

POSITIONED FOR as seen in *Law Practice Magazine* GROWTH Nov. / Dec. 2010

EMBRACING CREATIVITY IN FEES TO ACHIEVE A WIN-WIN

By Steven T. Taylor

For years now, many within the profession have been ringing the death knell for the billable hour, claiming that law firms would have to restructure their fee systems because clients would demand it. Well, the billable hour is hardly dead, with the vast majority of partnerships continuing to rely on it. Yet more and more firms are devising creative alternative fee arrangements (AFAs)—and perhaps

The obvious benefit of AFAs for clients is that they can more easily, and more certainly, budget outside legal expenses; that is, it eliminates surprises that sometimes exist with the billable-hour system. And for Shook Hardy, the shift to alternative fees helps simplify billing and tighten operations, which can lead to higher levels of profit. That's especially the case with one of its major clients, Tyco International. Several years ago, the global manufacturing giant consolidated its outside counsel for its product liability litigation from some 100 law firms to one: the Kansas City partnership.

Soon after becoming Tyco's counsel, Shook Hardy implemented an AFA program in which the company pays the firm a flat fee each year, in monthly installments, to handle all of its products liability work. This is the sixth year of that arrangement—and every year the fee has decreased and the firm's profitability has increased, according to Murphy.

"It's clearly been a win-win situation," he says. "The reason is, when you're working like that you gain efficiencies. You understand the business of the client and you understand what the client's needs are moving forward. And you can use that to provide value. So that's been a real success story for both the firm and the client."

To help keep such AFA programs running smoothly, Shook Hardy has a project administrator to make sure that the legal teams and the technology that supports their work are functioning well—and that the budgets line up. "Matt [Bohnen] performs a role that's very similar to a project manager in the construction industry," Murphy says. "If we're getting paid a certain amount of money on a monthly basis or a yearly basis, he's going to let us know from a budget standpoint how we're doing against that."

Murphy expects that, in time, 50 percent of all revenues will stream into the firm on an alternative-fee basis, whether it be through flat fees or hybrid arrangements. The key to success with AFAs, he adds, is creating a trusting and open environment for lawyers to communicate to clients early, often and fully.

For advice to others in the profession, he offers this: "Coming out of this recession, clients are going to be looking even more for their law firms to be creative and innovative and for their law firms to partner with them. I think you just have to embrace that creativity and not be reluctant to change."

©Copyright 2010 by the American Bar Association. Reprinted with permission. This information or any or portion thereof may not be copied or disseminated in any form or by any means or stored in an electronic database or retrieval system without the express written consent of the American Bar Association.



John Murphy
Chairman, Shook, Hardy & Bacon LLP

none has been more aggressive in this regard than Kansas City-based Shook, Hardy & Bacon, which has one of the nation's premier litigation defense practices.

While the 500-plus-attorney firm's use of AFAs predates the recession by almost a decade, it has increasingly utilized such structures during the past few years. So much so, in fact, that today AFAs account for one-third of Shook Hardy's revenues—that's right, one-third—or more than \$300 million per year.

"It's been clear to us for some time now that clients were looking for ways for their law firms to be more creative and innovative," says the firm's chair, John Murphy. "We saw this as a real opportunity to use alternative fee arrangements as a means of aligning our interests with those of the client and to show a willingness to share the risk."

When asked if clients are increasingly requesting AFAs in the face of the tough economy, Murphy's quite definitive. "Absolutely," he says. "I would say that 100 percent of the time clients include a section in their RFPs that asks if responding law firms would consider an alternative means of billing their time. I'm not suggesting, obviously, that 100 percent of the time the clients decide to go that route, but they at least always want to talk about it."