

Case study in defining legal scope:

Levenfeld Pearlstein



*A LegalBizDev white paper by Gary Richards and Jim Hassett
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Executive summary

In October 2015, Chicago law firm Levenfeld Pearlstein offered the half-day workshop, “How to Define Legal Scope and Negotiate Changes” to all 40 of its partners. Its goal was to build on other programs offered by the firm over the last several years to provide “excellent client experience... [and] to appropriately manage expectations: No surprises, no surprises, no surprises!”

LegalBizDev Principal Gary Richards developed this highly interactive workshop as a result of our research with AmLaw 200 firm leaders showing that of all the issues in legal project management, the most urgent area for improvement was in “setting objectives and defining scope.”

This brief case study provides specific examples of how the workshop changed the behavior of four lawyers from three practice groups: Trusts and Estates, Corporate and Securities, and Intellectual Property. The overall result of the workshop, according to Executive Director Angela Hickey, was that “Instead of avoiding conversations about scope, our partners now recognize that this is a business process and that it only gets better with more give and take, as opposed to just hiding from the discussion and hoping it all will work out in the end.”

The case of Levenfeld Pearlstein

In our research on *Client Value and Law Firm Profitability*, when we asked AmLaw 200 senior decision makers which issue in legal project management (LPM) was the most critical, number one on most lists was “setting objectives and defining scope.” As one chair summed it up:

The critical issue is sitting down with the client at the beginning and deciding what their goals are with the matter. Is it getting it done quickly? Is it getting it done so that nobody ever brings a matter like this again? Is it getting it done in advance of the big merger on the books a year from now? There are all different considerations as to what will lead a client to think this was a successful representation. And the more you push your client to think through what they care most about, the better off both of you are.

And when the scope changes as a matter proceeds, as it so often does, lawyers need to know when and how to talk with a client about the best way to proceed, rather than just jumping ahead now and sending a bill later. A senior executive at another firm put it this way:

We have people who recognize that the scope of a project has changed, but you would think they were 15 years old again and asking a girl to a dance. They never get around to making the phone call.

From the time we started working with lawyers on LPM, scope definitions and negotiations have always been important elements of our training and coaching. But after we completed this research, LegalBizDev Principal Gary Richards decided to develop a new course entitled, “How to Define Legal Scope and Negotiate Changes,” which focuses exclusively on these most critical

areas.¹ The final product is a highly interactive half-day workshop built around brief overviews of key concepts and seven hands-on exercises.

For example, in the first exercise each participant is very simply asked to, “Write the client’s objectives for a matter you are now working on.” An answer sheet handed out for the following discussion lists 21 questions lawyers could ask to better refine their understanding, including:

- How does the client define success?
- Are several outcomes acceptable?
- Are there other stakeholders in your organization who will be affected by the outcome of this matter?
- Do you have any particular fears or concerns about special risks in this matter?
- Can you envision anything that you or others in your organization could do to help ensure success for this matter?
- If, unexpectedly, your objectives for this matter become unattainable, what would you do?

The second to sixth exercises build on this foundation and the course culminates in a seventh and final exercise which requires each lawyer to develop a personal action plan to apply improved scoping concepts immediately in their practice.

When Angela Hickey, the executive director of Levenfeld Pearlstein, heard about this course, she quickly decided that it could help the firm provide greater value to its clients. She scheduled two sessions on successive days last October, each for the maximum class size of 20 lawyers, so that it would be available to all 40 of the partners in the firm.

While some LegalBizDev clients see this course as the first step in implementing LPM, Levenfeld Pearlstein had already been working on LPM for several years, including a SharePoint Handshake dashboard reporting system that was implemented in 2011 to help streamline processes, and hiring Eliot Levy in 2013 as the firm’s first manager of process improvement.²

The goals of our scope course are completely consistent with the “LP Way™”—the firm’s “model for creating an unparalleled client experience at an exceptional value.”³ As Hickey explained in an interview, “One hallmark of excellent client experience in any setting is to appropriately manage expectations: No surprises, no surprises, no surprises!”

