

March 13, 2010

Alternative Fee Arrangements

ACREL


PREPARED BY

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The following materials were presented to the American College of Real Estate Lawyers (ACREL) on March 13, 2010. These materials are incomplete without the substantial material accompanying discussion.

The Law Firm Consulting Practice

- Firm background of designing and conducting profitability analyses for over 25 years
- Personal role for 20 years included designing and approving alternative fee deals, conducting profitability post mortems, and leading project management training at two AmLaw 100 firms
- Strategic and management consulting services to law firms across the country
 - Earnings improvement
 - Strategic planning
 - Strategic growth, mergers and acquisitions
 - Partnership practices and governance (compensation, retirement, practice group management, etc.)
 - Associate structure (competency models, compensation, etc.)
 - Marketing and training
 - Annual Hoffman Alvary Survey™ on Law Firm Economics

Topics for Today

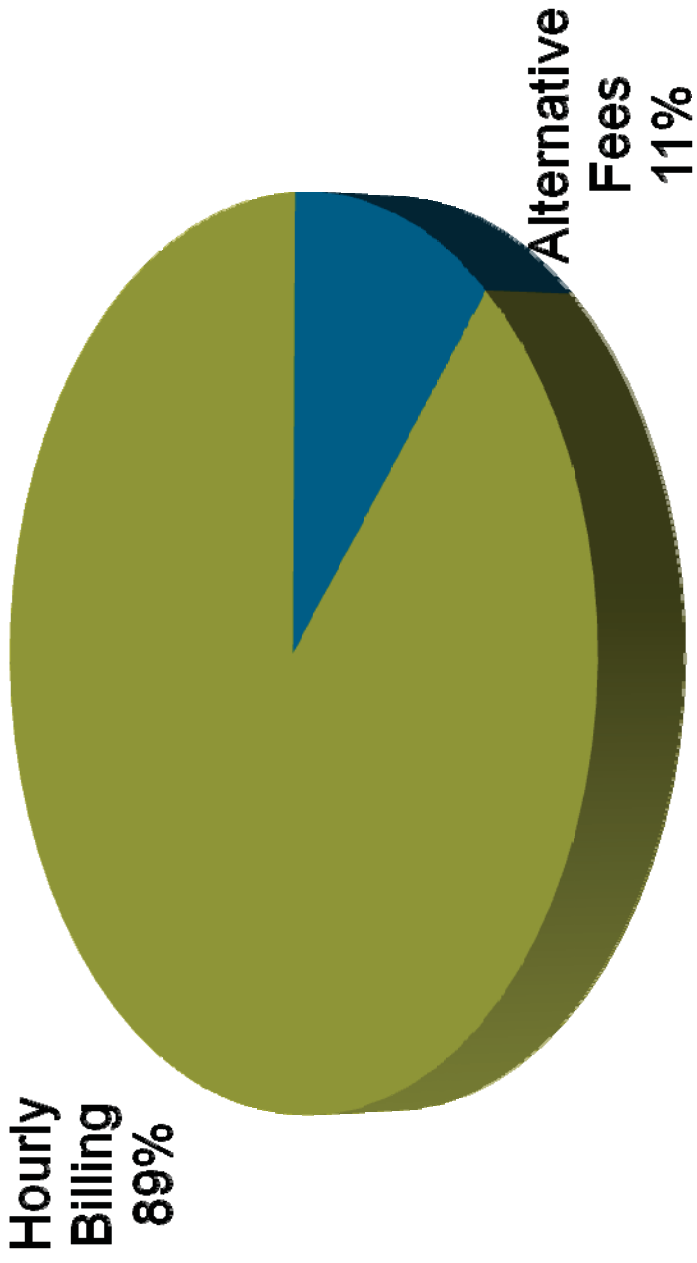
- Market trends
- Inking the deal
- Managing the work
- Assessing the results
- Approaches to reduce law firm costs
- Other ways to add value for your clients
- The “best practices” approach

The Workshop

The Billable Hour

“Reports of my death have been greatly exaggerated.”

