

My Money Got Funny!

The Art of Making Alternative Fee Arrangements Work for You

November 9, 2018

Program Description

Whether you're in-house or outside counsel, you have by now felt the pinch of shrinking legal budgets and the pressure to turn to alternative fee arrangements (AFAs). But the change from age-old hourly billing to value-based billing can be tricky.

Come and hear from experienced in-house and law firm practitioners who will provide real-world examples of how they successfully implemented AFAs and value-add engagements in the context of sophisticated transactions and complex litigation.

Our panel will briefly touch upon different alternative fee models, deep dive into real-world examples with an emphasis on challenges, opportunities, and best practices, and explore commonly held myths about AFAs. The panel will also share insight on how the parties can effectively align pricing with the value provided to the client and how to make AFAs a “win-win” situation for both in-house and outside counsel.

Agenda

- Introductions
- Alternative Fee Arrangements
- Real World Examples
- Poll and Panel Comments: Myth or Meritorious?
- Q&A
- Glossary: AFA Types and Descriptions
- Thank you!

Meet the Panelists



Gulzar Babaeva
Target Corporation
Director Counsel

Gulzar Babaeva specializes in complex commercial transactions with a focus on technology law. Gulzar works on enterprise and operation-critical information technology matters, including software licensing, cloud computing, business process outsourcing, hosting, and technology related telecommunication agreements. She currently serves on the Board of the Twin Cities Diversity in Practice where she also chairs the Professional Development Committee. Gulzar was born and raised in Baku, Azerbaijan before immigrating to the United States as a teenager. She earned both her Bachelors and J.D. from University of Minnesota.



Tasha Brown (Moderator)
DLA Piper
Director of Alumni Engagement

Tasha Brown is the Director of Alumni Engagement at DLA Piper. In this role, she combines career advising and mentoring with alumni engagement and business development. Prior to this position, Tasha was responsible for driving revenue to the firm as a Client Development Executive, where she focused on increasing awareness of DLA Piper's capabilities and generating opportunities in the Chicago area. Before joining DLA Piper, she served in senior roles at Counsel on Call and Major, Lindsay and Africa, where she provided legal staffing solutions to in-house legal departments. She holds a J.D. from Washington University School of Law and a B.A. from Stanford University.



Bonnie Lau
Dentons US LLP
Litigation Partner

Bonnie Lau is an experienced class action litigator focusing on unfair competition, antitrust, data privacy, intellectual property, and complex commercial disputes. Bonnie has successfully defended dozens of class actions, multi-district litigations and enforcement actions in federal and state trial and appeals courts across the country. She has also successfully handled bench and jury trials, class certification hearings, arbitrations, and administrative proceedings, and argued matters before the Second and Ninth Circuit Courts of Appeals.



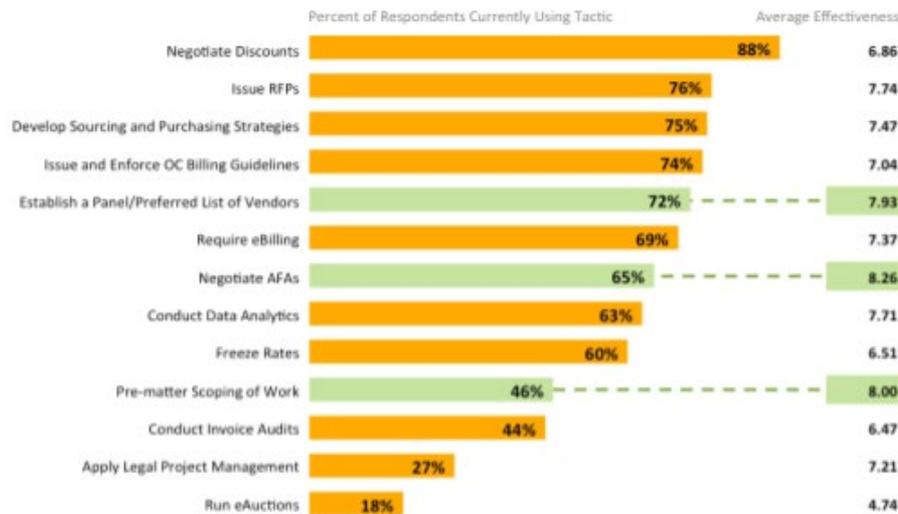
Nathan Leong
Microsoft Corporation
Lead Counsel, U.S. Health & Life Sciences

Nathan Leong is a technology attorney at Microsoft, and leads the U.S. Health & Life Science Legal team and overall legal strategy and execution on complex technology transactions, regulatory policy and compliance, privacy and data protection, incident management, and other issues related to the operations, marketing, and sales functions of the Microsoft U.S. Health & Life Sciences business. Nathan speaks and writes regularly on global privacy and data protection, information security, technology innovation in the legal profession, and digital health issues in the cloud. He also serves as a national committee chair for the National Asian Pacific American Bar Association (NAPABA) and as a member of the Board of Directors of the AABA-Chicago Law Foundation.

