Value Practice:

Designing an Alternative Fee Arrangement for a Corporate Client

Interview with Edwin Reeser, sole practitioner

August 2009

Approach to designing and negotiating an alternative fee arrangement

Edwin Reeser was formerly the managing partner of the Los Angeles office of a national law firm. He is currently a sole practitioner with a real estate and corporate business transactions practice. Based on his experience in larger firms, he determined that the hourly rate frequently does not reflect directly (if at all) the value of the lawyer's services for the client and interferes with the lawyer's ability to positively distinguish himself or herself. He concluded the hourly rate also constitutes an inferior basis on which to market a firm since it leads to a comparison on only that basis and feeds the perception that the work is no more than a commodity. That view serves neither the client nor the law firm well. Accordingly, when Ed established his practice upon leaving the firm, he determined to rely as much as possible on alternative fee arrangements, abjuring the hourly rate as best he could.

To do so, he sought to understand the client's perspective on the legal service and the role that his legal counseling and service would fill in his clients' affairs. He realized that his clients would value highly budget certainty and predictability. Applying that perspective and to achieve those goals in the context of designing an alternative fee arrangement requires that Ed ask questions of a prospective or existing client and listen closely to the answers so as to better understand and to meet the client's expectations in the context of the fee arrangement.

A successful alternative fee arrangement

The example below of a successful alternative fee arrangement illustrates the application of those techniques.

Client needs assessed:
For an international technology, licensing and product marketing and distribution organization, budget predictability was especially important. The timing of the closing of individual transactions was difficult to predict due to the involvement of counterparties with different needs and plans. The client needed the expertise that Ed offered but could not afford the hourly rate that would apply for that level

of talent. Ed wished to build a long-term working relationship with the firm, since it offered the possibility of considerable ongoing work.

The initial work entailed a series of ten or twelve agreements. While the deals were all unique, they all were done in the context of worldwide distribution, licensing, IP development and ownership matters, with an array of Asian, European and American companies as counterparties. No two transactions would be identical. Accordingly, after discussions outlining the nature of each one of the potential initial deals, Ed and the client established a fee arrangement based on a fixed fee per transaction. At any time either party could revisit the arrangement if it was working an injustice or unfairness upon that party. In such event, that party could elect to shift to the billable hour, or some other type of fee arrangement. Upon such a switch, they would not revisit the fees for past work; what was done would be done ... a deal is a deal. Ed and the client expected that, by working together, they would establish a level of trust that would better underpin the fee arrangement. That level of trust would lead to Ed receiving more work from that client without any additional marketing and the client would receive legal service and consulting more integrated into its deal making.

Travel fees/Phone consultations negotiated:
As part of the fee arrangement, Ed agreed to travel to the client's offices, or anywhere in the world, at one-way travel cost only. While drive time to the client's offices within Orange County, California, is included the fixed fee, he applies a maximum travel time of four hours for flying between Pasadena (where his office is located) and San Francisco, Las Vegas or Phoenix. For trips to Chicago and the rest of the Midwest, the maximum travel time is six hours and to the East Coast eight hours. Time spent driving to the client's office in Pasadena or Newport Beach would not be billed (only 60 miles from his office).

The fixed fee per transaction includes as many trips to meet the client as necessary, for no additional charge, and unlimited telephone consultations with the client's executives. Follow-up efforts are not billed unless and until they amount to a secondary matter or assignment. Ed issues a bill electronically the day after closing a deal.

Payment in stock can align interests:
Another important aspect of the fee arrangement was that Ed could request that his fees be paid in cash or in common stock of the client, making the election when submitting each bill. To further the relationship, Ed has requested stock so as to align his interests and the client's interests more closely.

Internal costs waived:
Ed charges the client no internal costs. No phone. No fax. No regular copying. (Big copying jobs are outsourced and he passes that cost through to the client.) He does not bill for legal research service (*e.g.*, Lexis/Nexis etc.) or for delivery service. He passes through filing fees, airplane tickets, hotel costs and travel-related meals. He flies coach and stays in hotels that fit the travel profile for cost that the client has authorized its personnel to apply.

Phone arrangements encourage dialogue and trust:
Because the fee arrangement allows for unlimited consultations with Ed by the client's business personnel for a single transaction, Ed developed a deal template that he reviewed with each executive. Each of those executives can call him to discuss issues that arise in the transactions that don't precisely fit within the template, without an hourly charge. (Ed reports that if there is a question or any anxiety about a deal, the boss says "well did you call Ed? It's 'free' you know!") The fee arrangement thus encourages more dialogue, which enables Ed and those executives to develop a deeper, more consultative relationship and trust, not to mention a more custom-crafted agreement that captures the client's objectives more precisely. The fee arrangement is driven by the client's deal and budgetary reality. The client can budget and control the timing of its costs to some degree by picking the month in which it wants the job done.

Result:
A successful fee arrangement that furthers the client's interests more clearly and supports the relationship between Ed's firm and the client. Ed has been able to build a personal relationship with each executive deal manager. Those executives appreciate not having to worry about calling the lawyer and getting "dinged" with an invoice with hourly charges for such consultations.

Contact Information:
Edwin Reeser (ereeser@sbcglobal.net)