

Billable-Hour System Under Scrutiny From Clients

By **Jesse Greenspan**

Law360, New York (October 20, 2008) -- With attorneys charging upward of \$1,000 an hour for legal work despite the economic downturn, many clients are pushing to do away with the billable-hour system altogether.

Last month, for example, the Association of Corporate Counsel, which represents about 25,000 in-house corporate lawyers, launched its "Value Challenge," an initiative designed to question conventional billing practices.

"We are saying we all have to stand back and reconsider what we've accepted for the last 15 or 20 years," said Michael Roster, chairman of the "Value Challenge" steering committee. "It doesn't say [billing by the hour] is wrong, but it's not necessarily the right, or only, way to do it."

He said that in-house counsel need to do a better job of cultivating long-term relationships with law firms, and that law firms need to do a better job of valuing their work not just by the amount of time they put in.

Roster added that the initiative came about because in-house lawyers and law firms increasingly found themselves at odds.

"Some of the really big companies are saying, 'You've got to find another way to bill me for services because I'm not paying those rates,'" said Pat [Gillette](#), a partner at [Orrick Herrington & Sutcliffe LLP](#).

She added that with rates crossing the \$1,000-an-hour mark, clients are beginning to wonder whether it is worth it.

"Until you start paying your own legal fees as a lawyer, you don't realize how ridiculous it is," Gillette said.

Hourly billing at law firms came into vogue about three decades ago, and criticism of the system has been around for quite a while as well.

"There have been advocates for eliminating the billable-hour system for a long time," said Joan C. Williams, a professor of law at the University of California Hastings College of the Law in San Francisco. "In my experience, it's proved very resistant to elimination."

But with the economy trending downward, there has been a bigger push from companies to cut legal expenses, according to Williams. She said companies were especially perturbed by high starting salaries for associates and extremely high profits per partner.

"Obviously, if you're being paid by the hour, there are motivations not to do things as efficiently as you otherwise might," she said.

She added, however, that doing away with the billable-hour system would not necessarily eliminate the confusion between "dedication and excellence on the one hand, and 24/7 availability on the other hand."

"Something is going to change," Williams said. "Whether it's going to be the billable-hour system, that's an open question."

A year ago, [Wal-Mart](#) Stores Inc. became the first big corporation to openly declare a moratorium on starting salary hikes for its outside firms' associates. Meanwhile, [Cisco](#) Systems Inc., [Pitney Bowes](#) Inc., [Bank of America](#) Corp. and other companies have pushed for flat-fee or other alternative fee arrangements.

Gillette said there are numerous options for firms that don't want to charge by the hour. She said they could charge a flat fee per case, charge a yearly fee for all work or cap legal fees for certain cases.

Firms could also use a tiered system, she said, where they charge different rates for easy, medium and hard cases.

She said that for big class actions, firms could charge different rates for the first, second and third years of litigation.

"It's as creative as you want to be," Gillette said.

Earlier this month, San Diego-based construction firm Scholefield Associates PC announced that it would eliminate hourly billing and guarantee the cost of litigation before any work is done.

Bryan Weaver, in-house technical adviser for the three-attorney firm, said that if contractors can come up with a fixed price, then law firms should be able to as well.

"The law firm billable hour, I'm surprised it even exists, because it's an anomaly in the business world. The entire business world works on predetermined price.

"At this point in time, associates aren't really measured on anything more than their ability to crank out work. It's kind of sad, actually," Weaver said.

Other small firms that have recently dumped the billable-hour system include Shepard Law Group PC in Boston and Valorem Law Group LLC in Chicago.

Gillette said she always offers alternative billing structures and that Orrick has embraced the idea. She said, however, that alternative billing structures have traditionally been limited to certain fee-sensitive practice areas, and that big law firms have been slow to adjust.

"It's hard to get the chairs of law firms to focus on this as a major challenge for their institutions," Gillette said. "And I don't know why except for that it's so overwhelming."

She said big firms have to find a way to measure performance by efficiency rather than hours.

"They're going to wake up one day and their work is going to be taken by small law firms, which have been more nimble," Gillette said.

"I just think we're hitting the ceiling in this economy," she added.