

Knowledge Management

Bridging People, Information and Processes

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Aligning Law Firm Fee Strategies with KM

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When faced with a remodeling project, a homeowner expects the general contractor to deliver project plans, a budget and expense reports as project milestones are reached.

These projects, however, also present inevitable “change events.” For example, when remodeling the second floor shower, the easy path might be to keep the water circulation path the same and just replace old pipes with new ones. This will get you water. But will the results align with the way you want to live, or will you live to align with the way your house is configured?

Stepping back from the daily flow of decisions allows the homeowner and contractor to consider together better alternatives. Changing the hot water circulation so that it starts on the upper floor can provide a novel source of heat (plus a much improved shower experience on a cold winter morning.) Viewing change events as opportunities — not unwelcome challenges — positions one to re-engineer the way things work.

VALUE PRICING AND AFAS

In the current legal market, clients are very focused on value pricing, seeking closer alignment with law firms

regarding the cost for legal services. Whether self-driven or pushed into action by clients, the ACC’s Value Challenge initiative, or the implications of the changes envisioned in Richard Susskind’s *The End of Lawyers?*, law firms are entering into many more alternative fee arrangements (AFAs).

Law firms bill and will continue to bill certain matters on an hourly basis. The current trend toward AFAs is a change event in the legal market, offering law firms an opportunity to reconsider the way all fee arrangements work.

Law firms are trying to better understand the costs associated with performing various types of legal services and are examining the different types of fee arrangements they have in place. Firms are also working with clients to manage these engagements efficiently, seeking arrangements that are successful and deliver value to the client and the firm.

To support AFA strategies, a number of large firms have involved their knowledge management (KM) departments. Some firms seek to leverage more “traditional” KM offerings, such as the use of precedent collections, checklists and, perhaps, document automation, to deliver legal services more efficiently. Other law firms also involve KM to consider how firm internal human practices (business processes or workflows) and systems support their AFA strategy.

WHY KM?

KM helps a law firm know what it knows. Legal KM professionals analyze workflows — the way people work and exchange (or hide) data, information and knowledge. This supports the delivery of “traditional” KM resources such as precedent collections and expertise systems. While these practice-oriented resources are more widely understood, the approach behind their creation is equally relevant to help the firm manage what it knows about fee arrangements.

| Traditional KM | KM in AFA Context |
|------------------------|--|
| Precedent | Fee proposals, budget templates |
| Classification systems | Fee types, standard billing terms and phase/task codes |
| Expert systems | Timekeeper locators (finding the right person for the job) |
| Deal/case databases | Matter classification to support AFA analysis |

For example, precedent efforts can focus on the management of fee proposals and budget templates instead of model employment agreements. Similarly, classification efforts can structure the way a firm manages fee arrangement types instead of supporting the design of a legal expertise locator. Additionally, KM can consider how existing systems can be leveraged to support the firm’s AFA strategy. Thus, deal and case information supporting business development efforts can also support the analysis of fees and costs for different types of work.

AFA WORKFLOW CONSIDERATIONS

Fee strategies are supported by numerous law firm workflows. Firms can align these workflows with their strategies by focusing on the way fees are crafted, managed and analyzed.

• **Crafting fee arrangements:**

How and when do lawyers craft a fee arrangement? Currently, there is no common workflow supporting the

development of a fee arrangement. Law firms may consider fee options as they evaluate the potential profitability of a matter using a tool, such as Redwood Analytics Planning Application from LexisNexis. Separately, a lawyer may look to his or her recent matters for fee arrangements perhaps seeking examples from other lawyers. Lawyers may also review past business proposals containing fee information.

From a timing perspective, these activities can take place in advance of a pitch, during final discussions with a client about pricing before work commences, or even later in the engagement as agreed to by the lawyer and client.

Stepping back from the daily demands may suggest workflows that better connect with the way lawyers work while also supporting the firm’s AFA strategy.

For example, if one goal is to help lawyers consider the profitability of a matter, could that exercise take place earlier in the business development cycle? If so, workflows and systems for managing proposals might be designed to coordinate with profitability analysis workflows.

Connecting the two different workflows might lead to greater synergies and efficiencies. The coordinated approach can serve firm profitability goals and provide real-time analysis to lawyers as they pitch new business. Additionally, this approach can provide important context for future fee proposals.

• **Managing fee arrangements:**

“Project management” is the term *du jour* in current AFA articles, online discussions, legal software and legal training offerings. In this context, project management focuses on managing the business aspects of delivering legal services. Law firms may adopt a Lean Six Sigma or general project management approach, training all or groups of lawyers in project management skills. In addition, or instead, firms may develop dedicated project management resources to support lawyers as they create, manage and analyze their fee arrangements. Regardless of the approach taken and the business processes being considered, project management workflows are critical components of an aligned AFA strategy.

