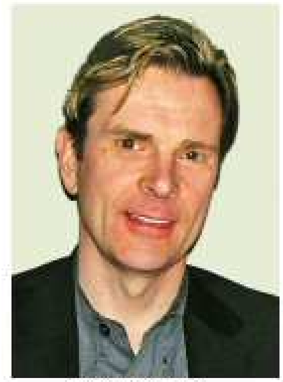
More Law Firms Charging Fixed Fees

By Larry Bodine, Esq., a business development advisor based in Glen Ellyn, IL. He has helped law firms nationwide earn millions of dollars using strategy, business development training and individual attorney coaching. He can be reached at 630.942.0977 and www.larrybodine.com.


Larry Bodine

Firms large (Morgan Lewis) and small (Butler Rubin) are starting to abandon the billable hour method in order to land major new clients, according to the Wall Street Journal.

Most corporations pay lawyers by the hour. But critics say that approach encourages lawyers to be inefficient, leading to large, unpredictable bills. Now, law firms are offering flat rate or fixed-fee agreements to win new legal work.

While a growing trend, alternative billing has yet to catch on in a big way, especially with the nation's top law firms, which are generally hugely profitable using the billable-hours system for most of their work. According to an upcoming study by the General Counsel Roundtable, 62% of about 150 general counsel at large companies said they have used fixed fees "once in a while," up from 54% in a study done in 2002.

Butler Rubin Saltarelli & Boyd, a 35-lawyer litigation boutique in Chicago, was a traditional hourly rate firm until about four years ago, says partner Patrick Lamb. Instead of raising its rates, the firm decided to pitch an alternative approach to clients.

The firm approached Houston-based FMC Technologies, Inc., whose general counsel, Jeffrey Carr, was a fan of unusual arrangements under which, for example, he would pay outside counsel a minimum of 80% of its billable rate, but add a premium over the firm's full rate if it achieved a good result. Carr ultimately asked retained Butler Rubin to handle the company's mass-tort work. Butler Rubin beat out the three other contestants. "Had they not been amenable to an alternative arrangement, it's safe to say they wouldn't have won the bid," says Mr. Carr, who calls the relationship, which is ongoing, "very successful."

Cisco General Counsel Mark Chandler brought fixed-fee payments to litigation and corporate work in an effort to bring the law department more financial predictability. He says that in five years, the percentage of total revenue spent on legal matters has dropped 25%.

In 2003, he went ahead with two-year fixed-fee deals with Fenwick & West in Mountain View, CA, and megafirm Morgan Lewis & Bockius. (Neither Cisco nor the firms will divulge the fee amounts.)

For Morgan Lewis, the first two years were a learning exercise. In early 2005, when Mr. Chandler sat down with the firm's litigation heads to discuss renewing the retainer agreement, they told him the firm was making 15% less on the deal than it would have under its normal billable-hour approach. Mr. Chandler encouraged the firm to renew at the same price, and the firm thought hard about it.

Morgan Lewis ultimately proceeded with another two-year retainer, says Jami McKeon, the head of the firm's commercial litigation practice. But Cisco agreed to hold frequent meetings with the firm to review the financial arrangement.

Both Ms. McKeon and Fenwick lawyers say the Cisco arrangements are now profitable, though not hugely so. "You don't want your law firm making a huge profit," says Ms. McKeon, "but you don't want your law firm taking a hit either. They're not going to give you the same level of service."