– Mark Twain



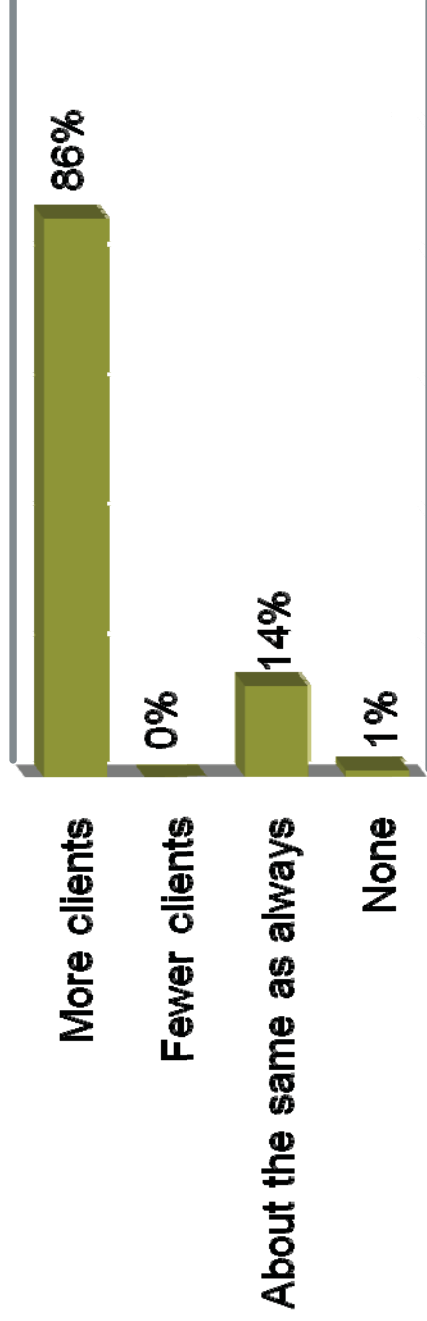
Source: The Legal Business Development Survey of Alternative Fees, p. 5; figure equals the estimated percent of AmLaw 100 alternative fee revenue of 11% times \$67 billion (The AmLaw 100's total 2008 revenue)

AFAs Represent a Growing Proportion of Fees

In 2009, approximately what percentage of your matters included a value-based / non-hourly fee component?



Are more or fewer clients willing to discuss changing their fee or other service structures?



Source: ALM Law Firm Leaders Survey, December 2009

In a Recent Association of Corporate Counsel Survey:

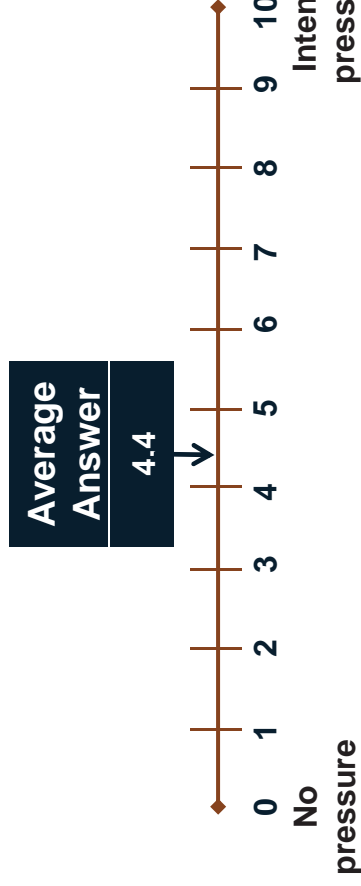
- 60% of general counsel and chief legal officers said the best way for outside counsel to improve relations is to offer more alternative billing arrangements
- 77% would like to increase the percent of their budgets spent on alternative fees