¹ <http://www.legalbizdev.com/projectmanagement/courses.html>

² <http://www.handshakesoftware.com/resources/levenfeld-pearlstein-llc-taking-the-share-in-microsoft-sharepoint-to-new-heights/>

³ <http://www.lplegal.com/thelpway/#?page=0>

The results could be seen within days of the workshops and have continued to mount in the months since. For example Marc Fineman, chair of the firm's Intellectual Property Group, commented that:

When looking at the client's objective of a matter, it's important to focus on the work that the client expects rather than just the work that the attorney expects to perform. At the start of a matter, there can be a very big disconnect between these two things. There needs to be a meeting of the minds where both the client and the attorney understand the client's objectives and the work that is necessary to achieve those objectives. To achieve that meeting of the minds, lawyers need to do a better job probing clients and asking numerous questions to identify and understand the client's objectives. One way to accomplish that is to reference the list of 21 questions used during the first exercise in the workshop. I now have that list on the bulletin board in my office for easy access when talking with clients.

This leads to a next obvious step of:

...being more specific in engagement letters. If, based on the answers to the questions you asked, you can lay out a fairly specific scope of work for the matter team, write it down and put it in the engagement letter, too. Doing that at the start sets expectations properly. If it is laid out in detail and the client agrees and signs the engagement letter indicating their agreement, it shows that everybody is on board with the scope, the work and the cost.

The entire process, Fineman continued, has led to a new emphasis on the fact that:

Good communication is needed throughout the course of a matter. After attending the workshop, one thing I have done for certain clients is to send along with their invoices a cover memo that essentially presents a bullet point summary of matters covered by the invoice, the progress of each matter, and the expected remaining fees for each matter. This allows me to explain not only that the bill was X dollars this month but why, and that this is what you should expect. Communications around invoices provide a great opportunity to provide regular updates to clients and to invite clients to talk about any issues.

Managing Partner Rob Romanoff provided a specific example of how our scope workshop related to an ongoing matter where a client requested some work for a flat fee:

This was in an area where we typically work on an hourly basis because there are so many things that can't be predicted. We only represent one of the parties and we don't know the other party's lawyer, so this could go on a while. But in the email where our client said he wanted us to do this work, he repeated more than three times that he wants it done for a flat fee...

One of my partners who wasn't at the scope workshop said, "We really can't do this for a flat fee." My response was that the client had made it very clear he wants a flat fee. We can't simply say no.

So the pricing partners broke down the core phases with a detailed analysis of scope and we agreed to work on a flat fee basis for drafting the documents. When we begin negotiating with the other party's lawyer, at that point it will be billed on an hourly basis going forward.

It could be a win-win both for the client, in terms of certainty of costs, and for us, either not being taken advantage of or having to take on all the risk that the other lawyer will delay the process and drive up the fees.

David Solomon, another workshop participant and a partner in the Corporate and Securities Group, offered a different fixed fee example and explained how the course had led him to refine and improve a process that the firm was already using:

In the past, we have set up our budgets based on a pricing matrix which combines our experience with some input from our pricing people. I've been putting together simple intuitive spreadsheets to show the client the status of the budget and taking time with our bills to allocate out all of our time to each bucket of the project. Then I've been sending it to the client without any editorial comments.

But for the last couple of project budget status reports since the workshop, I've sent quite a few editorial comments about exactly where we are, especially if we are higher on certain things, and telling them where I predict we're going to be. This helps set the stage for when there may be scope changes, as opposed to waiting until there actually has been a scope change. It's been very effective.

Stuart Kohn, head of the Trust and Estates practice group, gave another example of how the workshop helped him improve a process that was already in place:

A lot of the work we do for estate planning is based on flat fees that cover creating the documents. But for work after they sign, such as funding their trust, we bill them hourly. We state that in the engagement letter, but I think the need to have the conversation again to remind them and to clarify is really important, and that was a good highlight of the workshop.

Also, we already use an estate administration checklist internally to guide our work and activities on a matter. But now we will take that one step further and incorporate that description of our work into the engagement letter.

Another key reminder was that it is better to talk with the client along the way about scope changes as opposed to waiting until they get a bill and complain and we deal with it after the fact.

Overall, I thought it was a great workshop, incredibly helpful. The materials are really valuable and I have gone back over them a couple of times.

