawyers

While tempting, multiplying these hourly rates by 40 hours a week to see what lawyers “make,” is misleading. One recent survey showed that in a given 8-hour workday, the typical lawyer bills only about 2 hours.¹⁷ Utilization rate is the amount of billable time worked by a lawyer (billable hours worked divided by the available workday hours). It goes up as the law firm gets larger. This trend likely happens because in a larger firm, more administrative work (which is not usually billed to clients) gets done by non-attorney staff members.¹⁸ And when legal professionals work more than 8-hour days, their utilization rate becomes proportionally lower.¹⁹ In any case, what a lawyer actually “makes” must account for overhead and all the unbilled hours as well.

D. Billing Transparency

In the billable hour model, attorneys track time spent on a given matter and then bill the client for that time. But how can clients know whether the amount of time spent on a given matter is appropriate? Some of this insight comes from experience in working with lawyers and from familiarity in handling legal matters. But it helps to understand how lawyers track their time and calculate the bill. It also helps to expect accuracy in timekeeping and to demand that lawyers describe in clear ways how they spend their time.

Checking for accuracy in timekeeping helps ensure that lawyers charge fairly for services. Some lawyers do a poor job at tracking time. They recreate time entries based on their best guess at the time spent on the work, rather than “billing in real time.” Billing in real time requires some device to track the time while the work is being done. Disputes about accuracy in timekeeping are so prevalent that paid services actually exist to provide legal bill review.

¹⁶ Iina Rejeva, *The Anatomy of the Billable Hour* (Nov. 16, 2015), <https://legaltrek.com/blog/2015/11/the-anatomy-of-the-billable-hour/>.

¹⁷ Clio Legal Trends Report 2017, *supra* n.7.

¹⁸ *Id.* at 10.

¹⁹ *Id.*



Poor timekeeping in today's market is without excuse. Technology provides lawyers with many tools. Most attorneys have access to practice management software that inevitably includes tools to track and record time. The available technology has many levels of sophistication. Some software is nothing more than a glorified stopwatch. Some software tracks what matter the attorney is working on and automatically logs time spent. Others trigger a reminder to log the time when the attorney switches to a different task. If your lawyer bills by the hour, ask how time is tracked.

The increments used for tracking time and how those increments get recorded is another important nuance. Standard industry practice has lawyers charging clients in tenths of an hour (6 minute) increments. Some lawyers will charge in quarter hour (15 minute) increments. Some lawyers start and stop a timer when they work on your matter, such as when typing an email to you. Others bill a minimum tenth or quarter hour every time they turn to your matter. To some extent, this is justified, as when an attorney copes with a client who needs frequent answers that interrupt other work and require a change in focus. But such "rounding up" can add considerable time to a matter. This is another area worth asking about in order to gauge transparency in billing.

Be aware of how often you will be billed for a matter. Lawyers often bill clients once a month, but some will wait to send the bill until the matter is over or may wait several months before sending a charge. Others bill more frequently, especially during litigation.

To understand a lawyer's hourly billing, you need enough information to understand what the lawyer was doing. Typically, lawyers provide this information to clients through regular updates and communication, and also through regular billing with descriptive invoices. These invoices have detailed entries for each segment of time. Entries should have sufficient information for the client to know what they are being charged for. An entry like "email to client" might not tell the client much. But if the entry states "Emailed reply to Mr. Doe's email inquiry about latest motion detailing next steps to take before the deadline," it makes more sense why 10 minutes was spent on the email. Time entries are an art; some lawyers are good at them, and some are less so.

Another factor may be that some organizational clients do not want to receive extremely detailed invoices on sensitive matters, because of confidentiality issues. Note that reviewing an invoice for legal work that just happened is usually easier, because you still remember what the discussion and communications were about. You may receive abbreviated time entries for several reasons, but you should always feel comfortable asking your attorney about anything you don't understand. You should also feel comfortable asking for more frequent billing, so you feel current to the work described.

E. Alternative Fee Arrangements

In recent years, Alternative Fee Arrangements or AFAs have become popular. AFAs attempt to move away from the strict billable hour. They provide flexible arrangements that focus more on the value of the lawyer's service and its worth to the client.



Within these systems, the lawyer's cost to provide services remains a reality.

Fees for lawyers can be structured differently than the billable hour in many ways.²⁰ Their nature depends on the client's goals, the type of matter, and the attorney's willingness to participate. Here are some of the most common models.