Source: The Legal Business Development Survey of Alternative Fees, p. 8

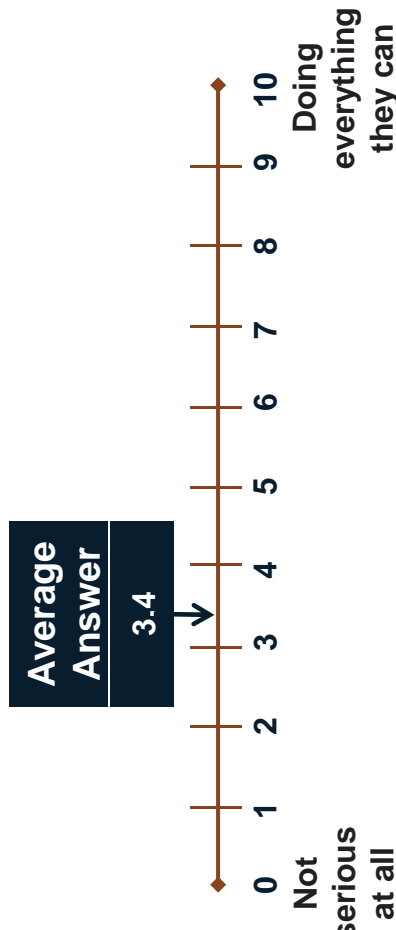
ACC Value Challenge

- Reconnect the cost of legal service with value
- Better align the interests of clients and firms

In your opinion, how much pressure are corporations really putting on law firms to change the value proposition in legal services delivery (as opposed to simply cutting costs)?



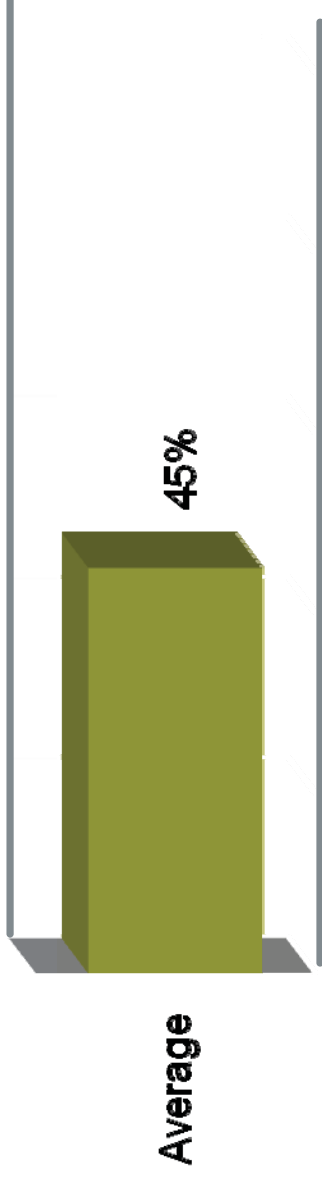
In your opinion, how serious are law firms about changing their legal service delivery model to provide greater value to clients (as opposed to simply cutting costs)?



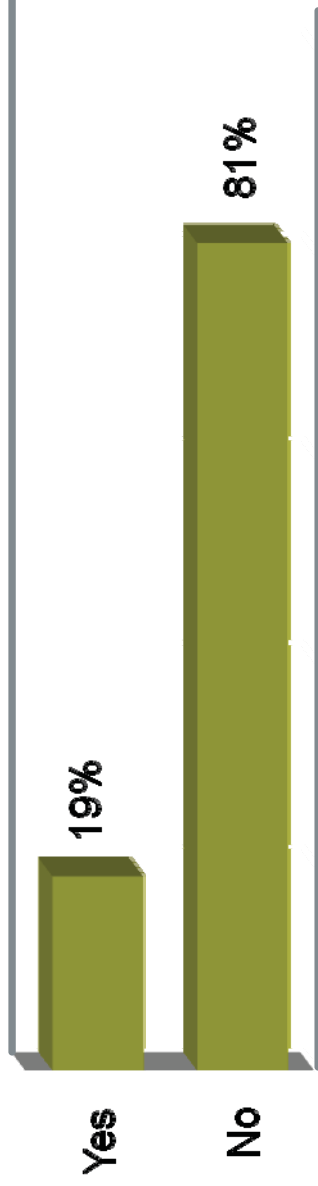
Source: 2009 Chief Legal Officer Survey, Altman Weil, Inc.

Do Discounts Help?

What percentage of your top 50 clients receive a discount?

