

THE FUTURE OF LEGAL SPEND MANAGEMENT

How Technology is Addressing Age-Old Billing Challenges
and Strengthening Client-Attorney Relationships

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The Evolution of Hourly Billing

According to the legal search consulting firm, Seltzer Fontaine Beckwith, while many attorneys assume hourly billing is “the way it’s always been done,” the practice didn’t enter the legal profession until the 1960s.

Before then, lawyers and clients used many factors to set fees but, as the legal practice became more complex and clients began requesting precise accounting, time as the measure for billing started to gain widespread acceptance. By 1970, pure hourly billing was the norm.



According to Susan Saab Fortney, the author of *The Billable Hours Derby: Empirical Data On The Problems And Pressure Points*, “The initial interest in hourly billing stemmed from attorneys’ desire to be efficient and to maximize their earnings and from clients’ preference for only paying for the actual time expended on their behalf.”

But today, the billing-by-the-hour model is coming under increasing scrutiny. Law firms and their clients alike are asking who is billing, what activities are being billed, how much time is accruing, and when are time/activities being reported. To understand the rumblings of discontent, it is necessary to observe how both the practice of law and the business of law have changed over time.

Technological advances, such as computers, smart phones, and other mobile devices, have meant that lawyers, like professionals in many other industries, are now accessible anytime, anywhere, and their work is interrupted many times throughout the day. This, combined with the huge increase in billable hour requirements of associates and partners at law firms nationwide, are at the crux of the hourly billing dilemma.

Associates at firms are expected to read massive amounts of documentation, think, research and write -- creatively and with intellectual focus -- for hours on end and often under significant time pressure. For example, many associates are required to “bill” a minimum of 2,000 hours a year. To achieve this “billable” goal, most lawyers have to work between 2,400 and 2,700 hours. With holidays and time off, that is 55 to 65 hours a week, every week.

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Inside a Billable Hour

The reality is that, while lawyers can have great aspirations for keeping track of their billable work for their various clients -- filling out timesheets; jotting notes in paper or online diaries; using email and document tracking technologies; sending themselves emails; etc. -- most do not track their time contemporaneously as they perform each activity. Very few record their work in real-time, minute-by-minute, and none track all of their time this way. Nor do many keep their timekeeping notes in one place.



It's no wonder. Consider what a typical litigation law firm associate physically does during any given workday:

- Review boxes of dusty fact documents or scrolling through pages of eye-straining electronic documents;
- Research legal issues by wading through complex case law, statutes, and regulations;
- Draft complaints and answers;
- Strategize about the categories of discovery needed to prove a cause of action;
- Prepare and respond to voluminous discovery requests;
- Develop deposition outlines;
- Travel to document reviews, depositions, and settlement conferences;
- Meet with clients;
- Participate in conference calls;
- Perform document reviews to extract attorney-client privileged communications and prepare files for production to opposing counsel;
- Prepare witnesses for depositions or trial;
- Participate in trials; and
- Write all assortments of litigation documents, including demand letters, discovery follow-up letters, memoranda, briefs, etc.

Associates often are performing these various tasks for more than one client in any given day. Realistically, does he/she stop every six minutes to fill out a timesheet? No. And yet, many legal bills are calculated in six-minute increments, or by the tenth of the hour.

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“It’s no secret that those in the legal industry are frustrated by the demands of the cult of the billable hour. Lawyers are exhausted by the pressure to bill and clients are aggravated with high fees.”

Likewise, a law firm partner managing several clients’ caseloads might spend his or her day reviewing and editing drafts of litigation documents prepared by the associates, conducting depositions, negotiating settlements, preparing and delivering oral arguments to judges on discovery or trial issues, participating in client conference calls regarding litigation strategy -- not to mention rain-making to keep the client work flow coming into the firm.

The average busy law firm partner, moving from meeting to conference call to deposition, does not typically stop to fill out a timesheet between every task. Given the practical realities of their days and weeks, many attorneys complete their timesheets in bulk, either at the end of the day, or the week, or often even the month (the deadline for submittal). This is not a nefarious practice: it’s efficiency-based. But the certainty of this common practice is that lawyers estimate, guesstimate, ball-park and “value bill.”

What has occurred at the law firm then is a separation between the work product and the administrative task of keeping time that will, eventually, become the basis of the bill. While work product is key to the client, so is visibility into the work and billing that is occurring. In today’s world, companies must stay on top of all sorts of requirements, not the least of which are accruals, actuals to budget, and then forecasting.

The Fluctuating Value of the Retrospective Billable Hour

Since many legal department counsels are former law firm counsels, they understand the traditional process of how billing works. Many departments have created sophisticated guidelines on what they can and cannot be billed for, and have instituted review processes to make sure those guidelines are adhered to. In addition to those guidelines and processes, some of which are supported by e-billing, every legal department has their attorneys review the invoices for “reasonableness.” A process that many do not like as it requires the in-house attorneys to stop their work for administrative matters and determine whether the billed activities seem appropriate. They do this without objective data of any kind, but rather “gut feel” and prior experience that they try to apply to the matter at hand. It is a less than an exact science.