Contingent or Success Fee

Perhaps the most well-known alternative fee arrangement is the contingency fee. It is usually used in litigation. In this model, the client does not pay the lawyer's hourly rate, but instead, agrees to pay the lawyer a percentage amount based on the amount of money collected at the end of the matter. Typically, this will be about 1/3 of the outcome. In some cases, this will lead to the lawyer getting more than what would have been received from charging by the hour. It often results in less. Payment is tied to the level of success in the results. Lawyers typically will not take cases on contingency unless the chance of recovering the overhead cost of the work plus profit for the attorney is very strong. In this model, the lawyer is taking on significant risk for the potential of a greater reward. Because litigation may involve hundreds of hours of work, an attorney is not likely to take a contingency case without a significant financial reward. Potential clients are often disappointed that they cannot access this model when their matter is not actually worth very much in terms of final dollars.

Fixed or Flat Fee

Rather than billing by the hour, a lawyer may charge for work based upon an agreed-upon overall rate for the matter. For example, a lawyer may charge \$2000 to draft a contract, rather than billing for the time it takes to draft it. This model gives clients and lawyers predictability, but not always a cheaper effective rate. Conceptually, it is not intended to, because it is based on high quality templates and the lawyer's skill and experience to apply those templates to a given situation.

Task or Unit-Based Billing

When budgets matter in litigation or a complex transactional matter, task-based billing looks at what kind of tasks will be involved and then sets the budget based on that work. In some cases, this leads to a flat fee, and in others, only to a matter estimate.

Retrospective Fee Based on Value

The retrospective fee is how legal services were historically paid. The lawyer would perform the work, and then at the end of the matter, would send the client a bill based on the perceived value of the

²⁰ Mark A. Robertson, *Marketing Alternative Fee Arrangements*, ABA Law Practice Magazine (Sept/Oct. 2011), available at https://www.americanbar.org/publications/law_practice_magazine/2011/september_october/alternative_fee_arrangements.html.



services provided. It is no longer common because it does not provide predictability for either the lawyer or the client. It may be an option where the client and lawyer have a very well-established relationship. In some situations, where the lawyer brings high expertise and the client is wealthy, the client may pay a large bonus based on value delivered. It can also be combined with a budget range at the outset to give a bit more predictability and structure to the arrangement.

Blended Hourly Rates

Rather than billing for each individual lawyer's time at their unique hourly rate, a blended rate provides one set amount regardless of who works on the file. For example, if a senior lawyer charges \$275 per hour, and a more junior lawyer charges \$225, the blended rate might be an average of the two at \$250 per hour. The client ends up paying more for the junior lawyer's time, but less for the senior lawyer. This can be effective if the senior lawyer is good at mentoring and supervising, but risky otherwise.

Fee Collars

In fee collar arrangements, the client and lawyer agree to a minimum and a maximum fee for a given matter. This is technically actually a budgeting tool rather than an alternative fee arrangement, since it typically still uses the billable hour as the standard for the work charged. Still, it can limit the maximum fee charged.

Fixed Fee Plus Hourly

In the fixed fee model, certain work is charged at a fixed price, with other work charged at the hourly rate. A good example of this arrangement would be work on a child protection policy. The lawyer might charge a fixed rate to perform the initial review of the policy, then charge hourly for additional discussion and work on drafting changes to the policy or for further review in light of changes or additions.

Fixed Fee Plus Success Fee or Contingency

The fixed fee plus success or contingency fee is another hybrid fee arrangement where a modest fixed or flat fee is initially charged, but then a percentage success or contingency fee is taken if the desired outcome is reached.

Hourly Rate Plus Success Fee or Contingency

Under this similar hybrid of hourly rate plus success or contingency fee, the lawyer charges a lower hourly rate for work, and then takes a lower percentage contingency fee if there is a successful result.

High-Low

The high-low is a hybrid fee arrangement for litigation, where the client is charged a lower hourly rate, which will be changed to a higher rate if the client wins. The higher rate is usually more than the



lawyer's normal rate. This can be considered a modified contingency fee, and is most popular in situations where statute or contract has the loser paying the attorney fees of the winner (shifting attorney fees).

Regardless of the structure a lawyer uses to charge for his or her services, the overall fee charged to a client must be reasonable. Lawyers are bound by professional rules of conduct to make certain that their fees and billing conform to this standard.

IV. Assembling a Legal Team

When assembling a legal team, you need to know how to vet a lawyer or law firm and what questions may be important to ask. This section outlines some considerations for evaluating a lawyer or law firm. Then it addresses some important points in legal project management to help ensure the representation goes smoothly.

