NEW FEES, SAME WORK – PREPARING AND RESPONDING TO ALTERNATIVE FEE ARRANGEMENTS

Kathryn Kotel
Franchise Counsel
Dallas, Texas

Norman M. Leon
DLA Piper LLP (US)
Chicago, Illinois

Vanessa Szajnoga
Liberty Tax Service
Virginia Beach, Virginia
• What are Alternative Fee Arrangements?

• Why are they becoming more commonplace?
  - control legal spending
  - pressure on law firms
  - competition / low cost providers
  - larger in-house legal teams
  - emphasis on value

• Are they here to stay?
Workshop Discussion

• The many forms of AFAs in use today
• The elements of each form of AFA
• Mistakes to avoid with each form – in the initial structure and engagement letter, as well as in practice
• Which forms of AFAs are best suited for various franchise practices
• Ethical issues to consider
• General Counsels’ preferences
Keys to Successfully Using AFAs

• Become informed
• Set objectives and define scope of project
• Constant monitoring
• Keep client informed
• AFA does not work for every case or every client
Contingency and Success Fees

• What are they and how do they work
  • A fee based on the results obtained, most commonly a percentage of recovery in litigation or a percentage of the transaction; a reverse contingency fee is based on percentage of amount saved for client

• Issues to be addressed in initial structuring and engagement letter

• When are they appropriate in a franchise practice

• What are the potential pitfalls

• Are there ethical issues to keep in mind

• GC POV
Fixed or Flat Fees

• What are they and how do they work
  • An agreed upon amount for a defined service
• Issues to be addressed in initial structuring and engagement letter
• When are they appropriate in a franchise practice
• What are the potential pitfalls
• Are there ethical issues to keep in mind
• GC POV
Task or Unit Based Billing

- What are they and how do they work
  - Similar to a fixed fee, a set fee for specific tasks or components of a matter
- Issues to be addressed in initial structuring and engagement letter
- When are they appropriate in a franchise practice
- What are the potential pitfalls
- Are there ethical issues to keep in mind
- GC POV
Percentage Fee

• What is it and how does it work
  • Typically derived from a sliding scale based on amount of work involved, a fee based on a percentage of a transaction, such as loan documentation or purchase of real estate

• Issues to be addressed in initial structuring and engagement letter

• When is it appropriate in a franchise practice

• What are the potential pitfalls

• Are there ethical issues to keep in mind

• GC POV
Retrospective Fee Based on Value

• What is it and how does it work
  • A fee agreed upon at the conclusion of a matter based on the value of the work received by the client, typically with an upfront agreement on a minimum and maximum fee

• Issues to be addressed in initial structuring and engagement letter

• When is it appropriate in a franchise practice

• What are the potential pitfalls

• Are there ethical issues to keep in mind

• GC POV
Blended Hourly Rate

• What is it and how does it work
  • A single hourly billing rate for the entire lawyer team, or for each labor category (Partner, Associate) working on the matter
• Issues to be addressed in initial structuring and engagement letter
• When is it appropriate in a franchise practice
• What are the potential pitfalls
• Are there ethical issues to keep in mind
• GC POV
Capped Fees

• What are they and how do they work
  • Using the firm’s standard hourly billing rates, total fees are capped at an agreed upon amount

• Issues to be addressed in initial structuring and engagement letter
• When are they appropriate in a franchise practice
• What are the potential pitfalls
• Are there ethical issues to keep in mind
• GC POV
Fee Collar

• What is it and how does it work
  • Like capped fees, a fee collar is an agreed upon minimum and maximum for a matter billed using standard hourly billing rates
• Issues to be addressed in initial structuring and engagement letter
• When is it appropriate in a franchise practice
• What are the potential pitfalls
• Are there ethical issues to keep in mind
• GC POV
Fixed Fee Plus Hourly Billing

• What is it and how does it work
  • Fees are fixed for specific portions of the work and the remaining work is billed on an hourly basis

• Issues to be addressed in initial structuring and engagement letter
• When is it appropriate in a franchise practice
• What are the potential pitfalls
• Are there ethical issues to keep in mind
• GC POV
Fixed Fee Plus Success Fee

• What is it and how does it work
  • The client and lawyer agree on a fixed fee for the work, plus a success fee for the lawyer if agreed upon outcomes are obtained

• Issues to be addressed in initial structuring and engagement letter

• When is it appropriate in a franchise practice

• What are the potential pitfalls

• Are there ethical issues to keep in mind

• GC POV
Hourly Rate Plus Contingency or Holdback

• What is it and how does it work
  • A lower hourly rate is billed in exchange for a lower percentage contingency fee based on a successful outcome; or the regular hourly rate is used but the client pays less than full amount each month, holding back a percentage to be paid upon a successful outcome

• Issues to be addressed in initial structuring and engagement letter
• When is it appropriate in a franchise practice
• What are the potential pitfalls
• Are there ethical issues to keep in mind
• GC POV
Volume Discounts

• What are they and how do they work
  • While not an AFA, a firm may agree to discount fees in exchange for handling all of the matters of a client

• Issues to be addressed in initial structuring and engagement letter

• When are they appropriate in a franchise practice

• What are the potential pitfalls

• Are there ethical issues to keep in mind

• GC POV
Final Thoughts

In-house perspective and law firm perspective – why everyone should consider moving toward a greater use of AFAs
Thank you!!