

LAW FIRM SOLUTIONS: STRATEGIES AND SOLUTIONS FOR CONTINUING TO GROW YOUR FIRM

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NEW NORMAL FOR LAW FIRMS MANDATES INNOVATIONS

Surveys and anecdotal data confirm what many lawyers already know – the demand for legal services is not improving appreciably. This lingering stagnant demand contributes to and is compounded by what legal profession futurists refer to as the New Normal. Characteristics of this New Normal include:

- A shifting of power in the relationship between law firms and their clients as clients wield control.
- Client demands for higher value at lower costs.
- Outsourcing of work to non-law firms.
- The emergence of successful law firms with nontraditional structures.

These circumstances are not seen as temporary responses to a sluggish economy, but as permanent changes to the practice of law as we have known it. It is no longer possible to raise rates to increase revenue per timekeeper (the most influential factor in profitability). It is no longer feasible to assign first-year associates to matters as learning opportunities. It is not feasible to continue to expand billable hours per lawyer.

In this environment, the only way to grow a firm is to either create demand by offering new services that clients did not realize they needed or taking clients from competitors. The latter case includes expanding the percentage of business received from current clients.

Creating demand for new services may work for new technology and certain new products, but for the legal profession it is not viable. Law firms are left with ***how to increase the amount of business from existing clients or add new clients.***

To increase business, firms must turn satisfied clients into cheerleaders. These conversions are accomplished by super-pleasing clients with your services, working with clients to develop new ways to solve problems and finding new ways to set fees, and cross-serving existing clients.

These same tactics are the ones that will attract new clients. By differentiating your firm from your competition on these client-valued items, you will be able to market your differentiation to prospective clients.

Turn Clients into Cheerleaders

Clients will cheer your firm if they receive problem-solving and impeccable legal service delivered in a timely fashion by people who care about them. But you must go yet further. You must consider your client as your partner as you work together to resolve the client's problem or issue. You must build a personal relationship with each client predicated upon the client's individual needs, quirks and interests. You must strive for the level of client affinity and deep personal relationship that assures that client will not even consider going elsewhere.

There are voluminous writings in legal media about achieving client loyalty – beginning with client satis-

faction surveys and concrete steps taken to implement needed improvements. However, to move a client from loyalty to cheerleader requires the individual attention of each lawyer backed by a firm-wide systemic dedication to superior client relationships.

Differentiate with Problem-Solving and Alternatives to Hourly Fees

When a lawyer and the law firm consider clients to be partners, it follows that the lawyer will work closely with the client to achieve client-valued outcomes to issues at client-satisfactory prices.

This usually means conferring with the client at the beginning of a matter as to the client's objectives and then establishing with the client a fee arrangement that satisfies the client while returning a fair profit to the firm.

Lawyers by nature and training strive for the best possible legal outcome for a matter. This may not be the best possible outcome in the client's eyes. The client receives much more value when the lawyer engages with the client throughout the matter in determining how best, how strongly, and how far to proceed. This collaboration can be a major factor in differentiating your firm.

The second differentiation, client-satisfactory prices, requires the lawyer to possess the knowledge to set fees that will satisfy the client and return a fair profit to the firm. In turn, this requires skill at project management to assure profitability of engagements. Sometimes, a lawyer or law firm needs to think creatively about how to handle a matter in ways that achieve the client's objectives. This is the impetus for relatively recent attention to outsourcing of mundane tasks, to the increased utilization of client portals that actually let clients see work product via the Internet, and to various other innovative approaches to client service. It is creative thinking to achieve a client's objective at a fair price and a fair profit.

Cross Serve, Not Cross Sell

The concept of cross selling services to existing clients has garnered much attention. However, it generates angst among lawyers who do not wish to be seen as always selling to clients. Cross serving clients encompasses the idea of adding services that a number of clients currently receive from other sources. This change in mental image and actual practice puts the emphasis on the needs of clients rather than the needs of the firm.

An effective cross serving effort requires research to determine which services clients obtain elsewhere and the amount of new business that might be available. This research will prevent the firm adding services impulsively with no realistic expectations of utilization. Of course, if the firm already offers the services utilized by clients elsewhere, it is incumbent upon the lawyers to offer those services to clients.

The New Normal will challenge law firms for the next several years. The Old Normal may never return. Adapting to client demands for value, outsourcing routine work, partnering with clients to resolve issues and determine fees, and serving as many client needs as feasible will help assure a bright future for your firm.

CHOOSING THE RIGHT BUSINESS VALUATION EXPERT

Today's effective litigating attorneys use economic/business valuation experts more often and in a growing variety of ways. Based on our experience, we offer litigating attorneys the following guidelines in selecting a valuation expert.

- ***Look for a valuation expert who not only is technically skilled but also is a good communicator.*** Many valuation experts have an orientation to complexity, technical language and fiscal conservatism. While these qualities help to generate competent conclusions, they sometimes mi-

tigate against effective depositions, courtroom presentations and communications with judges and juries.