A. Evaluating a Lawyer or Law Firm

How can you tell if you are getting a good lawyer or law firm? While there are many factors that you should carefully consider, here are some insights.

Good Standing

Lawyers are in a self-regulated profession, which means that the judicial branch of each state ensures that lawyers are licensed and are accountable to the applicable code of lawyer ethics. Many states allow the public to get information about a particular lawyer. In Colorado, for example, the public can search online at www.coloradosupremecourt.com for a lawyer and see whether the lawyer has any disciplinary history or is a lawyer in “good standing” and is active. Being active means that the lawyer is currently practicing law in the state. For “good standing,” Colorado lawyers must have passed the bar, have met required continuing legal education requirements to stay current on the law, and have generally kept out of trouble with attorney regulation counsel. That counsel is the body that investigates allegations of lawyer misconduct. Good standing is a baseline that all lawyers should meet.

Credentials

A lawyer's initial “credentials” relate to factors like academic success. Did the lawyer go to a top law school, either nationally or regionally? Did the lawyer graduate at the top of the class, or barely squeak by? Such credentials may give a baseline indication of academic drive and analytical thinking ability. How well a student writes has a big impact on success in law school.

Did the lawyer complete a judicial clerkship? Judicial clerkships are typically one-year positions serving as a lawyer for the judge's chambers, assisting with research, writing, and other tasks for the judge. Clerkships are highly competitive, especially at the state appellate and federal court levels—the higher the level, the more prestigious. So, if the lawyer obtained a clerkship, it is likely that person did well in



law school and is a good writer. Clerkships usually provide new lawyers with good research and writing experience and mentoring from seasoned judges.

Credentials in the practice of law also come in the form of lawyer rankings and awards. In the information age, several companies provide rankings and external verification of a lawyer's worth. Some are peer-reviewed and well-researched; others are glorified popularity contests. Still others depend on the individual lawyer's paid participation. In fact, some have commented that a "cottage industry" has arisen to make money off lawyers' egos. All ranking systems have their pros and cons, but here are some of the more common ones:

- ✔ Martindale-Hubbell (AV certification; preeminent)
- ✔ Super Lawyers
- ✔ Chambers
- ✔ Best Lawyers
- ✔ Avvo

Lawyer credentials can give you some indication that you are getting a competent lawyer who has achieved some level of success in a particular field. But credentials are only one factor that may or may not translate into good outcomes and good client relationships.

Experience

Evaluating experience is critical in evaluating a lawyer. Experience comes with time in practice. How long has it been since the lawyer graduated from law school and was admitted to practice? How long has the person been working in a particular field? As a rule of thumb, the longer someone has been a lawyer, the more experience that person probably has. However, length of years in service does not always translate year for year into practical experience on a certain issue. A large firm associate may have been in practice five years, but never seen the inside of a courtroom due to the way the firm manages its business. That associate may instead have excellent motions practice skills in corporate disputes. On the other hand, a mid-level prosecutor may have excellent trial experience in court but have very little experience at writing briefs and litigating civil issues. Something to consider is whether the lawyer appears to focus on developing professionally—for instance, by writing or teaching in his or her area of law.

Another thing to consider is the lawyer's "non-legal" experience. Does the person have other experience from a previous career—for example, running a business or serving in the military—or did the lawyer go straight from college or university into law school? In certain industries, broad life experience can be invaluable. An "insider's perspective" can help the lawyer rapidly grasp the client's needs as well as the broader context of challenges and possibilities.

You can usually get an overview of a lawyer's experience by visiting the firm's website and checking out the biography. You might also ask for some representative cases where the lawyer has handled



similar matters, keeping in mind that because of confidentiality restrictions, lawyers will often not reveal the names of other clients without permission.

Work Product/Results

One of the best indicators of a good lawyer is work product and results. These are also some of the hardest indicators to evaluate before engaging a lawyer. Part of this challenge is due to lawyers being bound by ethical rules to keep client information, including some work product, confidential. So, lawyers are constrained in what they can share. However, some lawyers will be able to provide work product, particularly in public matters like litigation.

Past success is no guarantee of future success. But past experience indicates the type of matters the lawyer has handled previously. It may also tell you something about the lawyer's approach to legal services, writing, and strategic skills.

