



THE NEW ELLIS GROUP

Monday Monday

Connecting the Dots with Karen Kaplowitz



*Helping you create and reinforce the habits of successful career building,
gleaned from my work as a business development strategist, trainer and coach*

Volume 4, Issue 20

October 4, 2010

Low-Balling and “Scope Creep”. With enormous client pressure to keep costs low, two factors often converge to cause conflict in client relationships: low fee estimates or unrealistic flat fees at the start of a client engagement followed by “scope creep”, the expansion of the scope of the original project. When work is scarce, it is hard to avoid the temptation to low-ball the cost of a matter especially when bidding for the work. But other than in very simple matters, “scope creep” is also inevitable. To avoid resulting conflicts, consider these strategies:

- Carefully define the scope of the engagement with the client and agree who will bear the risk of increased costs due to various contingencies.
- Inform other lawyers what the budget calls for and avoid situations in which lawyers are billing as much as possible rather than as little as necessary.
- Monitor the costs against budget to avoid surprises.

When faced with rising costs from “scope creep” which are not covered by the budget or a flat fee and which will affect your clients’ expectations or your law firm’s profitability, surface the issues quickly and decide which strategy to pursue. Either accept that you will have to write off fees and notify your client and partners of the situation or if allowed by your fee agreement, go back to the client to renegotiate based on the change of circumstances. But do not use short-term solutions like underreporting your time or writing off other lawyers’ time to mask the problem.

Example: When your client said that she would have to go to the procurement department and consider other firms unless you could handle a new matter with a cap on your fees, you persuaded your firm to allow you to take the matter with a cap. In negotiating the cap, you documented various assumptions about the matter’s scope and discussed with the client upfront who would bear the risk of greater costs in connection with certain contingencies. You also staffed the matter to take into account the fee restrictions, advised the other lawyers what the fee limitations were and how you expected them to handle the matter, and monitored the costs against the budget.

Despite all your good planning, you ran into a contingency you did not expect or provide for which suddenly drove up the projected costs of the matter. Even though your fee agreement did not explicitly allow you to pass on the additional costs to the client, you gently inquired whether the client would bear part or all of the additional expense. When your client declined, you promptly disclosed to your firm’s management that you would exceed the cap, at the firm’s expense. No one was happy about the extra cost but the firm appreciated your candor and you could sleep at night.

In negotiating fee agreements, are you anticipating the inevitable crunch resulting from low-ball fees followed by “scope creep”? Can you reduce the stress of fee crises by better fee agreements and project management?