

## LEGAL

## Local law firms look at 'alternative billing' as an efficient option

By William Williams

wwilliams@nashvillecitypaper.com

The legal industry is not known for being cutting-edge.

But with billing, a trend is emerging, rendering this sometimes-staid trade a bit more progressive than its past suggests.

The term used is "alternative billing," sometimes referred to as "alternative fee arrangements" or AFAs, and the practice is becoming increasingly popular with local law firms and their clients as both focus on efficiencies. In essence, alternative billing means a fixed or flat rate is billed for legal services, as opposed to an hourly rate.

Many clients – and lawyers, for that matter – say firms become more efficient if they bill by the job and not by the hour.

"Clients want more certainty in their budgeting and fees," said Charles Johnson, a practice group leader with Butler, Snow, O'Mara, Stevens and Cannada.

Johnson said Butler Snow's health care group sees about 75 percent of its fees generated from non-hourly rate billing.

Firm-wide, Butler Snow projects about 40 percent of 2012 projected revenues will be via AFAs, Johnson said. In 2014, that number is expected to rise to 65 percent, he added.

Some naysayers contend that alternative billing works fine for a business transaction that requires legal expertise but is not suitable for trial work and its often time-consuming nature.

Johnson counters by noting, "We are doing trial work with a fixed monthly fee."

Ed Lanquist, managing shareholder with Waddey & Patterson, said about a third of the firm's billing is alternative.

Lanquist said Waddey & Patterson has found that for budgeting purposes, telling clients the exact cost upfront minimizes surprises on the back end of the process.

"They can budget accordingly," he said.

On that theme, Butler Snow's Johnson said many of the firm's most dedicated clients, who tend to have a strong feel for long-range budgeting, like the AFAs approach.

"Understanding the need for predictability in budgeting, we approached many of our clients with a fixed fee first without them having to ask for a proposal," he said. "For one global pharmaceutical company, we handle all their contract work – which totals about 4,000 contracts annually – for a fixed rate. To do that, we have to have the data, and an understanding of what their legal expenses have been, so we can adequately agree upon price and scope of work for those projects. In order for the client and the firm to both benefit, firms have to be efficient with project management."

Teresa Walker, chief operating officer with Waller, said AFAs allow firms to know when a senior partner might be better suited (or not) for the work at hand.

"Firms want the flexibility to adjust the staffing for each case at their discretion," she said.

Walker said if clients opt for alternative fee arrangements, firms can actually generate more substantive bodies of work with those clients than otherwise would be the case – while still providing them fair costs for services.

"We can offer the client a flat fee for each legal matter we do for them,"

explained Walker, who estimated about 20 to 25 percent of Waller's work is handled via AFAs. "If done and staffed correctly, it can increase the volume of the work we get, which can increase revenue and also minimize any unnecessary costs to the client."

Alternative billing is not limited to the straightforward flat fee.

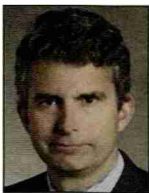
For instance, a firm can do discovery on a flat fee and trial work on an hourly fee. Some firms consider contingency fees a form of alternative billing. There is also the "collar" or fee cap approach. If legal work exceeds the fee originally agreed upon, the client will pay the balance.

In addition, some firms use an annual retainer for a portfolio of services. With this approach, the firm will handle the work for an agreed upon price (usually for a bulk of services).

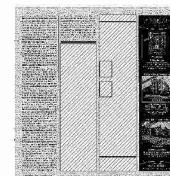
Bill Ferrell, a Stites & Harbison associate attorney who focuses on intellectual property matters, said AFAs are an accepted



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practice for trademark registration and for patent clients.

“There is room to grow in handling litigation for flat fees,” he added. “As time goes by, that’s where we’ll see the most expansion – in flat fees.”