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Session 5: Value Based Fees

Today's Agenda

- Main AFA Models
- Pricing Options on PERSUIT
- Value Based Fees

What are main AFA models?

Scale of Not very Innovative to VERY INNOVATIVE

AFA Families

Efficiency Controlled Hourly Billing

- Capped Fees
- Collared Fees

Value Based Billing

- Success Fee
- Contingency Fee
- Hybrid Model

Fixed Fee Billing

- **Portfolio Fixed Fee**
- **Matter-Level Fixed Fee**
- **Phase-Level Fixed Fee**
- **Task Based / Line Item Fixed Fee**
- **Activity Collared Fixed Fee**

Pricing Option on PERSUIT

Fee Types

Rate Card/Hourly Rate	hourly rates of the proposed law firm timekeepers
Budgeting Estimate	represents total budget amounts (e.g. $100,000) but which have no 'teeth' behind them as firms can bill beyond the amount without any penalty
Capped Fee	sets a capped budget such that the law firm bills hourly up until a cap upon which they can no longer bill the Client
Fixed Fee	flat fee that will be paid to the firm to represent the Client for the duration of the matter: • **Portfolio Fixed Fee**: annual fee for a portfolio of work; • **Fixed Fee by Phase**: fixed amount for each phase of a matter; • **Fixed Fee by Task/Line Item**: fixed amount per task or deliverable;
Contingency Fee	law firm charges a set % of the amount recovered in the case
Success Fee	law firm charges Client a fee that is only paid upon the achievement of a predefined outcome

What are main Value Based Fees?

Type 1: Success Fee

Definition: firm charges client a fee that is only paid upon the achievement of a predefined outcome. The success fee is often provided in addition to another AFA to incentivise the right outcome.

Example: $50K success fee for winning motion to dismiss without leave to amend.

Pros

- Motivates firms to achieve the optimal result for client
- When used in conjunction with a high discount or reduced fixed fee, client pays less for a bad result and more for a good result
- incentivises the firms to take on some risk
- Aligns incentives between client and firm possibly providing a win-win situation

Cons

- Firm is already paid to obtain a good result, why also pay a success fee?
- How is “Success” defined? Could lead to contentious discussions if not well defined at the onset of matter

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Type 2: Contingency Fee

Definition: firm charges a set % of the amount recovered in the case.

Example: 30% contingency fee such that firm will be paid 30% of the total amount recovered.

Pros

- Only pay for successful outcome
- Don't need to track hourly billing
- Client can take on matters that would be otherwise cost-prohibitive

Cons

- Firm may choose to limit resources or decline to proceed if the cost is getting too high and/or the probability of outcome or recovery is reduced
- % of fees requested by the firm can be significant
- Firms may choose not to take the work if the numbers are not favorable

PERSUIT Recommends

When to use Success Fees

Success fees work very well in the context of a matter or an activity where success can be defined. First you need to identify a predefined outcome or achievement, a milestone, or a marker that a firm can hit or target (e.g. motion to dismiss), and then you reward them with a success bonus. This really motivates firms to get that optimal result for their clients.

When to use Contingency Fees

Consider using contingency fees where a direct tie can be established to an amount or recoverable value.
This can be an award in a civil litigation or a trial litigation, or this could be the deal value of a huge transactional deal.