

Chapter 1

A Short History of Legal Pricing and Legal Procurement

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Abstract

Much has been written about the rise of pricing roles in law firms over the past few years. We are also now beginning to see increased attention being given to the other side of the proverbial coin, that of legal procurement within law departments. This chapter provides a very short overview on how each of these roles have come to have such widespread and increased attention.

If you are reading this book, you likely (a) are already involved in pricing legal services, (b) have an interest in pricing legal services, or (c) are writing an article or book about pricing or procurement of legal services. The last point may seem strange to include, but a huge volume of articles has been published about the rise of pricing, the demise of the billable hour, and the importance of pricing and procurement professionals within the legal sector over the past few years. Therefore, no book on this topic would be complete without first including a short overview of how we got here. As one of the longer serving pricing directors in a law firm, it is perhaps fitting that I address this topic.

Many of the articles identified in this chapter's footnotes will provide you with much greater context (and I recommend that you read at least a few of these). I also would like to highlight a number of the key developments here.

One of the very first articles to directly discuss the rise of the pricing director in law firms was written by Jim Hassett and Jonathan Groner of LegalBizDev in February 2012.¹ At the start of this article, the authors highlighted a number of statistics from the December 2011 issue of *American Lawyer*—namely that 81% of law firm leaders said more clients were requesting discounts and 55% of those were requesting deeper discounts. The article also quoted a separate survey from Altman Weil, in which 90% of managing partners and chairs concurred that increasing price competition was a permanent change in the legal marketplace, not temporary as many had hoped. Along with the shift of power from a sellers' market to a buyers' market (i.e., a market that is more favorable to a law firm client than a law firm), this played a key role in encouraging a number of law firms to address this challenge more proactively and visibly. A key consequence of this was the creation of roles focused specifically on pricing, rather than being part of an existing function (such as business development; however, as shown later in this book, this can vary by geography and firm). These newly defined roles are typically at a director or equivalent senior management level within the law firm concerned.

In a short series of articles for *Corporate Counsel*,² Susan Hackett described the pricing director role as the “hot new hire of 2012.” By June 2013, the first proper survey of (and for) pricing professionals in the legal sector was released by ALM Legal Intelligence, entitled “Here for Good: Pricing Professionals in Law Firms and Their Impact on Clients and Firm Business.” On face value, in less than 18 months, the role of the pricing officer (however defined) had gone from a position existing in only a few firms to one deemed integral to the success of a law firm. The survey respondents were self-selecting, with 63 firms participating. The main findings of the survey included the fact that 67% of respondents had pricing officers and 13% had a committee to review pricing. Of the firms that did not yet have

1. Jim Hassett and Jonathan Groner, *Law Firm Management: The Rise of the Pricing Director*, Bloomberg Law Reports (February 6, 2012).

2. Susan Hackett, *Connecting Cost and Price to Value: The Rise of the Law Firm Pricing Director*, *Corporate Counsel* (September 25, 2012).

a pricing officer, 43% were considering hiring someone within the next year and 14% in the next few years.³

In July 2014, the figures were even more startling. By then, 76% of big firms employed some form of pricing role; of these, 44% were created in the previous two-year period.⁴ A similar theme was highlighted in an anecdote: It took seven years for the first 30 pricing directors (as defined by title) to be in place but only seven months for the next 10 pricing directors.⁵

The law department side also experienced a parallel rise of legal procurement professionals, although at a much slower rate (initially), in large pharmaceutical companies, financial institutions, and others that sought to manage their legal spending more effectively. For example, DuPont focused on this area as early as 1992, and a number of others started making concerted efforts in the early 2000s. This raises a key question: What were the main drivers behind each of these developments?

The Rise of the Pricing Officer within Law Firms

The global financial crisis in 2008 may have dramatically accelerated the pace of change (or indeed been the catalyst), but change was inevitable. In the decade prior to 2008, law firms in the United States increased their rates between 6–8% per annum on average (often double the prevailing rate of inflation). Thus, something was going to give—and it did.

The legal market from that point on has remained relatively flat, with capacity creeping ahead of demand and overall fee earner productivity declining. Given the need for most firms to chase a relatively static level of demand and therefore differentiate themselves in terms of matter efficiency

3. *Here for Good—Pricing Professionals in Law Firms and Their Impact on Clients and Firm Business* (ALM Legal Intelligence, 2015), 7.