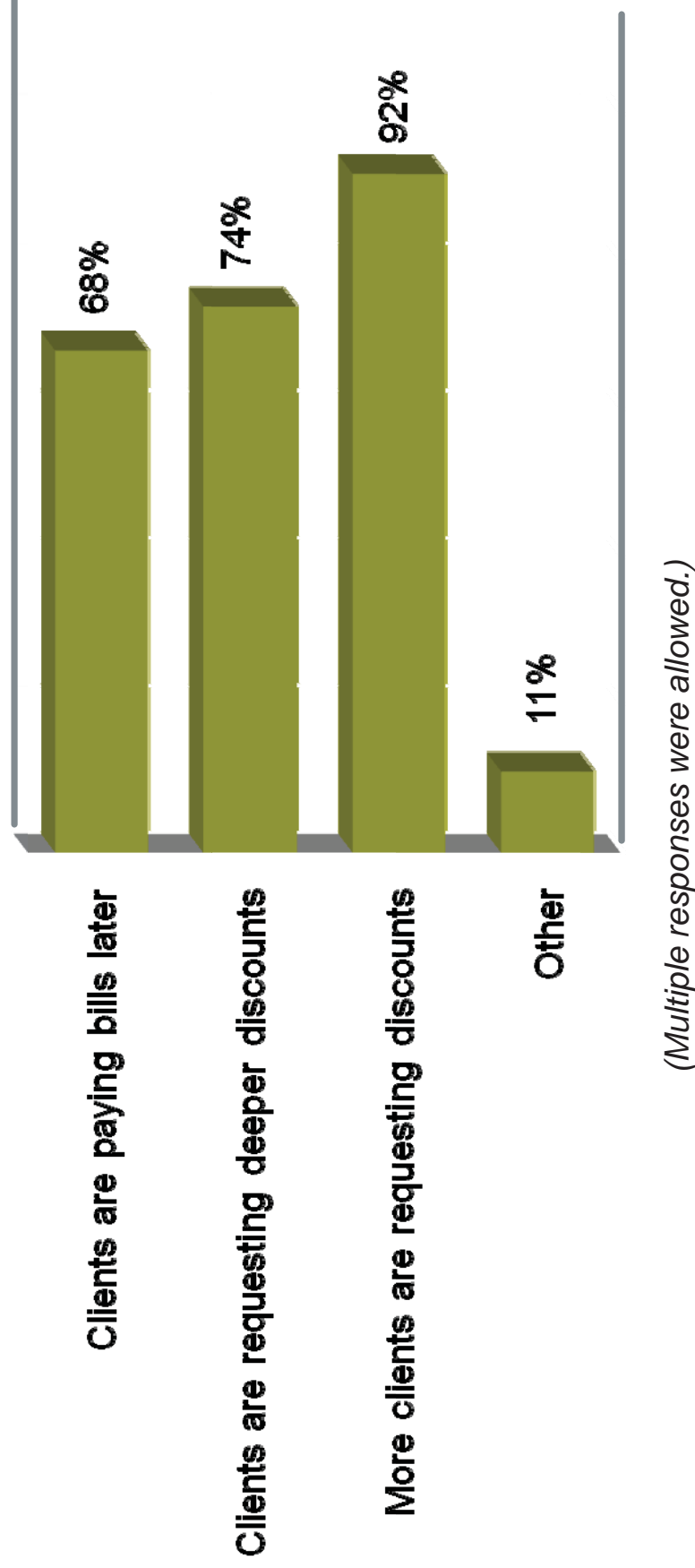


Is it easier to collect from clients who are billed at rack rates than those who receive discounts?



Source: ALM Law Firm Leaders Survey, December 2009

How Is Client Behavior Changing?



Source: ALM Law Firm Leaders Survey, December 2009

The Workshop Will Cover

- Pricing strategies and mechanisms, and quid pro quos you can request from the client
- How to choose which type of pricing to offer, and advantages of each structure for both the client and the law firm
- How to decide what price to set

The Menu

- Straight discount
- Volume discount
- Discount plus potential success fee
- Timed discount (higher fee for faster completion)
- Rate freeze (or no step increase or no scale increase)
- Fixed fee (per transaction or per phase of a matter)
- Cap
- Blended rate (or split blended rate)
- Risk corridor
- Contingency (or partial contingency)
- Requirements contract or retainer
- Securdment
- Hybrids and other options

