

Definitely Mabey

The New "Busy"

I know as Bob Dylan sang, "the times they are a-changin'" but until the billable hour is dead and law firms have changed their economic model in a meaningful and permanent way, the billable hour feeds a lot of mouths.



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One of my personal favourite myths to debunk is that the legal profession is going to come charging out of this recession like it has always done in the past. Alas, perhaps more importantly the thought that the recession is even over needs to be debunked.

Hildebrandt, a Thomson Reuters enterprise, acquired a couple of years back in their slow-but-steady takeover of the thought patterns of the legal industry, recently made the following statement as part of the Hildebrandt Baker Robbins Peer Monitor Economic Index release for the second quarter: "Demand, as measured by billable hours, was flat in the second quarter compared with a year earlier. Rate growth, which measures rates for negotiated worked hours, dropped to 2.6 per cent from the same quarter a year earlier, marking some of the slowest rate growth seen by PMI. In addition, collected rates were flat, and are expected to show only modest growth, or even a slight decline, for the year as a whole."

And before the Overhead Police gear up for another rant, the release also points out that, "overall, cost reductions were unable to improve firm profitability in the face of sluggish demand and rate growth." So nope, cutting your way to profitability is not the panacea for success.

So in the face of confirmation of what most practising lawyers knew in their heart of hearts, why is "busy" still the No. 1 response to the question "How are you?"

I expect there is some deep psychological explanation far beyond my ability to grasp so I will offer you a couple of shallower, earthier ones:

1. We don't want to let others in the profession know that the firm's hours may not be quite what they used to be and so must maintain a façade that the practice is good and everything is just as it should be.
2. Your lawyers have changed their definition of what busy means and no one has told you.

This first one never ceases to amaze me, in that a majority of law firms do not do much without first wanting to know what the others in the industry are doing, thus resulting in little true differentiation. Then what logical basis would you have for assuming that you are the only one whose hours are down in these current economic times?

Self-inflicted issues that can arise from such posturing include that if you say there is no problem, others in your firm begin to believe you and either develop a heightened sense of

paranoia about why they are not getting work or fall into the falsehood that everything is wonderful in the firm and they don't have to be part of any solution as there is no problem.

It is the second explanation that motivated me to write this particular column. The bases for my observations are discussions with law firm administrators, partners, and associates in a variety of size firms. While the basis for the change is different depending on whether you are a partner or an associate, the result is the same.

At the partner level there is a chicken-and-egg scenario that makes it hard to discern which came first but the cause for partners having defined a new "busy" are:

1. The more recent real pressure to push work down to the lowest cost producer has resulted in groups of junior and mid-level partners, practising in various areas of law, to find themselves with a mere shadow of the practice they once had, and which they rode into partnership on. As a result, they have become used to filling the void of billable hours with other "life hours" and "busy" has taken on a broader meaning but nonetheless describes their sense of activity level when asked.
2. Partners, whether wiser or lazier than those who have gone before, have decided they just don't want to work at the levels they did in 2007 and before, and so when asked if they have capacity to handle additional files, they advise that they are busy.

The challenge for either scenario is whether or not their compensation goals have been adjusted accordingly.

At the associate level, I would also offer up a couple of explanations as to the basis of the new "I am busy" response.

1. Newer associates at firms that did not fire half of them and a few partners to prop up "net income per equity partner" (a statistic that the creators are moving away from as a result of its penchant for short-term thinking) have not experienced workloads like the past so their terms of reference are what they have handled to date. So when a partner shows up at their door with another file, they truly believe they are busy and say so.
2. There are still individuals graduating from law school who are driven to develop large practices by handling all of the files they can, and then some, although just not as many as before. Instead, an increasing percentage of the graduating class believed the private-practice side of the legal industry when it said "we not only offer, but encourage work-life balance." This uncompromising desire to have real work-life balance (like we promised) has resulted in defining their idea of what busy means.

Like partners, the challenge will be whether they are prepared to forego the compensation levels of the past in order to pay for this work-life balance.

While I anticipate there are as many scenarios as there are consultants and law firms, the "new busy" will likely result in four broad approaches to this challenge by firms.

1. There will be a change in the recruiting efforts of firms and they will move away from being all things to all people and only focus on recruiting people in the image of what the partners have decided they want their focus to be and induce them to come with their firm.
2. There will be an acceptance that it will take more lawyers to do the same amount of work that was done in the past and they change their economic model to reflect this and reduce the level of consternation they are experiencing now by acceptance of less or greater differentiation in compensation between big producers and not-so-big producers.
3. There will be firms that decide not to grow at the rates they have in the past, to focus on having the highest economic returns, and discontinue participating in the race for who has the most lawyers on the web site.

4. And of course, the "ostrich approach" (no matter how many times you say that "hope it goes away" is not a strategy)!

And remember, until next time,

"Don't worry over what other people are thinking about you. They're too busy worrying over what you are thinking about them."

Comments or Questions?

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