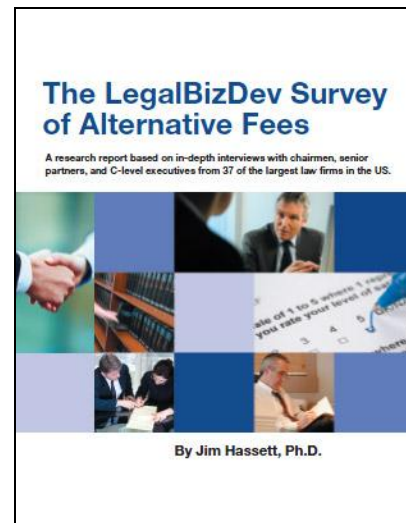


THE LEGALBIZDEV SURVEY OF ALTERNATIVE FEES



In the long run, the use of alternative fees will grow only if arrangements can be structured in a sustainable way that makes business sense for both sides. This report is based on in-depth interviews conducted between June and September 2009 with chairmen, senior partners and C-level executives at 37 of the largest law firms in the US:

Akin Gump
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Blank Rome
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Dickstein Shapiro
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Morgan Lewis
Nixon Peabody
O'Melveny & Meyers
Orrick
Patton Boggs
Pepper Hamilton

Perkins Coie
Pillsbury
Proskauer Rose
Reed Smith
Seyfarth Shaw
Sheppard Mullin
Shook, Hardy & Bacon
Sonnenschein
Steptoe & Johnson
Sutherland
WilmerHale
Womble Carlyle

The report summarizes senior decision maker opinions about what works for alternative fees, and what does not. While some of the statistics may have changed since the interviews were conducted, the fundamental insights of law firm leaders on when and how to use these fee structures are as valuable as ever.

"Momentum is building in the marketplace for new ways of charging for legal services. Jim Hassett's new survey summarizes valuable insights from AmLaw 100 decision makers about how the market is changing and what will and will not work in the future."

– Harry Trueheart, Chairman, Nixon Peabody

EXECUTIVE SUMMARY

The *LegalBizDev Survey of Alternative Fees* was based on in-depth interviews with chairmen, senior partners and C-level executives at 37 of the largest law firms in the US about their past use and future plans for alternative fees. Participants were recruited by contacting the chair or managing partner of every AmLaw 100 firm. Thirty-one interviews were conducted with a single individual, and six included two or three senior individuals at the same time. All told, we talked to nine chairmen and managing partners, 16 executives (including CEOs, CFOs and CMOs) and 22 senior partners, many of whom head their firm's alternative fee committee.

The interviews were conducted between June and September 2009, and revealed that:

1. Last year, the 100 largest law firms in the US generated approximately \$7 billion in revenue from alternative fee arrangements.

Although many articles have been published recently describing “the death of the billable hour” and new non-hourly alternatives, in fact law firms have been using fixed and contingent fees for several decades. Due to law firm secretiveness about financial results, and the fact that most firms (66%) do not yet track alternative fees separately in their accounting systems, it is currently impossible to precisely determine the revenue from these arrangements. In complex and uncertain situations like this, the best data often comes from a “wisdom of the crowds” approach which averages estimates from many knowledgeable experts. In this survey, estimates of the percent of AmLaw 100 alternative fee revenue ranged from 1% to 25%, with an average of 11%. Multiplying 11% by \$67 billion (which *American Lawyer* magazine reports is the total 2008 revenue for these same 100 firms) produced the \$7 billion estimate.

2. Every single participant said that the use of alternative fees will go up, but there were dramatic disagreements about how much.

Projections for the five-year growth rate in alternative fee revenue ranged from 20% to 900%. There was also a broad range of opinion about how – or whether – alternative fees will change the way law firms operate. When asked to rate broad changes in the large firm business model over the next five years (including compensation, recruitment and marketing), the average rating was 3.2 on a scale from 1 “no change” to 5 “radical change.”

3. When different firms say they are offering alternative fees, they may in fact have radically different business models and offer totally different types of deals.

Some firms are aggressively bidding alternative fees to seek new business, and are willing to risk lower profits to establish leadership positions in this growing market.

Other firms are taking a much more conservative approach, and trying to assure that each deal is profitable on its own merits.

4. There are nine types of billing arrangements that are most commonly used: risk collars, fee caps, fixed fees for a single engagement, fixed fee menus, portfolio fixed fees, retainers, success fees, holdbacks and full contingencies. These terms are defined in the complete report, along with advice on when and how to use each fee structure.

Some of these arrangements are offered in combination with shadow billing, in which law firms report the hourly cost of projects to allow clients to compare actual costs to a planned budget. Shadow billing offers clients transparency. It is favored by many aggressive firms and rejected by conservative ones.

A risk collar is an hourly billing arrangement built around a budget for a particular matter. The client pays a bonus if work is completed under budget and/or gets a discount if the work goes over budget. Many experts say they are a good way for lawyers to get started using alternative fees, and the report includes examples of six different ways to structure risk collars.

In addition to these four main conclusions, the survey covered a wide range of topics related to implementing non-hourly billing arrangements in a sustainable way that makes business sense for both sides. Most of the survey report consists of extended quotations from some of the most knowledgeable experts in the country, describing how:

- Seventy-eight percent of these firms reported that they are proactively using alternative fees in business development programs.
- In the past year, alternative fee use has grown rapidly as a result of client needs to control costs. This has led to a price war, with some firms racing to the bottom to offer ever deeper discounts. When a subgroup of participants was asked whether they had seen firms bidding on projects as loss leaders in a way that is not sustainable over the long term, every single one said they had.
- Some clients are also using alternative fees to meet business objectives that go beyond cost control, such as increasing budget predictability.
- At this time, the number of clients who want to talk about alternative fees is much greater than the number who use them.
- This is a new way of doing business, and many lawyers remain comfortable with the old way.
- In-house counsel that are interested in maximizing benefits of this approach are advised to provide bidders with more information about past cases before requiring them to propose fixed prices on new ones. Ninety-five percent of participants said that the RFP

process for alternative fees could be improved. The report also includes specific recommendations to in-house counsel regarding improved communication, management and approaches to value.

- Recommendations to law firms include suggestions about how to reduce cost, increase efficiency, improve project management, and focus on value.

The report ends with a conclusion section on “How to prepare for an uncertain future,” highlighting key decisions law firms and in-house law departments must make in order to succeed in today’s increasingly competitive environment.

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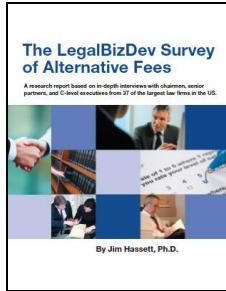
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“Morgan Lewis is a huge proponent of alternative fee arrangements for both litigation and transactional matters. In the LegalBizDev Survey, senior partners and executives from some of the largest firms in the country talk frankly about what does and does not work. This groundbreaking work provides indispensable guidance that will help clients to understand what their options are and, hopefully, increase their receptivity to breaking away from the billable hour with alternative paradigms and new ways of doing business.”

– Richard G. Rosenblatt, Operations Partner for the Labor & Employment Group, Morgan Lewis

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“The billable hour’s market share has peaked [and] alternative fees are here to stay. This type of sea change in law firms’ fundamental revenue model is a once-in-a-career event. [This book is an] impressive contribution to defining the ‘state of the art’ in the land of alternative billing.”

– From the *Foreword* by Bruce MacEwen, Adam Smith Esq.