

Definitely Mabey

Fixed Fees does not mean Fixed Income

Lets roll further ahead to 2010 or to 2011 (whatever year your crystal ball says law firms will be pulling out of the economic downturn they are in) and I ask this simple question "What will they have learned?"



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Will firms be bullied into raising salaries for Associates and doing the politically popular thing rather than learning from the current situation of clients revolting on continuous rate increases; lawyer and staff layoffs; billable hour targets that do nothing to enhance the quality of the profession or the individuals; or will we say enough is enough!

Enough is enough... no young lawyer fresh out of law school is worth \$200 - \$300 a hour to any client on any matter. No young lawyer fresh out of law school is worth \$90,000 - \$100,000 and up a year. Nothing is worth what we are doing mentally or emotionally to young, or for that fact older lawyers, with targets (soft or hard) of 1,800, 2,000, 2,200 billable hours.

Nothing is worth the adolescent attitude being nurtured by the way law firms conduct themselves. Nothing is worth the unrealistic expectations created nor the cavalier handling of unmet expectations!

While history shows that an extremely bright group of individuals are capable of doing dumb things, I remain optimistic that law firms won't immediately forget their experiences from these challenging times and immediately start down the path of creating the need for another economic correction in the future (the magnitude and length of which seems to grow each time). But I have been wrong before and will be again.

In some circles the most talked about development arising from the current economic times was not the announcement of further law firm cuts or Freshfields Bruckhaus Deringer LLP's latest dust up, but **Evan Chesler's war cry** that "this is the time to get rid of the billable hour".

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 eminent 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 whack (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. The real challenge is that most law firms are missing the two critical components required to properly value a piece of work, a transaction, or 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. The second is that they can't tell you what their costs are for this time spent.

I should declare my bias up front. From my narrow perspective fixed fees are the best pricing alternative. They provide:

1. certainty for clients as to what their legal spend is going to be for a matter, transaction, or time frame;
2. certainty for law firms as to profitability of clients;
3. cost containment for clients;
4. lawyers focused on meeting service expectations not time; and
5. enhanced profitability for law firms.

The historical approach has been that each matter is new and doesn't lend itself to such measurement. This may be true for the first loan agreement you do but the 10th, or the 100th, or the 1000th one surely gives you some basis for developing a benchmark.

And it is not like the measurement tools or methodology do not exist or hundreds of thousands of dollars have not already been spent by the profession on developing what is called 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 Chesler sounds the death knell for the billable hour, I would prefer to sound the starter's gun and would predict that the firms that marry the two concepts the fastest and practise them with their clients will win the race to create mutually beneficial value for the client and themselves!

And remember until the next column:

"A positive attitude may not solve all your problems, but it will annoy enough people to make it worth the effort."

Comments or Questions?

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