- **Look for a valuation expert who routinely advises businesses on the real-world problems they face.** Academic or technical credentials alone seldom include enough exposure to the realities of the litigation environment or day-to-day business decisions.
- **Look for a valuation expert experienced and comfortable in the litigation arena.** An independent expert who is educated, sensitized and personally comfortable with litigation strategies and tactics will strengthen your case.
- **Involve the valuation expert early in the case.** The valuation expert retained very late in a case operates under a severe handicap and often cannot contribute as meaningfully to the success of your case.
- **Utilize the talent and experience of the valuation expert to increase your effectiveness in discovery, dealing with other experts, assessing and compiling potential damages, and even in developing and executing a winning overall case strategy.** Limiting the role of the expert limits your opportunities for success and can even hobble your efforts.
- **Expect and demand objectivity, not advocacy.** When the judge and/or jury must choose between two widely divergent expert opinions, it is best that they not view your expert as an advocate.
- **Thoroughly apprise your expert of all parties to the litigation matter.** Just as attorneys, the business valuation expert must ascertain that no conflicts of interest exist.

Marks Paneth & Shron offers business valuation services through our specialized Litigation and Corporate Financial Advisory Services Group. Please contact any of our Law Firm Services Partners if you would like to find out more about our capabilities in this area.

SETTING PROFITABLE ALTERNATIVE FEES REQUIRES ANALYSIS AND ACTION

Most law firms agree that the move away from hourly billing towards alternative fee arrangements is not just gaining traction, it is here to stay. Doing nothing, not changing your approach to setting fees, is not an option. Yet, many law firms do not know how to set such fees while assuring profitability. They tend to look for efficiencies and then pass those efficiencies along to clients. This approach means slicing deeply into profits.

Law firms first were encouraged to track time – a half century ago – as a means of knowing the costs involved in a matter. This quickly was redirected to establishing billing rates based on compensation and assiduously tracking time to determine the billing amount. The cost reasoning became obscured in the mists of time. Embracing alternative fees means returning to the original purpose of tracking time – knowing costs.

Look Backward to Look Forward

To determine costs, begin with looking at costs associated with matters completed in the past couple of years, particularly for tasks that were repeated. How many hours, by what level of talent, were required? What share of overhead was involved? What other non-personnel expenses were incurred?

Determine actual costs per hour for each lawyer on staff. This means salary, benefits, and share of overhead expenses including rent, routine monthly expenses, depreciation and amortization of leasehold improvements. For allocating rent, use actual office space plus a proportionate share of common areas. Al-

locate support personnel costs for the nonbillable share of their time.

Determining costs for partners can be thorny if you let it be. A partner's compensation does not just compensate a partner for working attorney efforts, but also compensates for management, business generation, and ownership. If a partner is expected to bill 1,800 hours a year, then it may make sense to include all the compensation in the cost rate. If a partner spends considerable time supervising other lawyers or managing practice areas or the firm and only bills 1,000 hours a year, it does not make sense to include all compensation in the hourly cost figure. To do so would unreasonably burden the cost rate. In this case, hours associated with management and new business generation are a part of the overhead allocation. Compensation for ownership comes from the profit the firm generates.

Once you have looked back and applied some cost accounting principles to matters previously concluded, apply a reasonable profit percentage, say 25 to 33 percent, to arrive at a fixed fee that can be charged in the future for those services. Then, look at the amount of profit the matters actually generated. Did hourly billing meet or exceed what you would have charged in a fixed fee arrangement?

What to Do When Costs Exceed Value

Suppose you conduct a thorough analysis and determine just how much it costs to handle particular matters but the client still feels those prices are too high? Suppose you know that your competition is charging less? Suppose you want additional profit?

When cost of production (plus desired profit) exceeds value to the client, it is axiomatic that you must reduce cost of production or enhance value to the client. In reducing cost of production, you take steps to increase productivity without increasing cost of production. It is time to look at how you get the work done – time to re-engineer your processes. You can add efficiencies with smart use of technology and standardized processes that curtail re-inventing the wheel for each engagement. These efficiencies offer the potential for significant improvement in your costs.

However, the bigger changes may come from the questions posed in *The End of Lawyers?* (see the following article). Ask the lawyers in your firm what elements of their current workload could be undertaken differently – more quickly, cheaply, efficiently, and to a high quality – using alternative methods of working? Can non-lawyers perform more of the work? Can you outsource work? Can more people work from home, thus reducing overhead? Can the Internet offer solutions?

Enhancing project management skills is emerging as a desirable means to improve productivity without raising costs. This is not just a fad. It is taking deliberate steps, perhaps through training, to improve the efficiency, predictability, and cost management of legal services. It usually involves significant time in planning engagements so as to better control the implementation.