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On the other side, one of the biggest financial challenges facing law firms today is the amount of legal fees that are “written off” because of client dissatisfaction. Clients typically do not become aware of billing activities until invoices are generated 30-90 days after the month in which the legal services were rendered. Often, after clients see the actual bill, they request law firms to discount their invoices, write off legitimate fees, or absorb significant legal costs they deem erroneous or unnecessary. Clients complain about inflated legal bills, unauthorized and unknown billers appearing on invoices, unjustified billed activities, and inadequate descriptions of work.

According to author Veronica Root, in *Retaining Color*, it is well-known that “[m]any law firm partners, in an effort to get paid, often write off a subset of hours billed by attorneys before submitting the bill to clients.”

Stuart E. Rickerson, author of *Law Firm Profits Increase With Strategic Legal Management* suggests that American law firms forego “between 5 and 15 percent [of billables] on write-offs.”



Write-offs benefit no one. Even if a fee-cut saves the client money in the short run, the client begins to doubt the accuracy of future bills and grows to expect discounts with each invoice. These conflicts lead to stressed-out lawyers, disgruntled clients, loss of trust in the attorney-client relationship, and economic losses for everyone involved.

As poignantly noted in Georgetown Law’s Center for the Study of the Legal Profession’s *2013 Report on the State of the Legal Market*: “[M]any lawyers and law firms seem stuck in old models—traditional ways of thinking about law firm economics and structure, legal work processes, talent management, and client relationships—that are no longer well suited to the market environment in which they compete.” In the current economy, clients don’t want to, and shouldn’t, be held hostage by tradition. The economics must change, and the only way to effect such transformation is through enhanced transparency in client billing.”

In this scenario, because neither the in-house counsel nor the partner in charge of the matter at the law firm have objective information or data at the time the specific activity occurred on which to have a valid review and discussion of any questioned billings. Instead, the conversation revolves around the client “feeling” the bill is too high, the law firm asking if they feel that “x” percent reduction would suffice and the two coming together on an arbitrary number that many times neither party is satisfied with.

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The vast majority of lawyers retroactively track their time and activities so it is neither accurate nor accessible to allow for meaningful analysis of – or impact on – legal spend.

Alternative Fee Arrangements (AFAs): May Have Their Place -- But Not the Total Answer

As described by Alan S. Gutterman in the *Hildebrandt Handbook of Law Firm Management*, law firms and clients have begun experimenting with various genres of AFAs, including the following models:

- Adjustments to the traditional billable hour construct, such as “using unitary/blended rates, or setting a cap on the amount of fees that can be charged on specific matters without obtaining the consent of the client to a formal change order”;
- “Incentive arrangements such as partial or full contingency arrangements or tracking time at hourly rates with a final upward or downward adjustment (i.e., premium or discount) based on the results obtained on the matter”;
- “Fixed or project pricing, which requires an initial assessment of a project and a quote of a fixed price to complete the project based on mutually agreed assumptions about issues and tasks that are expected to [arise] during the course of the project”; and
- “Portfolio pricing, which involves a negotiation of a fixed price to complete a series of similar matters over a finite period of time.”

Proponents of these AFA arrangements, including flat or fixed fees for a particular service, contingent fees tied to results, blended rates, capped rates (also called “risk collars”), hourly rate discounts, etc. argue that these methods can theoretically help clients and their law firms work together toward greater efficiency.

But, as attorney and law firm consultant, Michael F. Moore points out, “Alternative fees may not be the best option when handling more complex matters that involve sophisticated expertise and higher risk, such as a line of product liability cases, a series of venture capital financings, or more complex multiparty contracts for capital equipment sales.”

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So, while alternative billing may be appropriate for repetitive, predictable work such as form contract creation and trademark applications, corporate clients and law firms must take the time to negotiate these complex alternative fee structures – and as the table below illustrates, each configuration has its own problems and pitfalls.