After examining current workflows, those managing fee arrangements may suggest greater reliance on budgets (matter-, client-, phase- or period-based). These budgets may derive from previously prepared profitability analyses. Where practical, budgets could be further enhanced through phase or phase/task time entry. KM can support these efforts by collecting sample or template budgets and considering how phase or phase/task codes can be designed to meet practice or regional needs.

Capturing this information is of little value unless it is regularly reviewed. Sharing common reports with clients regarding key financial measures relating to the engagement

may become the norm. Are current firm workflows designed to share this information in real or near-real time? Additionally, passive approaches, in place to monitor matter value internally, could shift to the automatic distribution of e-mail fee reports alerting an attorney when pre-defined fee levels have been reached.

- **Analyzing fee arrangements:**

What are the costs of specific types of legal work? The answer, in part, may be found through an analysis of the nature of the work and related fees. For example, knowing precisely every incorporation the firm has done along with the associated fees provides important data points from which an estimated cost can be determined.

Unfortunately, existing workflows may not deliver this information neatly. Most likely, incorporation work is done in connection with other services, blending the nature of the services and related fees. To address this, firms are exploring different ways to capture information about the nature of the services by matter. New business intake information can be supplemented with information captured in deal and case databases. Technology may also be utilized to classify matters based on time entries, timekeepers and/or the work product associated with the matter.

Even if the type of work is identified, one might consider the nature of the information available for the analysis. Most law firm workflows have been developed over time to support the hourly billing model (e.g. time entry). Thus, a large portion of available fee information and pricing is based on hours. Consistent capture of information based on workflows supporting AFAs will provide additional insights into the way that AFAs deliver value to the clients and law firms. This, in turn, may suggest additional ways to conduct the analysis.

While the examples provided here are law-firm centric, there are parallel client workflows that need to be considered. Collaborative environments used for e-billing may suggest how law firm and client workflows can align. Seamless, aligned workflows will support effective fee management and the relationship.

AFA SYSTEM CONSIDERATIONS

The value of information derived from various systems depends upon the purpose of those systems. For example, a firm experience locator may be designed to identify lawyers with particular subject matter expertise. That same system, however, may not directly support a search to locate the best timekeeper for a matter simply because the system does not offer information about billable rates and other timekeeper metrics.

KM can explore whether and how discrete systems can work together to support the firm's AFA strategy. The following are a few examples.

- **Fee and billing term classification:**

The design of a common fee arrangement classification scheme is critical to support near- and long-term AFA strategies. Historical fee classification schemes used within the firm should be examined to see if they support the various types of AFAs in use today.

KM can help consider classification schemes to support these efforts, looking at rate-based (e.g., standard, discounts and rate year) and alternative (e.g., fixed fee by matter, phase or period, or contingency) arrangements. Additional classification schemes may be appropriate to track payment and billing terms to support fee analysis and tracking (e.g., retainer payments, risk sharing components or volume discounts).

- **Matter classification:**

The KM, business intake, and business development departments may have designed systems to capture detailed matter information. For example, deal and case profiles support pitches, proposals, legal publication rankings, expertise locators and, perhaps, work product location. This information may also define more clearly the nature of the work performed under a specific fee arrangement. KM can consider how these classifications can be used to support AFA analysis and management.


- **Fee proposals:**

Business development proposal-tracking systems help manage information about client and prospective client opportunities. The nature of the information captured in these systems is designed to support client relationships and business development strategies. Given that targeted business development activities may also include specific fee proposal information, KM could examine how these systems could support AFA strategies as well. For example, the capture of this information may provide some additional knowledge about what types of arrangements work, what arrangements do not, as well as insights into how the arrangements were crafted.

- **Budgets:**

KM can work with lawyers within and across practices and regions to consider the development of budget templates, similar to substantive precedent collection efforts. Budgets by client, matter, phase or even phase/task can deliver more accurate and consistent information to help lawyers manage the engagement and support firm efforts to analyze the cost of legal services.

As firms consider their AFA strategy, a review of these and other firm systems may suggest opportunities



to align or re-engineer systems to support both hourly and AFA fee structures.

CONCLUSION

KM efforts to identify best practices and uncover knowledge within a firm can help identify practice-, regional-, firm- and client-specific needs. A “flat fee” arrangement might be viewed as “alternative” to a U.S. lawyer, while the same arrangement may be considered “standard” by a European lawyer. Separately, the dynamics of practice, regional or client approaches may suggest what fee information can be tracked and when. Broader considerations like these are critical to help firms align AFA-related workflows and systems internally as well as between the firms and their clients. Ultimately, this alignment enables clients and firms to manage their matters effectively, not the other way around. **ILTA**

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