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Inflexible Firms Risk Losing Both Clients And Partners

By **Denise Oliveira**

Law360, New York (December 05, 2008) -- The economic crunch has prompted many clients to ask their lawyers for discounted rates or alternative billing structures. Firms that don't respond risk losing both clients and partners, experts say.

"We're seeing some lawyers pick up and move their practice to a firm whose billing rates are more in line with their own," said Blane R. Prescott, senior vice president at the law firm consultancy Hildebrandt International.

And some law firms have been positioning themselves to recruit partners prepared to make the jump, according to consultants.

Partners might take their clients elsewhere to help them control costs, or simply to keep the lawyers' own practice alive, they said.

"It's [the partner's] own compensation and advancement at stake," said Edward Poll, principal of LawBiz Management Co. If partners can't attract clients to a law firm because of its high hourly rates, they might move to firms where they can actually bring in business, Poll said.

"If firms are not creative in this market when it comes to billing, a partner who is trying to attract a new clientele might leave. It's that simple," said Flo Frey, a principal at Virginia-based legal recruiting firm Frey & Sher Associates Inc. and past president of the National Association of Legal Search Consultants.

The blog of LegalTimes reported recently that a former counsel from White & Case LLP's global customs practice had done just that, moving to Baker Donelson Bearman Caldwell & Berkowitz PC in November partly because of its "friendlier rate structure."

The lawyer, Raymond F. Sullivan Jr., told Law 360 on Friday that his move to Baker Donelson made sense because the firm was looking to grow its international practice and because "I thought the firm had a friendlier rate and fee structure for clients I would bring with me and potential business that I could attract."

White & Case said in an e-mail on Friday that the firm has a "highly competitive and flexible billing structure that offers clients a wide variety of options and value."

As clients increasingly push for rate discounts and freezes, flat fee arrangements or success-based billing, firms that are rigidly charging top dollars may lose partners to firms that are actively touting themselves as rate-friendly firms in an effort to recruit lateral talent, consultants said.

Some small and mid-sized firms with lower overhead costs than their larger counterparts are advertising that they can do equally good work for a lower price, according to the consultants.

“It's a way to gain business and lawyers who have business,” said Tom Clay, a principal at law firm consulting company Altman Weil Inc. “And it will resonate well with clients for the next couple of years,” Clay said.

“Some regional firms see this as an opportunity to pick up partners with practices that work better in [a setting] without that same kind of billing structure,” said Jeffrey Lowe, the managing partner of legal recruiting firm Major Lindsey & Africa LLC's Washington office. Being able to charge $400 an hour as opposed to having to bill $650 an hour for the same work might make a big difference for some clients who would be willing to follow the lawyer to a new firm, Lowe said.

But several consultants said they don't expect a massive exodus of partners from law firms that refuse to yield to their client's billing requests.

"I don't think this would impact partners so severely that they would leave a law firm," said Dewey & LeBoeuf LLP's chief financial officer, Joel Sanders. Sanders said that since September he has seen an increase in client requests for rate freezes, discounts and deal caps, particularly on corporate transactions.

And while the flight of partners seeking greener billing pastures is likely to be exacerbated by the current financial meltdown, the demand for lower rates certainly preceded it, consultants said.

“There has been constant pressure on partners to keep rates up, when what clients want is for the rates to go down,” Lowe said, noting that often, entire practice areas get dislocated because of billing considerations.

And for several years, as law firms have merged and found themselves under new billing requirements, partners and groups have chosen to take their portfolios elsewhere, according to consultants.

While there is likely to be some voluntary partner departures in the period ahead, it will probably not be in huge numbers, and most of the partner movement will be due to layoffs, Hildebrandt's Prescott predicted.

If a law firm is going through difficult times and a partner is not generating sufficient profit or their billing rates are low, the firm will tell the partner to go elsewhere, he said.
A law firm's refusal to accommodate clients' fee requests may cause some loss of business or staff, but reducing fees is not always necessary and may not be a wise strategic move, several consultants said.

First of all, not every client will take their business elsewhere if they don't get a discount. Although law firms are having to compete for the more basic work, clients will continue to rely on lawyers with whom they've had long term relationships to handle their most sophisticated and complex legal needs, according to industry insiders.

Moreover, cutting fees is not typically sound long term strategy for law firms, some consultants said.

“If you're competing on price, you're not providing the highest value,” said Mary K. Young, a partner with law firm consulting company Zeughauser Group.

“Partners and firms need to work with their clients given their economic situation, but they need to think about the long-term implications of slashing their price,” Young said.
The key issue about law firm billing is that the higher the rates, the higher the firm's profits, Young noted. And the higher a firm's profits, the better equipped the firm will be to attract top talent. “And top talent is what clients need,” she said.

Moreover, a law firm that agrees to provide a discount may be locking itself into a new rate schedule, Dewey & LeBoeuf's Sanders said.

“Once you discount a matter for a client, you're married to that discount, and that may have a cascading effect. You may have to negotiate a similar discount for other clients, and it may have an erosionary effect on a firm's profit margins,” Sanders said.

While discounting bills or lowering fees may not be the answer, working creatively with clients to somehow meet them halfway and maintain a good working relationship is key during this economic crisis, the consultants said.

And most law firms are typically willing to be accommodating, Altman Weil's Clay said, noting that the consequences of being completely inflexible are too dire.
“You lose your lawyers and you lose your clients,” Clay said. “And that's all there is to lose. That's what the firm is all about.”