

Outsourcing: A Multi-Level Solution to the Cost / Value Dilemma

by Edward Poll, J.D., M.B.A., CMC

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Until well into the post-World War II era, legal fees were based not only on the time spent, but also the nature of the service, the result achieved, and the amount at stake. Charging an appropriate legal fee was a matter of professional judgment.

That changed in the mid-60s when clients began demanding detailed billing statements and lawyers used time records as a management tool to seek greater efficiencies. Today, most lawyers are paid by the hour - almost in the same way as an hourly laborer. When lawyers are paid by the number of hours worked, self-interest can and often does affect a lawyer's judgment as to how much work to do for the client. One national law firm has begun an advertising campaign that confronts this still-taboo question from the client's standpoint. The longer lawyers take, the more they make, one of the ads says. Does that align their interest with yours? That's a question I think every firm and solo practitioner has to confront.

Outsourcing Definition

Most lawyers' billings are "features" lists: this is what I did, this is the time I worked and this is what you owe me. That approach breeds dissatisfaction among clients, because it doesn't address value and benefits - the worth, as opposed to the cost, of the service. Given the dissatisfaction with hourly rates as a measure of legal service costs, it's not surprising that firms and clients are increasingly turning to cost reductions from outsourcing as a new form of value made possible by technology. *USA Today* recently carried a snapshot stating that 47 percent of legal service firms have outsourced a portion of their business.

The principle of outsourcing is fundamental: Do what you do best and let others (even if the work is done by another firm or company) do what they do best, most efficiently and at least cost to both you and the client. It makes sense to focus on your core capabilities. During the era of mega-mergers, Corporate America forgot this. When financing (and profits) became more difficult to attain, business began to look for ways to shed unprofitable activities. That's when "returning to one's core skills" became a popular phrase. It's not a new principle for law firms either: many firms for years have outsourced mailroom services and records storage, for example. But outsourcing today can go in any number of directions, with direct impact on firm costs and client value.

Service Outsourcing

This is the most dramatic and high profile development, in which high speed Internet technology connects U.S. law firms to the growing pool of highly educated talent in developing countries where the use of English is widespread, with India being the prime example. Such offshore legal service providers can reduce by up to 80 percent the cost of:

- Transcription of voice files from depositions, trials and hearings
- Accounting support in the preparation of timesheets and billing materials
- Paralegal and clerk support for research and file management
- Data entry for marketing, conflicts and contact management
- Litigation support graphics
- Legal research, including case citation summaries
- Review, and due diligence of business documents
- Patent review and searches

This is not the practice of law. It's the provision of high quality, low cost legal support products for licensed attorneys. Because the work is delivered electronically and is produced under the firm's supervision, it is transparent to the client. Clients often get angry with their attorneys for charges they consider overhead and part of the cost of doing business - whether photocopies, secretarial overtime, or word processing - especially with what they perceive to be very high hourly fees they pay to lawyers. Given that reality, the outsourcing of legal services is sure to grow.

Outsourcing to Contract Lawyers

Many firms, both large and small, use "contract lawyers" to provide legal counsel at reduced cost. Yet one crucial question determines the extent of cost savings: When you have a contract attorney work for you, how do you bill your client? This issue has been litigated and the conclusion is that the contract attorney is not an out-of-pocket cost for billing purposes. Firms are not required to bill the client at the cost to them for the contract attorney's time. They may bill at an "attorney's rate," a standard flat rate, or any rate that is established in the engagement agreement and is acceptable to the client.

Contract attorneys can contribute to work and cost efficiencies if used correctly. They can be a transparent resource (again, thanks to technology) that offers a win-win solution for firms and clients. From the firm's perspective it is important to set a contract billing rate high enough to cover all "overhead" expenses, which would then include all of your own staff, such as secretarial help, paralegals, word processors and so on.

Outsourcing Commodity Legal Work

Outsourcing doesn't always flow from law firms. Many firms have benefited from the outsourcing flow to them from increasing numbers of in-house legal staffs. General counsels have realized that standardized and predictable legal work can be performed using skills and experience readily available in the market. Economies of scale and experience present at outside firms benefit corporate America. When this work is outsourced, the high-volume specialist can often perform it at a lower cost and at a quality at least equivalent to an in-house team.

For in-house counsel, regular review of the balance between externally and internally sourced work is critical to secure value for the money. For external counsel, the trick is to balance the value of the services provided with the cost savings expected. If a client

asks you to lower your hourly rate price for a commodity legal work, be sure you first list the things you do for the client for that price. Then, when you reduce your rate, take some of those things off the table. Thus, you are not really "lowering the price." You're adjusting the price to fit the appropriate value based on the service to be delivered.

The Cost / Value Dynamic

Technology is generally the driver that makes all three forms of outsourcing possible. Paradoxically, when a firm needs makes an investment in technology, its immediate cost of operation increases. Increased technology creates greater efficiency, meaning that the time required (hours worked) to produce the same work product is reduced. Additional work assignments (causing attorney burnout), or higher hourly rates (causing increased client dissatisfaction) will result. Unless a new pricing paradigm is developed, there is little incentive to push the technology curve.

Law firms mirror their clients/customers. To the extent that law firms provide the service their clients need, at the price clients are willing to pay, they will grow. Otherwise, they will be challenged to stay in business.

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Edward Poll, J.D., M.B.A., CMC, is a coach to lawyers and certified management consultant who shows attorneys and law firms how to be more profitable. Ed's latest book is *Collecting Your Fee: Getting Paid From Intake to Invoice* (ABA 2003); he is the author of *Attorney & Law Firm Guide to The Business of Law, 2d ed.* (ABA 2002); *Secrets of the Business of Law: Successful Practices for Increasing Your Profits*. To make suggestions or comments about this article, call (800) 837-5880 or send an e-mail to edpoll@lawbiz.com. You can also order a free e-zine or visit Ed on the web at www.lawbiz.com.