

HOW TO COMPETE ON PRICE

By Jordan Furlong

6/29/2010

Ed. Note: the following article, written by one of the most thoughtful writers in the professions, articulates a subject long in conjecture – and long considered taboo -- in professional services. However, it is so insightful on the subject, it is well worth reprinting.

One of the oldest pieces of marketing advice in the legal profession is: “Don’t compete on price.” Wiser heads than mine constantly warn lawyers not to cut their prices to match what other sellers are providing, that engaging in a price war for legal services is as potentially ruinous as getting involved in a land war in Asia. There are at least three reasons for this:

1. *Price wars are a death spiral.* Every time you reduce your fees for a service to undercut a competitor, you set off a chain reaction whereby everyone in the market goes one step lower until even the “winners” can’t turn a profit. (Although [read this James Surowiecki column](#) for a counter-intuitive take on price wars.)
2. *Price-cutting leads to quality reduction.* It’s simple: if you’re not bringing in as much money for the same work, you need to cut back somewhere else: firing an able assistant, scrimping on new supplies, taking on more files than you can competently handle. (Although read the rest of this post for my thoughts on cutbacks.)
3. *Price is an important marketplace signal.* Unsophisticated buyers (and in the law, that’s most buyers) want the best deal, but they also worry about services that seem too cheap to be true. Lawyers offer a top-quality product, and a robust price for that product gives buyers confidence in its quality. (Although it’s perilous to count on the continuing ignorance of your customer base.)

So it's both sensible and logical to tell lawyers not to compete on price. Yet for all that, I've come to believe that it's not good advice anymore. I think we need to learn, as a profession, how to compete on price in ways that sustain our businesses.

It's fine, in the abstract, for a lawyer to refuse to match or beat a rival's lower price for a given product or service. The first few times a lawyer loses a client that way, she can content herself that she held the line against the devaluation of her services and that a client who only cares about price will be a difficult client throughout. But what happens when she loses the fifth client, or the tenth, or the fiftieth, because of price? What happens when clients start to consistently say, "I can get these services at a substantially lower price down the street," or "I like working with you, but I can't justify the premium that you charge"?

Many lawyers are already in this boat — much of the residential real estate bar, for instance. For these lawyers, refusing to compete on price is not a practical option, because their clients have made clear that price is the most important factor in their purchasing decision. There's little point in charging what you believe is a fair price if no one's buying at that price. Worse, more lawyers are going to join that boat over the course of this decade, as technology, collaboration, globalization, and regulatory change combine to rearrange the competitive landscape. We may complain about low-priced "non-lawyer" competitors and denigrate the quality of their work, but if clients buy what they sell at those prices, that's going to affect what everyone else can charge. And not only will the quality of their offerings improve over time, but it also won't be only "non-lawyers" doing it. Whether we like it or not, price will become a significant competitive factor, and it will be dangerous to run our businesses pretending otherwise.

So what can we do? The risks of constant price reductions detailed above are all too real, yet the day will soon come where we have to lower our prices just to stay in the marketplace conversation. If you can upgrade the type and quality of your services to premium or luxury levels and therefore maintain or even increase your prices, good for you. But there's only so much room at the top of the mountain and not everyone can stand there; and in any event, raising the quality of what you offer often requires increasing what you spend to offer it, getting you no farther ahead.

But you don't need to compete on price if you can go one better: compete on cost. Reduce the inefficiencies in your practice, streamline your processes, systematize where feasible,

outsource if possible, reallocate resources to match the appropriate level of talent to the appropriate sophistication of tasks. This isn't about freezing salaries or eliminating positions or taking away free coffee or all the other myopic expense-reduction steps many law firms took during the financial crisis. This is about restructuring your business in smart ways that reduce waste, cut down on system leakage, fine-tune your engines and upgrade your capacity.

Competing on cost means you spend less to get the same results as your law firm competitors, and puts you on an even footing with the non-firm competitors currently storming the gates. No matter what happens in the marketplace, one rule never changes: profit = revenue – expenses. Even if your revenue is down, you'll still turn a profit if your expenses are down further: the lawyer who charges \$500 for services that cost him \$200 is doing better than the lawyer who charges \$1,000 for services that cost him \$900. You can't control what the market will pay you; but you can control, to a large extent, what you spend to compete in that market. If you ever expect to seriously offer fixed fees to the marketplace, you absolutely must start by competing on cost.