Alternative Fee Arrangements

Whether your organization is experienced with using alternative fee arrangements or beginning to test the waters, AFAs continue to provide a compelling value proposition for legal industry participants.

A recent survey conducted by the legal procurement industry group *Buying Legal Council*, highlighted AFAs and pre-matter scoping as some of the most valuable procurement tactics.



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<https://www.feitconsulting.com/wp-content/uploads/2018/07/2018-BLC-LEGAL-PROCUREMENT-SURVEY-FINAL-VERSION.pdf>

Real World Examples

- Transactional



- Details

- Flat fee arrangement for menu/portfolio of work (deal support and regulatory advice) with lookback period, including gratis training period and strategy meeting(s)
- Flat fee + deal complexity scoring / points system
- Flat fee / all you can eat arrangement

- Challenges

- Lessons Learned

Real World Examples

- Litigation

- Details

- Phased fixed fee + decreasing success fee
 - Portfolio arrangement
- Complex class action litigation - phased/staged fixed fee
 - Performance fee
 - Decision/risk tree-based pricing
- Collar fee arrangement

- Challenges

- Lessons Learned



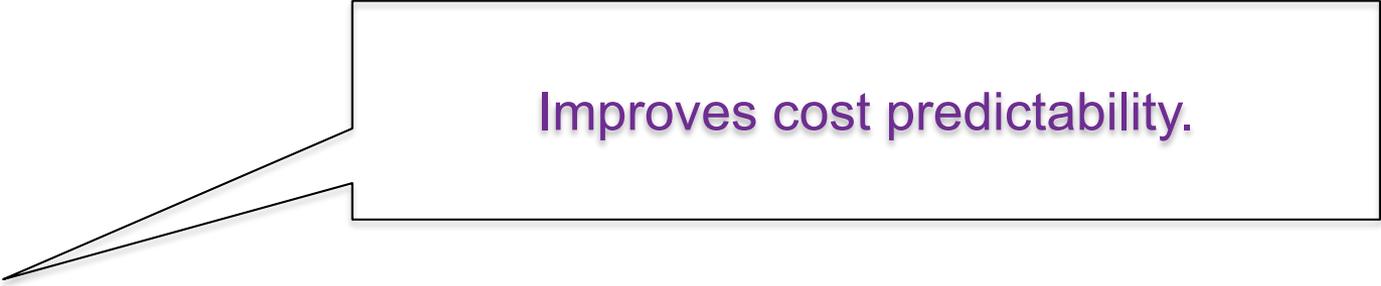
Real World Examples

- Transactional
 - Details
 - Blended Rate for Portfolio Work
 - Stage Based Billing for Complex Transactions
 - Challenges
 - Lessons Learned



You Decide: Myth or Meritorious

There are no other benefits or measurable success for AFAs other than lower price.



Improves cost predictability.



Alleviates administrative burden.

You Decide: Myth or Meritorious

I am never going to know if I got a good deal unless I use shadow billing.

"Value" should be measured independently of hourly rates.

Innovation beyond hourly rates is necessary to evolve the practice of law.

You Decide: Myth or Meritorious

If we don't track hours, we can't determine whether diverse attorneys are working on our matters.



AFAs don't preclude engaging diverse teams.



AFAs offer young and diverse attorneys more opportunity and better experience.

Glossary of Alternative Fee Arrangements

- Fixed fees/retainers
 - Fixed fees
 - Retainers
 - Portfolio
- Risk sharing
 - Success fee
 - Performance fee
 - Decision/risk tree-based pricing
- Flat fees
- Blended rates
- Capped fees
- Volume discounts/rebates
- Deferred billing

Fixed Fees/Retainers

Fixed Fees

Description	A fixed fee or flat fee is a pricing option where the fees for either the entire matter, or stages or tasks within a single matter, are fixed.
Comment	<p>The most common AFA. Main goal: cost certainty. Fixed fees can include a discretionary component (e.g. 10%) which is payable, at the client's option, at the conclusion of a matter once the result is known and the client can assess the value of the services provided by the law firm.</p> <p>Fixed fees work well when client can commit to providing detailed scoping. Also, consider discussing 'what if' or banded fixed fees on certain type of matters that are less certain, where different fixed fees are discussed and agreed based on different criteria (number of parties, rounds of negotiations, etc).</p>

Retainers

Description	In a retainer arrangement, the firm is paid a set amount per month (or other time period) regardless of how much effort is expended.
Comment	Benefits are cost certainty, easy financial management and limiting fee negotiations to a periodic review meeting (annual or monthly).