Match the Fee Arrangement to the Client's Motivation

Cost predictability



Retainer or fixed fee

Aligning incentives



Contingency / success fee

Lawyer efficiency



Blended rate

Lawyer efficiency, with an
emphasis on partner
supervision

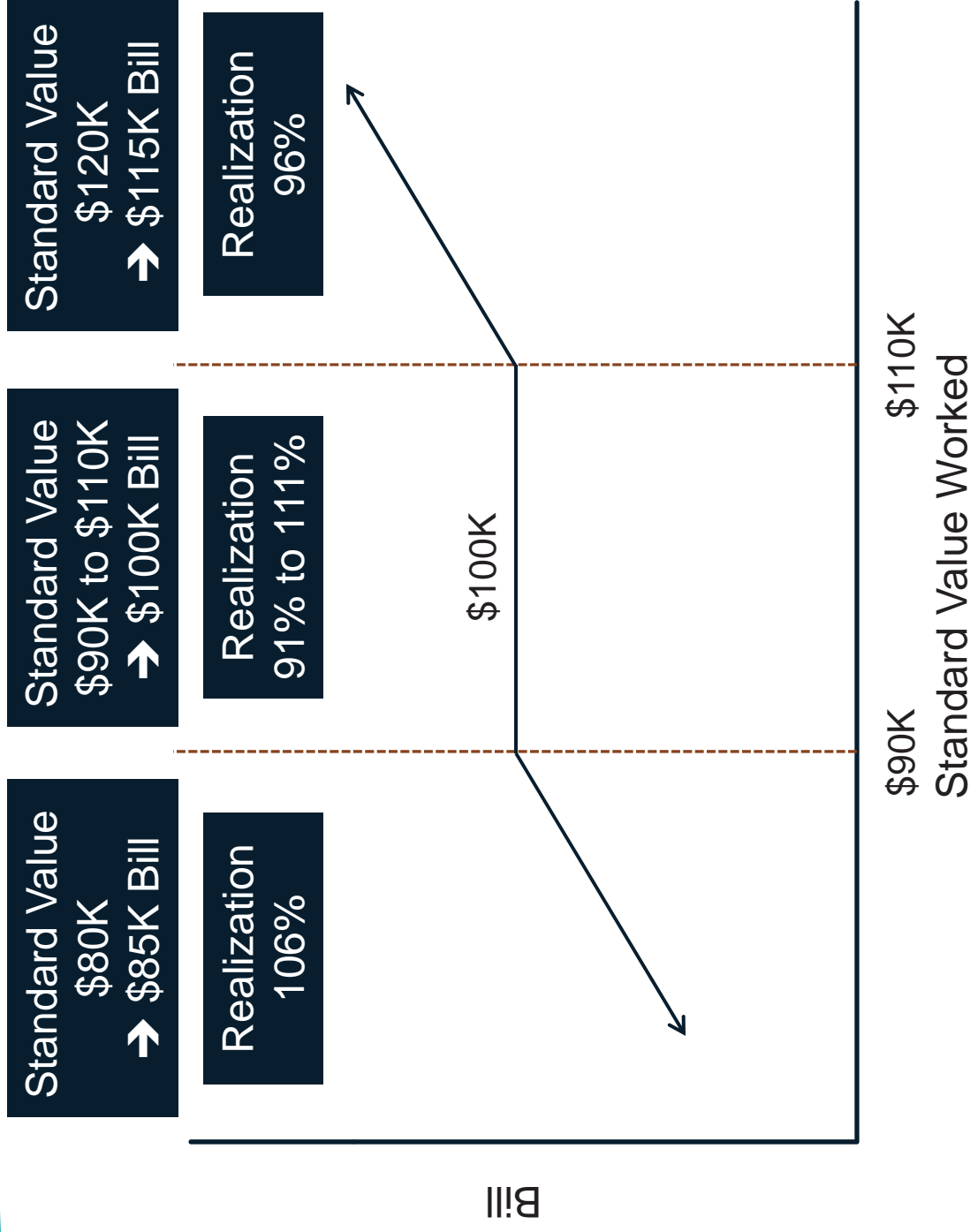


Split blended rate

Quid Pro Quos

- A guarantee of a large volume of work
- A promise of (or a right of first refusal on) future work – perhaps at standard rates – in a new area (e.g., litigation work for a company that to date has been solely a real estate client); or perhaps in a related area. (This promotes efficiency and may free up conflict space for your law firm.)
- A bonus opportunity
- A guarantee of prompt payment (!)
- Access to collected knowledge (from the client's databases, from other law firms) or to information on other law firms' fee structures and legal costs. (There is no need to identify the firms.)
- Referrals of new work, marketing assistance (e.g., appearances on panels), etc.
- An ethical or a blanket waiver

Risk Corridor \$90K - \$110K 50% Split on Over / Under







Inking the Deal with the Client



Managing the Work

Most Arrangements Can Be Profitable or Not – the Difference Is Management

To paraphrase Peter Drucker,

“Administration is doing things right.
Management is doing the right things.”