Here are some examples of how you can compete on cost:

- *Install a legal project management system.* Probably the simplest way to introduce business efficiencies to your law firm is to [adopt the principles of legal project management](#). From a basic back-of-the-envelope process for doing certain tasks systematically all the way up to a full-scale Lean Six Sigma re-engineering of your entire operation, you'll wind up with clearer goals, more explicit processes, more efficient systems and increased productivity.

- *Automate anything repetitive that moves.* Your client intake system, your most frequent inquiries, your most common procedures, your most familiar routines: if the same basic task occurs more than occasionally in your firm, it should be converted into a template, a checklist, a document assembly system, or some other means by which completion is made faster, variation is made more difficult, and fewer resources are expended needlessly.

- *Move work up and down the talent chain.* Move dictation and transcription from secretaries down to voice-recognition devices. Move legal research to freelance specialists across town or outside the country. Move administrative tasks to virtual assistants. Move e-discovery to people or systems actually qualified to do it. Then train the people who used to do low-value work in

high-value skills like project management, business development, human resources and so forth. Same people, same resources, but better allocated and with new capabilities.

- *Use technology wherever possible.* Practice management software, on your server or preferably in the cloud, delivers huge efficiency gains. Specialized accounting software for law offices reduces errors and improves productivity. Take advantage of low-cost, internet-based contact management systems. Give serious thought to going paperless, or at least paper-less. If you're already using these tools, constantly train your staff to become more proficient with them. Exploit what [Dave Bilinsky](#) calls the "new leverage": using technology to achieve higher rates of return on each hour of work.

- *Give serious thought to outsourcing.* There's one reason big firms like WilmerHale and CMS Cameron McKenna have struck deals with legal process outsourcing firms to move millions of dollars worth of business and back-office functions to smaller centers: efficiency gains that help them compete on cost. To be sure, [there are human costs](#) to be dealt with, but if you take a hard look at the numbers, you might find the logic of outsourced operations to be inescapable.

- *Come up with a non-hourly billing and compensation system.* It probably goes without saying that the single biggest inefficiency in most law firms is the fact that tasks are worth more the longer they take and the more resources they consume. Hourly billing — and more importantly in this context, hourly compensation — is a productivity hemorrhage that's becoming far more damaging to firms than to clients. And it is not sustainable.

You can probably look around your office right now and find five ways that costs could be reduced or efficiencies could be introduced without a corresponding drop in quality (and maybe even an increase). Most often, the reasons why your firm avoids dealing with these inefficiencies are personal or political or both. But it's not mission impossible, as the saying goes; only mission difficult. And I would suggest that as of right now, it's also mission critical. Getting a grip on and eliminating inefficiency in a positive, sensible way is probably the most under-valued tool law firms possess to increase their productivity.

If there's a downside to this approach, I don't see it. Suppose that none of these dire warnings come to pass, and that the legal marketplace remains the safe, cozy, bloated anachronism it's always been. By making cost competition a strategic priority, you'll have increased your profitability *vis-a-vis* your rival firms, channeled more money to your partners,

become more attractive to potential lateral hires, and given your firm the leverage, if you ever wanted, to make your rivals compete on price on *your* terms.

But say the marketplace erupts in the ways I've been describing, and hyper-efficient competitors emerge that can beat your usual fees by 30, 50, 70 percent or more. Without a streamlined operation in place and no time to install one in the chaos and pressure facing you, you run the serious risk of becoming another victim of market change. But if you've already prepared to beat these new entrants at their own game, you'll at least have a fighting chance. Competing on price might be a necessary evil, but competing on cost can be the key to your success

Jordan Furlong is a partner at Edge International Consulting, and a Senior Consultant at Stem Legal Web Enterprises, Inc.. He is former publisher at Law21 and editor-in-chief at the Canadian Bar Association, and Managing Editor and Writer at The Lawyers Weekly. This article is reprinted from his blog, Law 21.

[HOME](#)