

Can Task Billing Be a Cure for the Unhappiest Job in America?

ACCORDING TO A SURVEY RECENTLY REPORTED in the electronic edition of the *American Bar Association Journal*, an associate attorney has the unhappiest job in America.¹ The reason given is “a structured environment that is heavily centered on billable hours.” Earlier, the same journal reported a fee dispute between a large national law firm and a client. The client’s discovery found an indiscreet internal e-mail referring to the firm’s billing process as “Churn that bill, baby.”²

Is there a connection between unhappy associates and churning that bill? Most certainly, yes. Focusing on billable hours unavoidably invites associates and partners to record their time with a heavy hand or spend time on unnecessary projects. Small wonder that idealistic young associates are unhappy. The same undoubtedly goes for many partners. Would lawyers be happier if they could avoid living or dying by the billable hour? I think so. Is it possible to abandon the billable hour and still make an adequate living? The answer is yes. The solution is to stop focusing on time and start focusing on results. I am not suggesting lawyers stop keeping time. I am suggesting that time is a good measure of cost but not value.

How do we arrange to be paid for results rather than hours without restricting our practices to contingency work? One answer is to switch to a prepriced, task-based billing system. Under such a system each task would be prepriced and the firm paid as discrete tasks are completed. In addition, the firm should be paid a negotiated bonus for good results. This system will work in any litigation in which legal fees are significant enough to justify the time spent preparing a budget.

Some clients and firms may resist task billing in the belief that budgeting cases and prepricing tasks accurately are too difficult. They are wrong. An experienced trial lawyer who takes the time to understand his or her case well in advance of filing a complaint or answer, who understands the budgeting process, who has the necessary tools, and who has the skills to use those tools can budget a case. The first tool is a detailed trial task list arranged in chronological order. The second tool is a simple electronic spreadsheet upon which the parties record the estimated cost of each task and subtask. When completed and totaled, the spreadsheet becomes the case budget, which describes in detail which tasks will be performed and which not.

What if, as the case moves forward, client and counsel find that some budgeted tasks are unnecessary while other unbudgeted tasks are necessary? The answer is to amend the budget. What if client and counsel fail to budget every task accurately? There will be multiple budgeted tasks. Some will come in under budget and others will come in over budget. Over the course of an entire case one would expect these out-of-budget items to cancel out.

The system takes advantage of human nature. We know that most law firms give their attorneys quotas for billable hours. Each month lawyers check their hours and, if they are short, find ways to record more hours. Under a task-based system, lawyers do not have

quotas for billable hours. Instead, any productivity quotas they have are based on completing prepriced tasks. If a lawyer is falling short, the solution is to complete more tasks. Each completed task will move the case closer to its conclusion. There will be no incentive to record billable time on unnecessary tasks.

Clients should be receptive to prepriced task billing since it is a means to control litigation costs. However, it should be equally attractive to law firms. First, law firms can make their clients happy by helping them control costs. As the case proceeds, the law firm will receive regular agreed-to payments as tasks are completed. When the

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case is completed, if the results are good, the firm will receive an agreed-to bonus. Second, it should be attractive to law firms because it promotes trust between lawyer and client. That should improve firm morale and help cement good relations with valued clients.

Third, task-based billing benefits not only the client but also the firm because the case will practically manage itself. Both client and firm are able to easily monitor the progress and cost of the case by consulting the case budget and noting which tasks have been completed and which have not. No longer will clients feel they have to obsessively review invoices and micromanage their trial counsel in an effort to control litigation costs. If the firm wants trial counsel to take an extra lawyer to a deposition, it is the firm’s decision and will not matter to the client because it does not change the budgeted and prepriced cost of the task.

Fourth, the financial interests of counsel and client will be aligned. No longer will every monthly invoice present a chance for a dispute. Instead, lawyer and client can concentrate on what is important: working together to achieve the best possible result. If law firms can find ways not to live and die by the billable hour, it will be a giant step toward ending rampant associate and partner dissatisfaction. ■

¹ Debra Cassens Weiss, *Associate Attorney Is the Unhappiest Job in America, Survey Says*, ABA J. (Apr. 1, 2013), available at http://www.abajournal.com/news/article/why_a_career_website_deems_associate_attorney_the_unhappiest_job_in_america.

² Martha Neil, “Churn that bill, baby!” *Email Surfaces in Fee Dispute with DLA Piper*, ABA J. (Mar. 25, 2013), http://www.abajournal.com/news/article/sued_by_dla_piper_for_675k_ex-client_discovers_lighthearted_churn_that_bill.

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