

Is there a fair alternative to hourly billing?

**“The villain of the piece is what some call the ‘Treadmill’—
continuous push to increase billable hours...”**

--The Honorable Stephen G. Breyer, Associate Justice, Supreme Court of the United States

For years, the American Bar Association has urged its members to depart from the traditional billable hour model in favor of a value priced model. The reason for this edict is quite simple: A set price for particular legal service(s) would provide monetary certainty for a client's legal services while creating balance, efficiency, and personal harmony in a lawyer's life and practice. The ABA launched a special Task Force on Alternative Billing Methods in 1989 and the results of their findings were published in 2002. Interestingly, ABA President Robert E. Hirshon cites in the reports preface that “the billable hour is responsible for a lack of balance in lawyers' lives, negative impacts on lawyers' families, loss of professional mentoring, decrease in lawyer service, less collegiality and a loss of focus on efficiency.”

What Impact Does the Billable Hour Have on a Client?

The ABA's thought provoking report on the billable hour's effect on a lawyer's personal life and firm practice sheds light on the fact that the legal industry employs a flawed business model. We grasp the reality that being a tied to this billable hour can enslave a lawyer and rob his quality of life. But what impact does this have on the client?

The billable hour business model affects clients because there is rarely an end in sight or a finite financial cost associated with a particular legal task or service. In essence, a client pays a lawyer and the meter is left running until the conflict is resolved or the client simply cannot afford it any more and discontinues legal services. Many clients can relate to hiring a lawyer for a particular hourly fee and then watching their bills escalate as matters progress (as often the case in litigation matters). In some cases, opposing counsel may prove to be difficult and as such retained counsel must respond by increasing their workload; however, the client must pay for the excess legal work.

When the value of an attorney is measured strictly on the number of hours he or she can justify for a task, or the reward for the most hours billed is a hefty bonus, the model is ripe for abuse. And the client pays the bill. This model discourages efficiency and rewards inefficiency for performing a task.

The firms that are steeped in the hourly billing model will claim that they bill clients only for 'reasonable' time spent on a task, even if the young associate floundered with the matter for an inexcusable amount of time. That justification only confirms that the reasonable amount of time spent is based on what the market will bear, not the value of the task. Still, this does not discourage the hourly attorney from performing legal services just for the sake of creating billable hours, or to use the legal system to punish the opposition at the client's expense. There is no incentive to seek out better or more efficient ways to work. It happens, and the clients rarely know what is going on.

What value does a fixed price billing system bring to the practice of Law?

Despite all the arguments by attorneys opposing fixed pricing in law, there are almost no valid reasons not to apply the fixed price models in situations where it is appropriate.

Nearly every other industry operates this way and is successful in a fixed price environment. Most notable and also the easiest industry to compare this to: the construction industry. Contractors depend on their experience and knowledge to offer a fixed price or guaranteed maximum price before any work is performed. A price and scope for the completed work is agreed to in advance and both the contractor and the owner are comfortable with this arrangement. The risks associated with a fixed price contract are borne by the contractor.

Scholefield studied various alternatives to the typical hourly billing charged by law firms and concluded that a fixed price contract for legal work is most suitable for most of their litigation and transactional work, but with some caveats. The first one being that the law firm must really know the area of law they practice in, in order to be able provide a good value for the services. Otherwise, the law firm may under or over bid their work. The second is that there must be some sort of provision for unexpected events. This would be the equivalent to a construction contract 'change order'.

Scholefield engages in the practice of construction law. By superimposing the typical construction contract model, Scholefield has revamped their legal practice by offering their clients a billing model that they are familiar with and that makes plain sense: a Guaranteed Maximum Price Contract. Under this billing model, once Scholefield has assessed the needs of a client's case, the client will receive a guaranteed maximum price for the service(s) provided. No risk shifting, no inefficiency passed on to the client. Each bid will include unlimited phone time, office supply costs, emails, etc. Each bid will also include a time-line and a schedule of values that will show the client exactly what the legal fees will be for each category of tasks. Billing will be shown as progress against the category.

Scholefield is in step with the ABA's Task Force Findings and rather than just agreeing that it is a good idea, Scholefield is implementing the program and offering a fixed price contract to clients.

In the world of business, a deal is a deal. A lawyer or law firm should be held to the same standard and be willing to stake their reputation on their work. By providing a guaranteed maximum price contract, the law firm is confident in their knowledge and experience and so sure of their abilities, that they will guarantee the price.

This is not newsworthy in most industries, and shouldn't be newsworthy in the practice of law either. Scholefield has stepped up to the plate and is ready to put value into the practice of law.