Management Is

- Real time
- A published budget
- Published task codes
- Advance warning of budget issues
- Prompt notice of scale changes

Management Is Not

- Archeology
- A secret fee deal
- Disregarding task codes
- Month-end time entry
- “Oops, we went over budget”
- No discussion of scope

AFAs Are Still Experimental As With Every Experiment, You Must Look at Results

Subjective:

- Client feedback
- Team feedback

Objective:

- Realization
- Average standard matter value
- Range of standard matter values

Prospective “What ifs”:

- Change in responsibilities (who does what)
- Change in staffing (who is on the team)
- Process reengineering
- Better forms
- Better training



Approaches that May Reduce Firm Costs



Other Ways to Add Value for Your Firm's Clients



The “Best Practices” Approach

A Focus on Value

“If you think good tax advice is expensive, you should see what bad tax advice costs.”

Source: The Legal Business Development Survey of Alternative Fees, p. 101

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Workshop Slides

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Assessing Different Fee Structures

Fee Structure

Advantages to Client

Advantages to Law Firm

Straight discount or rate freeze - Lower cost

Volume discount

- Lower cost

- Likely higher volume

Discount plus success fee

- Possibly lower cost

- Potential premium for success

- Aligns law firm and client

interests in success

Fixed fee

- Predictable cost

- Potential premium for high efficiency

- Possibly lower cost

- Shifts risk of cost overrun to law firm

Fee cap

- Predictable cost

- Possibly lower cost

- Shifts risk of cost overrun to law firm

Blended rate

- Possibly lower cost

- Potential premium for high efficiency

- Aligns law firm and client interest

in efficiency

Assessing Different Fee Structures

Fee Structure

Advantages to Client

- More predictable cost
- Possibly lower cost
- Shares risk of cost overrun
- Shares benefit of lower costs
- Aligns law firm and client

Advantages to Law Firm

- Shares risk of cost overrun
 - Shares benefit of lower costs
 - Potential premium for high efficiency
- interests in efficiency

Contingency

- Possibly lower cost
- Aligns law firm and client

- Potential premium for success
- interest in success

Requirements Contract

- Predictable cost
- Possibly lower cost

- Likely high volume
- Potential premium for high efficiency

Quid Pro Quos

- A guarantee of a large volume of work
- A promise of (or a right of first refusal on) future work – perhaps at standard rates – in a new area (e.g., litigation work for a company that to date has been solely a real estate client); or perhaps in a related area. (This promotes efficiency and may free up conflict space for your law firm.)
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Setting the Right Price

History	Bill	Price
Blackacre Deal	\$25,000	\$25,000?
Whiteacre Deal	\$30,000	
Greenacre Deal	\$20,000	

Setting the Right Price

History	Bill	Raw Time	Price
Blackacre Deal	\$25,000	\$28,000	\$25,000?
Whiteacre Deal	\$30,000	\$32,000	\$27,000?
Greenacre Deal	\$20,000	\$21,000	

Setting the Right Price

Date	History	Bill	Raw Time	Price
2008	Blackacre Deal	\$25,000	\$28,000	\$25,000?
2008	Whiteacre Deal	\$30,000	\$32,000	\$27,000?
2009	Greenacre Deal	\$20,000	\$21,000	\$30,000?

Is “Shadow Billing” Appropriate?

For Legal Services Rendered During February 2010
on the Blackacre Condominium Project, Which Closed
on February 26, 2010

Fixed fee

\$50,000

Is “Shadow Billing” Appropriate?

For Legal Services Rendered During February 2010
on the Blackacre Condominium Project, Which Closed
on February 26, 2010

Fixed fee \$50,000

At standard hourly rates, this invoice would total \$75,000

Is “Shadow Billing” Appropriate?

For Legal Services Rendered During February 2010
on the Blackacre Condominium Project, Which Closed
on February 26, 2010

Fixed fee \$50,000

At standard hourly rates, this invoice would total \$25,000

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