4. “What the Rise of Pricing Officers Says About Big Law’s Future,” *The American Lawyer Daily*, July 3, 2014.

5. Private conversation with Steven Manton, True Value Partnering Institute (February 2015), with these numbers being determined by recent new hires and analysis of previous roles/titles.

and client satisfaction, it was “unlikely that companies will want to revert to the more casual and costly pricing of earlier days.”⁶

In the past, law firms may have had loose guidelines on how matters could be priced (or even had a central group to review and approve, as the focus on pricing intensified). However, it became clear that a more dedicated group of resources was required to help manage both the increasing volume and complexity of these demands. Thus, there was a greater need for law firms to be pragmatic and “nimble” when responding to their clients’ collective requests, which frequently challenged some long-held traditions and models around firm profitability, the traditional partnership model, the “appropriate” quality of work product, hiring, and retention, to name a few.

As law firms’ collective client base seemed increasingly focused on securing bigger and bigger discounts and greater certainty of outcome, it often felt like a daunting prospect to be a practicing lawyer—and even more so, to be a *profitable* practicing lawyer. In addition, clients’ frequent requests to implement agreements that lasted multiple years and for agreements seeking to transfer more commercial risk to their selected law firm providers caused many lawyers to feel overwhelmed.

This situation contributed to the rise in importance of the legal pricing and legal project management disciplines in general—and “alternative fee arrangements” specifically—as essential skills within the arsenal of “modern lawyers” and law firms. The need for a central source for capturing pricing and fee information and standardizing nonhourly pricing approaches so that these could be reused and improved, continued to grow. However, very little was likely to actually change unless there was a resource in place to drive it. Indeed, the legal pricing profession has grown rapidly in terms of visibility. People are recognizing it not only as a very clear career path within a firm’s business support functions, but also as a skill set that not every partner or associate has. However, as an ALM pricing survey pointed out, having a dedicated pricing officer can often also correlate with the size of law firm itself. For example, 82% of those with more than 1000 attorneys had a dedicated

6. *Thinking Like Your Client: Law Firm Strategic Planning*, LEXISNEXIS (ALM Legal Intelligence, October 2012), available at <http://www.lexisnexis.com/pdf/intelligence/ALM-Report-Strategic-Planning-in-Law-Firms.pdf>.

pricing resource, compared with 77% of firms with 501 to 999 attorneys and only 39% of firms with 500 attorneys or fewer.⁷ Of this group, very few have any form of direct engagement with the client (which may be a missed opportunity). As the ALM survey observed, “Having pricing officers interact with clients is still relatively new territory for law firms.”⁸ This may also be symptomatic of something else, as Aric Press commented in a 2014 article—namely, the confidence that firms have in their pricing executives.⁹

Unsurprisingly, given the focus on law firm profitability that many of these law firm pricing roles directly support, most report via the finance reporting line (about 75%), with another 13% in business development (which is where I have reported through both of my law firm pricing roles to date).

Although the legal profession typically views the expansion of law firm pricing roles through a U.S. lens (and, to a lesser extent, “mature” legal markets such as the United Kingdom and Australia), we are also now beginning to see increased attention to this in a wider range of jurisdictions and regions,¹⁰ perhaps emphasizing that this is no longer a relatively localized phenomenon.

One theme that is very likely to be at the forefront in the coming months and years will be the scarcity of suitably qualified resources for both law firms and law departments alike. This impact to law firms has been very neatly described as the “unicorn problem” in an ALM survey¹¹ because a combination of people, financial and process skills are sought. To quote directly from the survey itself, “firms effectively ask someone to be a salesperson, a financial analyst and an operations manager.”¹²

7. *Pricing Officers: Some Firms Still Wait to Make the Jump* (ALM Legal Intelligence, 2015), 7.

8. *Ibid.*, 17.

9. *What the Rise of Pricing Officers Says About Big Law's Future*.

10. There have been a number of pricing-related articles, as well as growth of the pricing function, featured in both the *Canadian Lawyer* and *Latin Lawyer*; e.g., Marg Bruineman, “What Is a Pricing Officer? Does Your Firm Need One?” *Canadian Lawyer Magazine* (January 5, 2015); Rachel Hall, “The Pricing Policy,” *The Latin Lawyer* (October 17, 2014), available at <http://latinlawyer.com/news/article/47381/pricing-policy/>.

11. *Pricing Officers*, 10.

12. *Ibid.*