The benefits of the program extend not just to client interactions, but also to internal communications within the firm. Fineman noted that:

The value of a specific scope statement carries over to delegating and supervising tasks that are assigned to others. That means that you have to 1) give people on your team the benefit of knowing the scope of work that has been developed and 2) make sure that they operate within that scope of activities... so that things don't go off the rails. I realized after the workshop that this is something I need to work on myself, and I've already started doing so.

Similarly, Solomon reported that:

I can have it all in my head and know what the budget is, but everybody who is working on it also needs to know. So at our last team meeting, I showed everybody's budget, how it was spread and especially in their particular area. And I urged them, "When something seems to be going awry, raise your hand and tell me."

I certainly think the team will benefit from seeing the entirety of what has to happen, and this will help get their agreement/buy-in to all the things that go into the plan. Also, their involvement will help me to make sure that when I'm creating a budget I'm not forgetting something.

Executive Director Angela Hickey summed up the workshop's benefits as follows:

Instead of avoiding conversations about scope, our partners now recognize that this is a business process and that it only gets better with more give and take, as opposed to just hiding from the discussion and hoping it all will work out in the end.

In addition, the workshop tips for how to handle a fee increase negotiation has had a positive impact on our partners to rethink the client relationship. I heard some light bulbs coming on in conversations among our partners when they discussed how negotiating is sometimes a natural part of the process. It's not distasteful, it's not bad, it's something that we should embrace, expect, and plan for. And it does not have to be adversarial. It could, instead, be a way to get to every party's interests.

After all, it is a business transaction and most clients are used to negotiating the terms of everything: contracts, agreements, standards, and processes. Clients don't find it distasteful to negotiate. It's just business as usual.

About the authors of this white paper



Gary Richards has 25 years of experience developing and conducting Continuing Legal Education (CLE) seminars in professional effectiveness and management for lawyers. Participants in his courses have received CLE and ethics credits from 18 state bar associations. Gary has addressed the ABA's National Convention in Hawaii, Young Lawyers Chapters in Chicago and New Orleans, the Virginia, Cincinnati and Cleveland Bar Associations, and the Washington Defenders Association. He has also facilitated training programs for a wide range of corporate and government clients including Pfizer, Ford, GM, PwC, and Sprint. In addition to offering workshops in the US and Canada, Gary has conducted training in the UK, Belgium, Holland, Brazil, Egypt, and Luxembourg. His consulting background began with project management training at KPMG/Peat Marwick where he was a manager of employee benefits consulting.



Jim Hassett is the founder of LegalBizDev, which helps law firms increase profitability by improving project management, business development, and alternative fees. Before he started working with lawyers, Jim had 20 years of experience as a sales trainer and consultant to companies from American Express to Zurich Financial Services. He is the author of 13 books, including the *Legal Project Management Quick Reference Guide*, *Legal Project Management, Pricing, and Alternative Fee Arrangements*, *Client Value and Law Firm Profitability*, and the *Legal Business Development Quick Reference Guide*. He has also published more than 80 articles in the *New York Times Magazine*, *Bloomberg Law*, *Of Counsel*, *Legal Management*, *Strategies: The Journal of Legal Marketing* and other publications. Jim is a frequent speaker at law firms and at bar associations (including the New York City Bar, the New York State Bar, and the Massachusetts Bar), Harvard Law School, the Association of Corporate Counsel, the Defense Research Institute, the Ark Group, and at Legal Marketing Association meetings in Boston, New York, Philadelphia, Washington, Savannah, and Vancouver. He has conducted webinars through the Ark Group, West LegalEdcenter, the National Law Journal, The International Lawyers Network, TAG Academy, and the Legal Marketing Association. Jim writes the blog Legal Business Development which was featured at the ABA TECHSHOW (in its list of "60 Sites: Latest and Greatest Internet Hits") and by TechnoLawyer (in its list of "the most influential legal blogs" in BlawgWorld). He received his Ph.D. in psychology from Harvard University.

About LegalBizDev

LegalBizDev helps law firms enhance client service and increase profitability by improving project management and business development. We offer coaching, webinars, workshops, retreats, train the trainer programs, publications, and more.

We help each individual identify the action items that are most likely to produce immediate and practical results for their practice, their personality, and their schedule. Our proprietary process helps lawyers make the best use of their limited time by quickly building on best practices from other law firms and other professions.

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