There are no simple solutions to the many challenges facing the practice of law. Making changes in fee setting is not simple – it requires addressing the myriad questions thoughtfully, determining what will work for your firm and your clients, and then taking action. Yet, the dividends in client satisfaction and firm differentiation, with resulting firm profitability, can be significant.

THE END OF LAWYERS? SPURS DEBATE IN LEGAL PROFESSION

The intriguing book *The End of Lawyers? Rethinking the nature of legal services*, by Richard Susskind, is heralded as a must-read tome for anyone even peripherally involved in the practice of law. Susskind, a British information-technology consultant and futurist, is not necessarily predicting the end of the legal profession, but he does predict that within a couple of decades lawyering will have changed in ways that the typical law firm partner of today can hardly envision.

Susskind argues that the market for legal services is increasingly unlikely to tolerate expensive lawyers for tasks (guiding, advising, drafting, researching, problem-solving, and more) that can equally or better be discharged, directly or indirectly, by smart systems and processes. It follows, the book claims, that the jobs of many traditional lawyers will be substantially eroded and often eliminated. Two forces propel the legal profession towards this scenario: a market pull towards commoditization and a pervasive development and uptake of information technology. At the same time, the book foresees new law jobs emerging which may be highly rewarding, even if very different from those of today.

The author urges lawyers to ask themselves what elements of their current workload could be undertaken differently – more quickly, cheaply, efficiently, and to a high quality – using alternative methods of working. The challenge for lawyers is to identify their distinctive skills and talents, the capabilities that they possess that cannot, crudely, be replaced by advanced systems or by less costly workers supported by technology or standard processes, or by lay people armed with online self-help tools.

Inspiration or Heresy?

Susskind's book is attracting strong supporters and some detractors. Supporters point to Susskind's predictions of 1996, in *The Future of Law*, many of which can now be seen to be coming to pass. In the current book, he argues that the engine of change for the legal profession is the Internet and information technology in general. He updates his views of legal process outsourcing, courtroom technology, access to justice, e-learning for lawyers, and the impact of the recession on the practice of law. He analyzes the four main pressures that lawyers now face: to charge less, to work differently, to embrace technology, and to deregulate.

Detractors are few. Their arguments tend to rely upon perceived differences in the practice of law in the United Kingdom and the United States. Some readers believe the book is overly long and pedantic. Others believe that it is addictive and engaging.

The End of Lawyers? Rethinking the nature of legal services certainly warrants your close attention.

SPOTLIGHT ON MP&S

WHAT SMART MONEY WILL DO IN 2011

Marks Paneth & Shron has released thoughts on smart money moves for the new year. Plan to expect less; save more and retire later, says Tax partner Alan Dlugash. Learn what higher taxes, a reduction in social security and Medicare benefits and low interest rates mean for your long-term strategy.

MP&S WELCOMES NEW TAX PARTNER

John Evans, a tax specialist with more than 30 years of experience on issues affecting closely held businesses and their owners, has joined the firm as a partner in the Tax practice. In addition to working with closely held businesses, he has experience with work related to taking public companies private.

EMPOWERING INTELLECTUAL PROPERTY

Intellectual property (IP) is an untapped frontier in value creation. The problem is the basic tendency regarding IP, including patents, as the single, proprietary, closely guarded holding of the patent developer. As

Steven Henning and Glenn Sacks discuss in their article, that tendency is fundamental to the patent system – indeed, to all property rights, because at the root, we are talking about patent ownership

IDENTIFYING AND CORRECTING POTENTIAL DISPARITIES IN EMPLOYEE SELECTIONS BEFORE THEY HAPPEN

Employers define human resources policies and practices and make employment decisions that, while based on legitimate business decisions, may have a disparate effect on different groups of employees. In her article in the *Employee Relations Law Journal*, Josefina Tranfa-Abboud offers a hypothetical example of selections for a proposed reduction in force (RIF) that illustrates how an evaluation can reveal a disparate impact of a protected class group. Unveiling potential disparities before the implementation of the proposed RIF allows management to revise the goals, objectives, and the planning of the selections for termination, correcting a potential disparate effect of protected class groups, and minimizing the likelihood of legal disputes.

FOR FURTHER INFORMATION

If you have any questions, please contact **Robert I. Feldman** at 212.710.1660 or rfeldman@markspaneth.com or **Howard K. Warshaw** at 212.710.1673 or hwarshaw@markspaneth.com, or one of the following Law Firm Services Partners:

Steven L. Berse: sberse@markspaneth.com

Thomas H. Engelhardt: tengelhardt@markspaneth.com

Mark Levenfus: mlevenfus@markspaneth.com

Andrew H. Kubrick: akubrick@markspaneth.com

In addition, information on Marks Paneth & Shron's Law Firm Services can be found at www.markspaneth.com.

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