Reputation/Referrals

Because it can be difficult to evaluate a lawyer's ability to deliver results and good work product, get referrals and recommendations from former clients of the lawyer. Other lawyers can also be good sources of referral. They may have worked with the law firm you are considering hiring, or worked on the other side of a case. Other lawyers can also provide a better understanding of work product quality. It is acceptable to ask a lawyer to connect you with some of these people.

Staffing the Legal Team

When you evaluate an attorney, consider the legal team as a whole. Consider who will work on your matter. Will that be the named partner with whom you have the relationship? Or will a junior associate handle much of the actual work? If so, will the cost be significantly lower? Will a paralegal or other non-attorney staff person do some of the work?

Each of these arrangements can have benefits. For example, pushing down work to the lower-billing staff is a good way to be efficient. However, if the attorney in charge is distracted, uninvolved, or not properly supervising the matter, quality might suffer.

Understanding how the lawyer or firm will provide bench depth is also important. Bench depth refers to the legal team as a whole possessing all the necessary skilled people to handle a matter or a client's needs. In some firms, bench depth is provided by having a large cadre of lawyers with different skills ready to jump in on different matters as needed. In smaller firms, bench depth can come through more creative means, like collaborating with other lawyers outside the firm through co-counsel or contract arrangements. Sometimes, lawyers fail to recognize this issue and take on matters where they are not trained. Good lawyers recognize both where they are strong and where they are not. Large firms default to filling their bench from within the firm. A small or boutique firm may actually offer a deeper bench by going outside firm boundaries sooner to larger pools of national and international talent.



Values Alignment

Does the firm “fit” with the client’s personal or organizational values and mission? Determining values alignment through marketing alone is difficult. Understanding how the marketing translates into practice may be unclear. What is the vision of the firm or the lawyer’s legal practice? How is the firm striving for efficiency in practice? Does the firm care about the same things the client cares about? Does the firm handle matters that are morally repugnant to the client, such as defending gaming or adult entertainment industries?

B. Legal Project Management

Once you have a lawyer or law firm that appears qualified and to be a good fit philosophically, consider how you and the lawyer will manage the legal services. Deciding what you need should come down to evaluating a few key factors.

How much legal help do I really need?

You and your attorney will need to evaluate candidly how much legal help you really need. In general, the level of legal involvement should depend on the risk exposure. Risk exposure means how much you could lose if you don’t have proper legal guidance. The level of risk should inform the level of resources you should devote to legal help, and at what stage you want those resources. For example, at times you want an attorney involved early on to prevent really expensive trouble ahead. Other times, matters can be handled in-house unless and until something changes.

A good lawyer or law firm should be willing to have this conversation with you. Not only should this conversation involve an honest discussion about how much work the attorney should do, and what could be done by your organization or other non-attorney, but it should include discussion about what you want to achieve, and the most efficient manner to reach your goals.

What can we do v. what should an attorney do (and to what extent?)

An attorney who cares about client needs can discuss what work the attorney should do, and what work the client can do, in order to be most efficient and effective. Only lawyers should do certain things, like appearing in court. And you may need a lawyer to advise on anything with a complex regulatory scheme or set of laws. But many aspects of legal work can be done in partnership with a client.

Clients and lawyers can work together to decide what work can be done in-house and what work should be done exclusively by legal counsel. Some work may be more appropriate for one than the other.

How can we control the lawyer’s fees/legal expenses?

Once an organization realizes it needs legal services, a related conversation is how much work the organization really needs on a given project. Lawyers should discuss a cost-benefit analysis with the client in every legal project.



Doing multiple drafts of a project or pursuing every available option in a case may be important or even critical in some instances. However, in other instances, that is not necessary. The bottom line is very important. If the legal matter is worth only \$50,000, paying a lawyer \$250,000 to pursue it does not make sense. Or in litigation, if the motion is simple and won't matter much, it probably shouldn't require four drafts. In some matters, the cost-benefit of "A+" legal work does not make financial sense for the client. Work done well but somewhat minimally may be a wise course in certain situations. You and your lawyer can be strategic and save money on legal fees.

More and more, clients are encouraging law firms and lawyers to brainstorm on how to achieve work product less expensively. Budgets may be helpful. But beyond budgets, you should ensure your lawyer understands your goals, and that you understand how the lawyer is going to use legal skills to move those goals forward.

V. Conclusion

Legal services can be beneficial or downright necessary in some situations. Understanding the economics and business of law is important to finding the right partner for legal counsel and advocacy. And working with the right lawyer in the right way can be a great experience for everyone.



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