TYPE OF AFA	DEFINITION	ADVANTAGES	DISADVANTAGES
BLENDED RATES	* Flat hourly fee charged firm-wide regardless of billing attorney	* No need to keep track of different rates for different attorneys	* Firms could push work down to the lowest-billing attorney, causing client to pay more for less experienced work * Time/activities not tracked live, when work is being done (for accrual purposes) or who is doing work (in time to impact that work)
DISCOUNTED RATES	* Reduced rates during early stages of the attorney-client relationship, and/or reductions for on-time or early payment	* Good for start-up business clients that don't have sizable enough budgets for legal fees	* Firms could bill more hours to make up a deficit in income * Time/activities not tracked live, if/when work is being done (for accrual purposes) or who is doing work (in time to impact that work)
BUDGET AND FEE CAPS	* Ceiling for the total amount of billings allowed.	* Predictable legal fees each month	* Difficult to accurately estimate litigation costs in advance so firm absorbs extra costs * Firm could work according to budget, not necessity * Creates potential ethical conflict (noted by many authorities) between work dictated by the matter and budget restrictions * Time/activities not tracked live, no opportunity to change course
FLAT FEES	* Used for single, repeatable legal projects for which costs are predictable	* Simplified billing process	* Can lead to insufficient or inadequate compensation * Creates potential ethical conflict (noted by many authorities) between work dictated by the matter and budget restrictions
RISK COLLARS	* Estimated budget based on an hourly rate for a project * If firm completes work under budget, client pays a bonus; if over budget, client gets a discount	* Firms can earn an "efficiency bonus"	* Creates incentives for attorneys to potentially cut corners * May prevent clients from disclosing issues in order to stay under budget * Time/activities not tracked live, inaccurate data and no chance to change course
SUBSCRIPTION FEES	* A repetitive flat fee for a period of time, or a retainer	* Predictable bill at regular intervals	* Clients can pay more than for strict billable hours plan * Time/activities not tracked live, no chance to change course

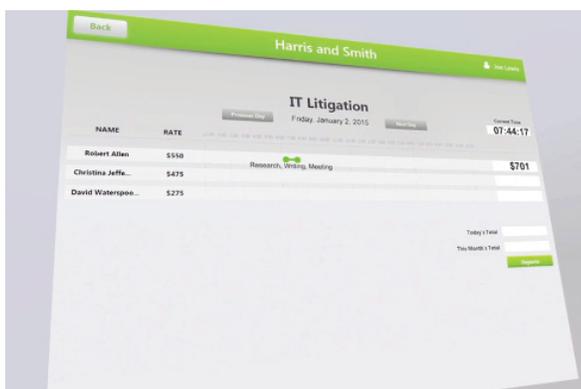
ALM Legal Intelligence recently found that AFAs accounted for only 16% of revenues at the nation's largest law firms in 2010. Many pundits maintain that it remains unclear how effective alternate billing arrangements are at controlling costs. At the recent ACC Legal Ops Conference in Chicago, while a number of firms attest to using AFAs, the vast majority noted that they still shadow bill to make sure that they are getting the work to justify the spend, that work is being done when needed and to make sure that the team is correct for the matter. In other cases, General Counsel presented that they haven't figured out how to create the AFA that allays their concerns noted above and that, while AFAs provide budgetary certainty to a degree, it comes at a cost that they aren't comfortable with taking except for repetitive tasks.

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Most in-house counsel do not have an issue with paying their outside counsel on an hourly basis as it is an excellent gauge of paying for work provided. The issues that many voice are that (1) they want more visibility into the billing (to the WIP level - not 30 to 90 days after the work is performed), and (2) they have a problem with retroactive billing, inconsistency getting the information into their systems, and the pitfalls inherent with time passing until submittals.

The Right Answer: LIVE Time Tracking

It is clear that the weakness of nearly every AFA is its dependence on timely and accurately captured billing data, which as discussed earlier, is rarely the case. The vast majority of lawyers retroactively track their time and activities so it is neither completely accurate nor accessible to allow for meaningful analysis of – or impact on -- legal spend.



The screenshot shows a software interface for 'Harris and Smith' with a green header. The main content area is titled 'IT Litigation' and shows a table with columns for 'NAME' and 'RATE'. The table lists three individuals: Robert Allan (\$510), Christina Jeffa (\$475), and David Waterspoo (\$275). A total of \$701 is shown. The interface also includes a 'Today's Total' and 'This Month's Total' section.

NAME	RATE
Robert Allan	\$510
Christina Jeffa...	\$475
David Waterspoo...	\$275

The solution is a system that requires lawyers to communicate with their responsible partners and clients BEFORE they begin any billable legal activity. Instantaneously and without disruption to their or their client's work flow. And to provide that information on a constant and aggregated basis. This is LeGuard.

LeGuard is the only technology that allows law departments to see their outside counsel spend and activity on a LIVE basis. This means that clients always know, up to the minute, where they are on accruals (instead of relying on outside counsel to provide that information). While some ebilling systems allow clients to see the status of billing mid-cycle, they can't see time that has yet to be entered by authorized billers. And this may not happen until days or weeks after the time and activity have accrued. With LeGuard's innovative FLASHBOARD – which delivers up-to-the-minute data in a flash -- efficiency is increased; the billing process is streamlined; budgeting and forecasting are more accurate; and clients achieve up to 25% savings on legal spend.

The key to the client-law firm relationship is communication. Poor communication, especially when it comes to accruals and billing, can lead to unwelcome surprises and high stress negotiations that leave neither side satisfied. LeGuard provides both in-house and outside counsel with transparency to strengthen their relationship.

For more information on how LeGuard can give you live visibility into legal spend and activities - before they accrue -- contact info@leguard.com or 1-844-LeGuard (534-8273) toll-free or www.leguard.com