The Billable Hour's Grip on Legal

Changing times have made the gold standard in legal billing less viable — but it's not entirely obsolete.

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The 2008 economic downturn accelerated corporations' decisions to put a cap on legal spending — not only in terms of spending volume but also how many outside counsel they would ultimately engage. This forced general counsel as well as their law firms to take pricing seriously beyond just raising billable hour rates.

Firms began to adopt strategies and processes focused on legal spend management and legal fee pricing. As an additional consequence, legal fee price adjustments led firms to reduce cost of services, which forced the adoption of centralized and standardized project and practice management methods and tools.

In the new normal, rates growth has drastically declined, productivity is down and demand for legal services has flattened. As a result of these trends, the old school billable hour model has once again come under increased scrutiny. Is the billable hour finally dead, as many industry observers have long predicted? How has the hype of alternative fee arrangements (AFAs) measured up to AFA reality? And what is the ideal or hybrid solution?

IMPROVED PRICING OPTIONS

According to Toby Brown, renowned law firm pricing specialist and Chief Practice Management

Officer at Perkins Coie LLP, the better law firms are at pricing, the better it is for the market. Brown has observed client side trends ranging from e-billing, corporate procurement in pricing, to the rise of legal department outsourcing, outside counsel guidelines, and legal spend management.

The de facto poster child for rocking the boat on traditional law firm pricing is pharmaceutical heavyweight GlaxoSmithKline PLC (GSK). About six years ago, GSK's legal procurement team launched a web-based system for lawyers to bid on specific GSK legal matters, rather than rely on nondescript big firm panel request for proposals (RFPs).

According to Justin Ergler, Director of Alternative Fee Intelligence and Analytics in GSK's legal department, one of the central goals of the auction system was to drive down legal fees. They wanted to get rid of hourly billing and AFAs that are based on hourly calculations, such as capped and discounted fees.

"Clients have been telling firms forever to be more efficient, but if you're billing based on the amount of time you spent doing something, that does not encourage efficiency," says Ergler. "If firms are efficient under a flat-fee structure, they're able to reap the benefit. GSK is able to get that benefit as well from a work product value standpoint."

Ergler is also a firm believer in leveraging data when it comes to law firm fee pricing and determining value. As he stated during an ILTACON big data-themed panel session back in 2013: "In order to survive the new marketplace, law firms must differentiate themselves with something other than the excellent lawyering mantra. Leveraging big data is a way to do that."

In order to rate the efficacy and adoption of AFAs by law firm clients and ultimately their outside council, the 2016 BTI Consulting "State of Alternative Fee Arrangements" report provides insight. The results show that AFAs accounted for \$21.3 billion of outside counsel spending in 2015, up from \$13.1 billion in 2013. AFAs are the biggest growth market around, registering a 19.8 percent compound annual growth rate and savings of 13.9 percent. In summary, top legal decision makers credit their new love of AFAs to improved client focus, predictability in budgets, a more streamlined approach to the work, and the savings.

THE BILLABLE HOUR IS STILL RELEVANT

But not all believe the billable hour isn't viable. Peter Zver, President North America for Tikit Ltd, has been involved

with law firm technology for the past 25 years — specifically in the knowledge management and timekeeping arenas. As a trained accountant and CPA, he also understands the detailed financial aspects of running a law firm.

"The billable hour is not dead. An alternative transaction model has emerged as part of the legal industry's transformation, utilizing the billable hour as an input rather than an output, a cost metric as opposed to a revenue metric," says Zver. "If anything, the term billable hour should take second stage to the trackable hour that is either billed independently or packaged within a billable project/matter. Ultimately, hours worked that are billable are part of the cost equation in matter pricing," he says.

Zver's sentiment mirrors that of others, including Brown who link law firm profitability to leverage and the ability to push work and hours to the lowest level as cost per hour. Doing so will lower revenue, but also increase profits and free partners to pursue new business.

So, assuming the billable hour is not dead, what can firms do to not only protect but maximize their billables?

Leverage technology: According to the 2016 ILTA Technology Survey, 49 percent of all surveyed law firms do not use any mobile timekeeping software. This is a staggering statistic considering mobility is a major driver in the adoption of cloud-based applications and technologies that will maximize remote workers' productivity. Modern timekeeping solutions offer a wide variety of time capture methods based on where firm professionals are working and needing to capture billed time. This includes mobile time entry and automated time capture technology that accounts for "lost" time users may have not accounted for throughout the day.

While 52 percent of firms surveyed by ILTA use the native time capture functionality of their existing accounting system, 100 percent of firms with more than 350 attorneys use third-party "best of breed" timekeeping applications. This reflects the focus of larger firms' need for the most robust technology in place to empower timekeepers and — more importantly — provide accurate time recording for clients.

Rely on data and metrics: Data analytics are being leveraged in all aspects of legal technology and law firm operations. Timekeeping is no exception. More firms are relying on metrics provided by their timekeeping vendors to continually monitor and improve practices and productivity. For example, Zver and the Tikit team provide firm customers with a velocity of time capture metric. This allows firm accounting, administration, timekeepers and even firm clients to know how long the lag is between billable work being performed and when it's captured in the system. The smaller the lag number, the faster recorded time entries will be billed to clients and, in turn, paid. This provides the transparency and accountability more firm clients are looking for from their outside counsel.

MOVING FORWARD

While the billable hour is not what it used to be (the 2008 recession changed that forever), a complete abolition is not in the cards either. Certain law firms will continue to only offer time-based pricing options, while other complex legal works warrant hourly arrangements.

Alternately, less emphasis on billable hour targets at firms will ease the transition to AFAs. The growth in firm clients that favor outcome or value-based metrics and rely less on quantitative metrics, like hourly billing rates, will as well. Lastly, an evolution in timekeeping technologies will facilitate more accurate and transparent extemporaneous timekeeping. ■

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Ron Baker, the Founder of VeraSage Institute, will present "Burying the Billable Hour: Implementing Value Pricing in Your Firm" at this year's Annual Conference & Expo in Denver. Learn more on *alanet.org*.

ABOUT THE AUTHOR

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