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Winston sees growing demand for alternative fees

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The use of fixed and other alternative fees is growing “exponentially” at Winston & Strawn LLP because of client demand reinforced by a new data system the firm designed to forecast the costs of legal work, according to the firm’s leaders.

“I pushed it because our clients evidenced an increased interest in alternative fees” starting in earnest about 18 to 22 months ago, said Thomas Fitzgerald, managing partner of the firm.

The system, which went into effect in the second half of 2009, enables Winston & Strawn to know in advance the cost of many types of legal work and offers clients fixed, capped or other alternative fees, said Fitzgerald and Scot Farrell, chief operating officer of the firm.

The top 100 law firms around the nation derived about 11 percent of their revenues from alternative fees in 2008, according to a new book, “The LegalBizDev Survey of Alternative Fees.”

All firms that responded to the survey predicted substantial growth in alternative fee arrangements, according to LegalBizDev, a consulting firm.

Farrell said fixed and other alternative fees were used in only 5 to 7 percent of legal matters that Winston & Strawn handled when he joined the firm in August 2008.

“Right now, I would say we’re probably doing around 20 to 25 percent of various alternative billings,” he said. “It’s just growing at an exponential rate right now.”

Some types of legal work that might be billed in this manner include real estate transactions, initial public stock offerings, regulatory inquiries, preparation of documents for the Securities and Exchange

Commission, patent prosecutions, some mergers or acquisitions, and private equity work, Fitzgerald and Farrell said,

“We’re also working on right now on being able to do fixed fees and alternative billing in various phases of litigation,” Farrell said. “I don’t think either system [billable hours or fixed fees] is going to eliminate the other.”

Instead, he said, clients will have more options. “They’re going to make the decision as to what’s more attractive to them,” he said.

In 2006, Seyfarth, Shaw LLP of Chicago adapted a business management strategy called Six Sigma into a law firm system that Seyfarth calls Lean Six Sigma.

Seyfarth is using its Lean Six Sigma system to predict how many hours a legal matter might take so it would be able to offer flat fees.

At Winston, Farrell described how the new data system came to be.

He said the firm had already been “data mining” through a system called Praxis to learn how Winston lawyers process various legal matters and the phases each matter goes through.

“When I came here, I asked why hasn’t Praxis been linked into the financial system” to learn what different legal matters cost the firm to complete.

They then tied in Praxis to the accounting system and began researching “the average number of hours” different legal matters consumed, “the costs and revenue derived,” and costs involved with “specific phases of matters,” Farrell said.

From this, Farrell and his staff developed typical price structures that Winston partners could use to offer fixed or capped fees or other alternative fee

arrangements.

“Our reports to our partners give high, give low, and give average [price] — as much information as they need and want,” Farrell said. “We assist them in creating models and assist them in monitoring the progress” of legal matters.

Not all partners support this. “There are a number of partners whose practices are bet-the-firm type practices,” Farrell said. “They aren’t interested in talking to clients about fixed fee arrangements.”

But the firm has derived fixed fees and alternative billing arrangements for various pre-trial phases of litigation. “We can do general discovery, depositions, interrogatories, all the phases that exist all the way up to trial,” Farrell said.

“Trial tends to be the wild card. It’s still risky in the U.S. The plaintiff attorney’s best weapon if he found out [the defense attorney] is on a fixed fee would be to drag the trial out as long as he can.”

The appeal of fixed and capped fees is that “clients have told us they are for certainty of costs,” Farrell said. “They’re more concerned about being able to set their budgets and stay within their budgets.”

Though fixed and capped fees can please such clients, “we’re taking the risk if the matter has some aspects we didn’t plan for,” Farrell said.

He said one of the keys to fixed and capped fees arrangements “is to do these ... if there is some volume involved,” a volume of business from the same client.

“There is still some risk,” he said. “But if you have volume, you are able to spread the risk. ... We need to show the partners that the risk of doing an alternative fee can be spread over multiple matters.”