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It's Time To Leave The Billable Hour Hot Mess Behind



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Ask any BigLaw attorney to give you their top three most hated aspects of the job, then ask their clients the top three things they most loathe about working with private attorneys. I can guarantee one item shows up on both lists: the billable hour. Like Jason Voorhees from "Friday the 13th" or Freddy Krueger from "A Nightmare on Elm Street," it's evil, everybody hates it, yet it just won't die.

What's Wrong With the Billable Hour?

There are lots of good reasons to despise the billable hour. For starters, it creates incentives that are problematic at best. The billable hour rewards inefficient, slow work. It compensates attorneys for retooling language

that's already been dialed in, filing motions that have little hope of success, and always leaving no stone unturned.



Quick, efficient resolutions are not rewarded under the model. Even more insidiously, there's nothing in the billable hour system that encourages innovation and efficiency, and there's plenty that discourages it.

Billable hours are also annoying black holes for in-house legal department budgets. Maybe the outside counsel you budgeted \$25,000 for gets their engagement done for \$15,000, but far more often new issues arise that stretch the budget past that initial allocation. Clients hate bearing the risk of uncertainty in legal matters, and private attorneys hate upsetting their clients by asking for more cash to handle new wrinkles in the case.

Repeat players in the legal world, notably insurance companies, have experimented the past few decades with strict billable guidelines, time-coding systems and other billing control mechanisms. The goal has been to get better data, understand legal billing and needs better, make better decisions and predictions, and ultimately keep costs down.



Unfortunately, these systems are often flawed and can lead to bizarre outcomes. Self-reported data is notoriously unreliable. Attorneys might be incentivized to shift hours from billing categories clients won't pay for, like research, to things they will, like drafting. Garbage in, garbage out.

The bugs in the system I've talked about so far are all pain centers for clients, but private attorneys don't have any more reason to love billables. Who likes getting to the end of an exhausting day and trying to remember what they did, and when? Who enjoys the constant pressure to justify every minute they spend in the office?

There are few things as dispiriting as trying to reconstruct a hectic week. Worse yet, all that time we spend noting, revising, writing down and stressing about our billable hours is time we don't spend doing things that actually benefit our clients and ourselves. The process of billing prevents us from actually billing.

What's the Alternative?

So how do we wake up from this decadeslong nightmare? The answer, in part, is that firms must start shifting toward flat-fee models. Flat rates cure most of the inefficiencies of billables, and shift the risk of uncertainty from clients back onto their attorneys, who are better equipped to anticipate and price those uncertainties.



Attorneys are incentivized to work efficiently and innovatively, since they make the same money whether they take two or 20 hours to complete a flat-fee task. While there will certainly be cases where an attorney spends more time than they anticipated on a task, smart attorneys will find ways to drive efficiencies and improve their effective hourly rate.

Clients love flat rates, too, because they know exactly what they're going to pay for the service they receive. No more late-breaking invoices, no more worries that unscrupulous attorneys might find some way to spin their wheels to eat up any budget left over.

The United Kingdom, which tends to be a few years ahead of the U.S. in legal innovation, has been leading the way on that shift for some time. I spoke to the managing partner of a major U.K. firm a few months back who told me 50% of the firm's revenue was now generated by flat-rate pricing.

Many other U.K. outfits have been following suit. And as firms on the vanguard give clients a taste of flat fees, those clients will likely demand it from their other legal teams.

The Fear Factor



If everyone hates the billable hour, why does the industry cling to it? In a word: fear. Lawyers are notoriously risk averse, and anytime lawyers can use a safety net, rest assured they will. Billable hours represent the ultimate financial fail-safe — a way of ensuring that we never end up doing work for which we are not paid.

Even if lawyers had a genuine desire to jettison the billable hour, there's a second reason that prevents migration away from it: Lawyers generally stink at correctly pricing engagements. We tend to be more of the "stick your thumb in the air and make an educated guess" school of price modeling, which comes at a cost.

Everywhere we overestimate our budgets, we risk not bringing in business. Where we underestimate, we end up depressing our effective rates or doing work for free.

If lawyers are the problem, then the solution starts with getting them out of the way. Rather than relying on lawyers to utilize task codes or spit ball on budgets, smart firms will utilize a combination of technology and human expertise to arrive at the right pricing structures.



The seemingly boundless venture capital money flowing into the legal-tech world in the last decade has led to the emergence of new artificial intelligence-based software offerings that can help skilled pricing directors break down engagements into rational, structured flat-fee deals. With these resources at work, the seemingly unthinkable task of getting flat rates right suddenly becomes possible.

Spoils for the Daring Few

Because it's the legal industry and nothing moves quickly, the migration to flat-rate pricing will be a slow one. But the daring few who see the opportunity will seize the moment, invest in technology, hire pricing specialists, and capture more market share as a result.

Because one person's hot mess is another's opportunity.

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