

Friday, June 6, 2008

## Cincinnati law firms find alternative menu of fees works better for them, clients

Looking beyond hourly billing

*Business Courier of Cincinnati* - by Jon Newberry, Staff Reporter

Maybe it's a coincidence, or maybe not, but as the economy slows and many businesses are trying to rein in expenses, some law firms are pushing for an end to hourly billing for legal services.

Rather than charging clients by the hour, they want to devise alternative billing arrangements that they think better align firms' compensation with their clients' interests.

At the Columbus office of Waite, Schneider, Bayless & Chesley, for example, they have abandoned hourly billing for new clients and new projects as of Jan. 1 and instead are working under other arrangements such as flat fees, contingent fees, monthly charges or a combination of things.

"Everybody that we've talked to has been enthusiastic. Everybody wishes that the legal profession as a whole would adopt it. We haven't had anybody resist," said Michael Grodhaus, a partner in the state capital office who joined the Cincinnati-based firm in 2006 after serving as first assistant attorney general under Ohio Attorney General Jim Petro (who's also a partner in Columbus). Most of the firm's business involves litigation and resolution of business disputes, on both the plaintiff and defendant side.

**At the Wolfe Practice in Blue Ash, alternative billing is also the much-preferred way to go. Jennifer Wolfe, founder and CEO, said she hates hourly billing.**

**"When I talk to any client, I talk about alternative billing right up front," she said. "What I dislike about billing by the hour is that it immediately puts you at odds with your client."**

**She prefers to work under monthly or annual retainers that cover however many hours are needed for agreed-upon services. "Then I can really focus on being a better service provider," she said. Wolfe says it's sometimes a hard sell because clients are concerned that they'll pay too much or won't need as much service as they anticipate. For that reason, the arrangements are generally open to adjustment if things don't pan out as expected, she said. That works both ways, because the biggest risk from her perspective is if she quotes a fee that's too low and the work takes a lot longer than she thought it would.**

**"Then we're kind of stuck. We've got to do the work," she said.**

**So her firm's arrangements are based on assumptions to which both parties agree.**

**"Those are the assumptions. If any of the assumptions turn out to be incorrect, then we requote it," Wolfe said.**

Grodhaus said there's some demand for alternative fee arrangements from large corporations - DuPont is a notable advocate nationally - but he thinks the real push is going to come from law firms themselves.

"The only way large law firms can make more money is to hire more lawyers to bill more hours, or raise rates," he said.

Old strategy pushes at its limits

From a business perspective, that kind of growth strategy is pushing up against its limits, with hourly billing rates for many senior partners now exceeding \$500 an hour. According to the 2007 edition of the "Altman Weil Survey of Law Firm Economics," the median hourly rate for equity partners at large (150 or more lawyers) U.S. law firms reached \$375 in 2006, and the rate jumps to \$535 for the top 10 percent.

The number of billed hours per lawyer also rose, with associates at large firms billing an average of 1,901 hours - 36.6 hours a week for 52 weeks. Critics of the billable hour contend that lawyers are under pressure to bill more hours to increase revenue, which puts their short-term interests at odds with clients that want to limit legal expenses and resolve issues as quickly and efficiently as possible.

Grodhaus cites a 2002 study by an American Bar Association commission that concluded that hourly billing eliminates incentives for lawyers to strategically plan a project at the beginning of engagement and penalizes efficient and productive lawyers.

Bruce Petrie Jr., a partner on the executive committee at Cincinnati's Graydon Head & Ritchey LLP, said much of the resistance to high legal fees is centered in the nation's financial centers in New York, Chicago and Los Angeles where senior partners' rates are reaching \$1,000 an hour and top associates are billing around \$300.

As a result, many in-house corporate counsels are beginning to view Midwest law firms as better values, he said.

"A lot of the alternative billing pressure is on the firms in the mega-firm category that are increasingly finding they're pricing themselves out of the market," Petrie said.

In Cincinnati, he finds that as long as his firm consistently delivers on service, legal expertise and industry knowledge, clients generally have no problem with reasonable hourly fees that are documented with detailed bills.

"If you can deliver on that level, most clients will pay reasonable rates and prefer to do it on an hourly basis," he said.

More in-house legal departments do seem to be interested in considering alternative billing arrangements these days, but as those discussions unfold, they tend to gravitate back to the basics of reasonable hourly rates, detailed billing and the value of the services delivered, Petrie said.

"There's a business acceptance of the hourly rate. In the mind of the purchaser, it's still a sensible way to do it," Petrie said.

Lawyer critics of hourly billing, however, contend that it encourages lawyers to bill more hours to meet internal quotas and generally makes life miserable for lawyers subjected to that pressure.

#### **'Happier clients, happier lawyers'**

In a foreword to the ABA commission's report, U.S. Supreme Court Justice Stephen Breyer said the issue isn't merely efficiency but "how to create a life within the firm that permits lawyers, particularly younger lawyers, to lead lives in which there is time for family, for career, and for the community."

Grodhaus agreed. "You can have happier clients, and happier lawyers, if you abandon hourly billing," he said.

At the Wolfe Practice, the sources of revenues are getting close to a 50-50 split - with about half coming from arrangements other than hourly billing - and Wolfe said her goal is to get rid of most of the remaining hourly billing over the next few years.

"It's easier administratively, too. Have you ever tried to track your time?" she said. "Everybody likes the idea. It's a question of how do you make it work."