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Law Firms Find Marketing Edge in Touting Alternative Fees

These firms aren't keeping secrets about their clients' billing options.

By Lizzy McLellan | December 13, 2017



Kevin Kent of Conrad O'Brien.

Even with increasing buzz around [client demand for alternative fee arrangements](https://www.law.com/americanlawyer/almID/1202795020314/) (<https://www.law.com/americanlawyer/almID/1202795020314/>), the numbers suggest law firms are dragging their feet on adopting non-traditional billing. But while others move slowly, some Pennsylvania firms have found that highlighting their [embrace of alternative pricing](https://www.law.com/thelegalintelligencer/sites/americanlawyer/2017/08/16/is-change-now-unstoppable-for-law-firm-billing/?back=law) (<https://www.law.com/thelegalintelligencer/sites/americanlawyer/2017/08/16/is-change-now-unstoppable-for-law-firm-billing/?back=law>) can help them stand out from their rivals.

Conrad O'Brien, for example, has made its billing options a fixture in its marketing strategy. What started as one partner's creative approach has grown into a database of billing options they make available to clients, with the law firm often starting the conversation.

According to [Altman Weil's 2017 Law Firms in Transition survey](https://www.law.com/americanlawyer/almID/1202787079121/) (<https://www.law.com/americanlawyer/almID/1202787079121/>), 39 percent of law firms have significantly changed their approach to pricing strategy. Among firms with 250 or fewer lawyers, the figure dipped to 33.2 percent, and just 15 percent of firms said they were proactively initiating conversations about pricing or budgets with their clients.

Kevin Kent, a partner and executive committee member at Conrad O'Brien, said his firm is in that 15 percent. While clients do bring up billing on their own sometimes, he said it's not a topic he shies away from introducing himself and discussing in detail.

The firm first started experimenting with billing arrangements through partner Jack Guernsey, who was an early adopter, Kent said. To this day, he said he bounces billing ideas off Guernsey.

"I don't know that we really called them alternative fee arrangements at the time," Kent said. That was in the early 2000s, pre-recession. After the recession, he said, AFA use increased slightly, but not as much as one might think, given the general economic distress.

"Clients hadn't had a lot of experience with them at the time," Kent said. "When we would propose something else they would revert to the billable hour because it was familiar."

But over the last four to five years, he said, the interest has accelerated. Clients are more in touch with their legal spend and are looking for ways to tailor the costs to their needs.

Conrad O'Brien's response: use AFAs more as a marketing tool. The firm's marketing staff has become involved in assessing existing AFAs, comparing them to other options in the market and creating additional templates for clients to use, Kent said.

Offering Transparency, Sharing Risk

The firm has created dozens of tailored arrangements over the years, Kent said, falling into about 11 categories of agreements. Some of them include a billable hour element, and some aren't all that much of a departure from the traditional billing model. While some firms have hired staff to focus on pricing—26 percent of them, according to Altman Weil's report—Conrad O'Brien still has mainly lawyers creating the arrangements, Kent said.

"In some of the AFAs, you're essentially sharing risk with clients, which they want," said managing partner Nicholas Centrella. "The way we've often structured it is that we still get revenue through the course of the year usually through reduced rates," with the potential for a success fee at the end.

What's more, the firm often sends the details of billing arrangements it employs—sometimes its entire database of fee arrangement templates—to prospective clients.

Kent said he is not too concerned about what prospective clients might do with those templates. He and his partners have even offered to help clients create agreements with other law firms, usually in situations where the matter at hand is outside of Conrad O'Brien's practice offerings.

"To the extent that there would be any concerns, they're outweighed by the benefit we see in a high level of transparency with the client," Kent said. "These are just templates, and the end product ends up being a result of back-and-forth between us and the client."

Law firm consultant Tom Clay of Altman Weil said Conrad O'Brien likely doesn't have much to lose by sharing its templates—anyone who wants to find a list of potential fee arrangements could do a quick internet search. But the firm may have plenty to gain.

“This is a great marketing ploy, giving people things they didn't necessarily ask for,” Clay said. “It's a great value-add.”

Any lawyer could benefit from sharing their ideas for fee innovation with their clients, he said. There's “no doubt” that clients are more focused now on the potential benefits of alternative pricing, he said, so it's wise for firms to be proactive.

Jeffrey Lobach of central Pennsylvania's Barley Snyder has said clients often ask for a “menu” of alternative fee arrangements in their requests for proposals. [A number of midsize firms \(https://www.law.com/thelegalintelligencer/sites/thelegalintelligencer/2017/08/25/central-pa-firms-aim-to-seize-on-cry-for-more-afas/\)](https://www.law.com/thelegalintelligencer/sites/thelegalintelligencer/2017/08/25/central-pa-firms-aim-to-seize-on-cry-for-more-afas/) in the region said they do as much as a quarter of their work on an alternative fee basis.

[Ballard Spahr \(https://www.law.com/law-firm-profile?id=24&name=Ballard-Spahr-LLP\)](https://www.law.com/law-firm-profile?id=24&name=Ballard-Spahr-LLP) chairman Mark Stewart said his firm sometimes provides specific advice for clients' legal departments on how to operate more efficiently.

“The transparency with respect to how we're doing the work, who's doing the work and how the work gets done ... that's stuff that clients really appreciate,” he said. “You do have clients who are thinking about this more and more, and we try to be out there.”