



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 3, Issue 4

February 23, 2009

Putting Skin in the Game. You have longstanding clients who love your work but don't want to spend money right now. Even lawyers in practice areas which are usually busy in downturns have seen adverse effects from this one. Bankruptcy lawyers are doing more straight liquidations and fewer complex reorganizations because credit is so tight. Employment lawyers are being instructed to settle discrimination cases arising from layoffs which pre-recession their clients would have instructed them to defend. Your clients are reporting that *their* clients, the business people, don't even want to use *them* because their business units get charged for inside lawyers too. In this environment, consider these strategies to generate –or retain-- work:

- Are you willing to propose converting any purely hour cases to partial contingent cases?
- Would you assess existing cases and cap fees for the duration of the cases based on your projections?
- Would you reduce rates or cap fees in exchange for a success fee?
- Would your firm waive the costs of getting up to speed on a major matter being handled by another firm to help a client consolidate more of its work with you?
- Would your firm agree to supervise other outside firms in areas in which you are experts, without taking over all the work, if that were more cost-effective for the client?
- In defense cases, would you consider a partial contingent fee based on the amount you save the defendant, measured by an agreed upon standard?
- Are there claims or assets, like IP, which you could help a client assert on a contingent fee basis?

As you consider these strategies, do you have enough information to assess your own costs and risks associated with these options?

Example: Before the collapse of Lehman Brothers, you met with a client company for whom your firm has successfully defended patent infringement suits. The company has a significant patent portfolio which it has never exploited in an active licensing program. You had asked the in-house patent lawyers to arrange a meeting for you with senior business people in the company to explore a patent licensing program for the company's portfolio. The business people were frankly skeptical at the beginning of the meeting but warmed to the idea and invited you to send them a proposal laying out the cost of pursuing an active licensing program with your help. You sent your proposal, with standard billing rates, in September, right before the meltdown. Afterwards, your clients reported that your proposal had been shelved.

To revive the discussion, you offer to do a preliminary assessment of the most promising parts of the patent portfolio without a fee, on condition that if the company decides within six months to assert any of the patents you evaluate, that the company will retain your firm to do the work on the basis of reduced hourly rates and a success fee. Your clients respond that they appreciate the offer and are willing to take it up with their business people who would have rejected any offer which had an immediate price tag associated with it.

If you have clients who are reluctant to spend money on new legal matters or who are shutting down existing projects, are you willing to consider putting some skin in the game with alternative fee arrangements to encourage clients to invest in your services now?