

Taylor's Perspective ...

Book Showcases Law Firm Leaders Candid Thoughts and, Wisely, Condemns Shadow Billing

Jim Hassett is at it again.

The founder of LawBizDev and an occasional contributor to this publication has written another book, *Client Value and Law Firm Profitability*, released last month. (*Of Counsel* published a chapter from it in our October issue.) Based on dozens of interviews with law firm leaders at 50 of the nation's top 200 law firms, Hassett's new book provides readers with a valuable look into what managing partners, chairs, senior partners, and executives are doing and thinking about regarding the profession's most meaningful issues and ideas.

Perhaps the most compelling section in the book is "Chapter 6: What Clients Should Do," particularly Hassett's third point, "Stop demanding shadow billing." Thank you. Thank you. Thank you. I couldn't agree more, and feel it's about time someone called clients out on this unreasonable demand they often place on their law firms. This practice has got to go—more on this later. But first, here are a few thoughts on the latest stellar effort by this consultant/trainer/speaker/writer.

What makes *Client Value and Law Firm Profitability* so insightful, despite its bland-vanilla title, is the candor with which the leaders discuss such topics as legal project management, profitability, clients' expectations, their own frustrations of running a law firm, and other relevant areas of managing a

practice and running a partnership. Because Hassett assured his interviewees that he wouldn't attribute their quotes, and because he's respected and trusted within the profession, these influential leaders offer their honest, sometimes critical, opinions.

Consider what one senior executive says about the inability of the legal profession as a whole to implement knowledge management—defined by Hassett as "systematically sharing insights and experiences"—with any sort of depth or benefit. "We're probably in middle school, as an industry," the executive says. "Almost everyone has the basics. But sophisticated knowledge management? We're collectively not there yet."

Another is quoted as saying this about knowledge management (KM): "I think people say more than they are really doing."

Yet another senior executive talks about how his firm will keep trying to implement KM to help the attorneys and staff be more efficient, and that they've all invested a lot of time and resources into it. But, he or she adds, "[T]he lawyers working on it got frustrated because everybody has their own idea about how it should be set up, and it's very hard to get several hundred lawyers all committed to the same exact system and putting in the time necessary to make it work."

Clearly, well-conceived knowledge management models have been proven to save

time and money and increase the quality of legal service, but they often come with a few growing pains.

And, it's important for law firms to understand this reality.

Throughout Hassett's well-written book, he sets up the thoughts of the leaders he interviewed, lets them say what's on their mind, and then offers some quick, smart analysis. In his forward to the book, Altman Weil consultant Tom Clay gives it a two thumbs-up. "I will be recommending that all Altman Weil clients secure a copy and use it in their strategic planning initiatives or to review their firm's current strategy," he writes. "This book will be a powerful tool." I agree.

Reject Shadow Billing

Now let me get back to that all-important sixth chapter and Hassett's proclamation that clients should drop their demands for shadow billing. In case you're not exactly sure what this practice is: it's when a law firm and client agree on an alternative-fee or fixed-fee arrangement on a matter or case, and the client asks the firm to also provide updates on what the legal service would cost if the lawyers were billing by the hour.

The idea, of course, is that the clients can see which method of payment costs them more and then try to renegotiate the terms of the agreement if the hourly rate is cheaper. Although some law firms might feel that agreeing to shadow bill their clients enhances the lawyer-client relationship, it's a bad idea. And, it actually can be counterproductive. "[F]or a client to say they still expect shadow billing really undermines the whole strength of that relationship..." a senior executive says in *Client Value and Law Firm Profitability*.

Others feel the practice is intrusive. "I can understand the impulse to want to compare [the two payment methods]," an East Coast

law firm consultant, who asked for anonymity, tells me. "But if you agree with the price, whatever the law firm does to make that price possible for themselves, well, that's their business."

Exactly. We all know that since the economic meltdown in 2008 and its aftermath, "the legal profession changed as we know it" (how many times have you heard that?) and, in this transformed legal arena, the client is in charge. The client expects more from his or her law firms. Lawyers better deliver high-value service as efficiently and effectively as possible or bye-bye, lawyers. Hello, lawyers' competitors; welcome aboard.

But shadow billing crosses the line, and law firms should reject it. "A deal is a deal in this approach, and the client should not get a look behind the curtain to see whether the firm has won or lost," Hassett writes. "It feels a little like asking your Ford dealer to provide all the time cards from your SUV's assembly plant to ensure you're not being overcharged for spark plug installation." Spot on, Jim, spot on.

Encouraging Dishonesty

To provide two sets of books, which shadow billing essentially requires, also takes time and money and impedes exactly what alternative fees are designed to do: increase efficiency.

What's more, it invites deception. After all, if the lawyer and client agree to a fixed fee of \$100,000 and the lawyer determines the hourly rate would actually come in at \$90,000, wouldn't it be tempting to lie and say the hourly rate would be, say, \$105,000 so the fixed fee is cheaper? "Sure," says the East Coast consultant. "I'd lie about it."

Here's what Hassett has to say about it, on page 154 of his book: "In industries where shadow billing is a frequent practice, vendors have become very creative in coming up with ways of ensuring that their hourly charges are never less than a fixed fee or cap. In the

19 years that my company worked as a government contractor, I learned many ways of ensuring that our hourly charges were never far below the cap. This led to bad feelings on both sides of the table and saved the government nothing. It would be a shame if the legal profession went down the same path.”

Lawyers should find a way to explain to their clients that they don't want to engage in shadow billing and politely decline to do so. Or they should, to borrow a phrase from the 1980s anti-drug campaign, “Just say no.” ■

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