

Commentary

Value Billing in Vogue Yet Again

In some circles the most talked about article was not the announcement of further law firm cuts or Freshfields latest dust up but Evan Chester's war cry that "this is the time to get rid of the billable hour".



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First, understand that all the concerns pointed out as the potential abuse that can arise from the billable hour as a basis of charging for legal fees are fair ones.

Secondly, some consultants have been announcing the imminent death of the billable hour for over 15 years!

Thirdly that every panel advocating this change has been client based which makes you wonder why it has not happened.

And lastly many lawyers would like to get off the billable hour treadmill.

So why has it not happened?

I expect there are a number of reasons from the client perspective including the concern that if done well outside counsel might make even more money so they had better keep track of the hours in order to make sure their incomes don't get out of wack (curious that clients with alternative value added billing arrangements still want to see the hours on the file) and guess what methodology most in-house counsel were raised on (and the comfort that comes from no change).

From the law firm perspective there is likely a myriad of reasons put forth, none of which would speak to "risk aversion" but many would find their conception there. But the real challenge is that most law firms are missing the two critical components required to properly value a piece of work; a transaction; a matter to both the client and the firm.

The first is being able to identify how long, on average, various steps in a file / transaction are likely to take by the various timekeepers and the second is that they can't tell you what their costs are for this time spent.

The historical approach has been from the perspective of dealing with the client that each matter is new and doesn't lend itself to such measurement - and this may be true for the first loan agreement you do but the tenth, or the hundredth; or the thousandth one surely gives you some basis for developing a benchmark.

And it is not like the measurement tools / methodology does not exist or hundreds of thousands of dollars have not been spent by the profession on developing them - TASK BASED BILLING!

Now the costing is a newer principle to the profession but COST ACCOUNTING is hardly in its infancy in the business world and lawyers have many clients who would likely enjoy sharing their expertise with them for a change.

So while Mr. Chester sounds the death knell for the billable hour I would prefer to sound the starter's gun and predict that the firms that marry to the two concepts the quickest and practice them with their clients will win the race to create mutually beneficial value for the client and themselves!

Comments or Questions?



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