Portfolio

Description	An option where a firm represents a client on multiple matters (a "portfolio") for a fixed fee. Clients or firms can use data from prior matters to predict average matter cost and price accordingly.
Comment	This area entails a great deal of flexibility, as portfolios can be segmented by practice area, claim value or time period.

Risk Sharing

Success Fee

Description	A pricing option that includes a possible extra payment, usually agreed at the outset of a matter, to motivate the law firm to meet certain goals and share risk with a client.
Comment	This is often used by clients wishing to reduce costs and to tie fees to outcome. Success fees can be based on various metrics: for instance, the length of a matter (e.g. if a matter is resolved in X months) or the ultimate amount paid or recovered (e.g. if damages or settlement paid is less than £Y).

Performance Fee

Description	A performance fee is payable subject to pre-agreed criteria. This can be related to satisfaction, hitting key project milestones etc.
Comment	This fee arrangement tends to be used by organizations keen to align legal spend with business goals and objectives.

Decision/Risk Tree-Based Pricing

Description	This is a model that aligns pricing to outcomes that might occur at certain stages in a transaction, significant project or piece of litigation. The phasing and pricing follow a decision tree-type approach that aligns pricing to outcome (e.g. whether the matter continues or discontinues at key stages).
Comment	This can be complicated to understand and follow, but it is a useful tool if the client and law firm agree where they wish to load the risk (e.g. higher payment early on, or potential for higher payment later on).

Flat Fees

Description	A variation on the fixed fee model, this option provides clients with a 'menu' of different fixed fees for a variety of different work types. The fixed fee for each work type will always apply (i.e. it will not be renegotiated according to the nuances of each specific matter), thus giving clients true price certainty ahead of engaging lawyers in any fashion. Menu-based fee arrangements can also be structured on a task-by-task basis (e.g. for complex, multi-phased matters likely to span several months or years).
Comment	This pricing arrangement is growing in popularity, particularly for work that has limited variables. Clients increasingly ask for a menu of fixed fees to utilize alongside other AFAs.

Blended Rates

Description	A blended rate fee structure is based on hourly billing with one consistent hourly rate applied to all timekeepers (partners, counsel and associates). A variation would be different blended rates for different categories of timekeepers (e.g. one blended rate for partners and one for associates). A blended rate arrangement differs from a typical hourly arrangement because, in setting the blended rate, the firm assumes the risk that it correctly predicts the percentage of time each timekeeper will incur on the matter.
Comment	Blended rates are increasingly popular. A client may utilize one blended rate for each level of work classified as “strategic, core, or commodity” for various reasons including incentivizing use of more associate time.

Capped Fees

Description	Clients are billed for work done, up to an agreed maximum 'cap'.
Comment	<p>Capped fees can work against the spirit of partnership, as all risk is borne by the law firm. More popular with clients who are looking to risk share are cap and collar fees. This is where the firm is paid on an hourly basis with the condition that if actual fees either exceed or fall short of a budgeted fee range (the “collar”), both firm and client share the risk and the reward. For example, assume a fee estimate of \$100,000 with a “collar” of \$90,000 to \$110,000. If actual fees billed fall within the collar, no adjustment is made. If actual fees fall below the collar (e.g. \$80,000), then the firm receives a portion of the savings (typically 40-50%). Conversely, if actual fees exceed the collar (e.g. \$120,000), the firm only receives a portion of the additional fees.</p>

Volume Discount/Rebates

Description	At pre-agreed volumes of fees, clients receive either a discount on hourly rates, or the law firm pays a rebate back to the client.
Comment	Volume-based arrangements are very common. Some clients choose a forward-looking discount, others a rebate. One factor to consider, particularly in client's circumstances, is ensuring that rebates are beneficial to all – i.e. they go back into relevant 'pots' if the spend has not all come from the center.

Deferred Billing

Description	Billing at the end of a project rather than periodically.
Comment	This will simplify budget management for client. In such cases the project or part length would need to be predictable. The law firm should ensure that it isn't exposed unreasonably in either financial amount or length of time.

Questions?

Thank you!