



Winning alternatives to the billable hour

Has the billable hour seen its demise? It's time to examine your billing practices. There is a better way to value your services and satisfy your clients

James A. Calloway and Mark A. Robertson, Editors, Third Edition available May 2008, American Bar Association, publisher

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So, what do you charge per hour? And more to the point, why? Thus continues the debate on the holy grail of the legal profession – the billable hour. The billable hour has been cited as the root cause of attorney dissatisfaction, to say nothing of the client who pays the bill. Has the time finally come to end our collective misery? In *Winning Alternatives to the Billable Hour*, James Calloway and Mark Robertson make a persuasive case for implementing alternative billing strategies and offer a detailed plan for both solo/small firm practitioners as well as larger firms to achieve this goal. The result, the authors promise, is a win-win for both attorneys and clients. Attorneys will find they experience greater satisfaction in dealing with clients who feel they are getting value for their money.

When I graduated from law school, hourly billing was the standard. What I did not know was that it was a relatively recent innovation. The authors point out that for many years, lawyers determined their fees by reviewing a file, often at the conclusion of a case, and arriving at a figure they felt represented the value of the

work. Minimum fee schedules were also employed but the practice of using these schedules was dropped with the decision in *Goldfarb v. Virginia State Bar* (1975) 421 U.S. 773 which cited possible anti-trust violations. During the 1970s and '80s the demand for legal services exceeded the supply (believe it or not) and hourly billing rates increased. Once the market began its shift from a seller's market to a buyer's market, however, clients began to look for ways to reduce legal costs. And the result of *Bates & O'Steen v. State Bar of Arizona* (1977) 433 U.S. 350 meant increased competition as lawyers began to advertise more aggressively.

The technology paradox

Now add to the mix, the technology paradox. Legal offices now benefit from an array of technological improvements. Even the solo practitioner can crank out a complaint or demand for interrogatories in far less time than it used to take without relying on a legal secretary. Billing software allows the attorney to keep an accurate record of the time he or she spends on any matter. The end result is the attorney can do more work in less time, resulting in reduced income. And technology is a double-edged sword. Potential clients can now go to Web sites that will assist them in doing basic legal work themselves. Nolo Press provides advice and documents the consumer can fill in to complete wills, trusts, incorporations and the sale of a business, to name

just a few. So, the billable hour is not really working very well.

The authors make a good case for alternative billing but the heart of this book, and the value to the attorney, is how to analyze your cases in order to implement alternative billing strategies. It compels the attorney to understand the types of cases he or she handles in terms of the "value curve" and to examine management strategies and past cases to determine and fairly estimate costs for clients.

The "value curve"

The "value curve" divides legal work into four categories and shows value of the work versus the volume of work available. The greater the volume of work available, the more lawyers there are to perform the work and therefore, the more price-sensitive the work. The majority of the work available is Commodity work (60 percent), the type of work any lawyer can perform adequately. Brand Name work (20 percent) goes to firms that have established themselves in the market as experts in a particular area or to a niche boutique firm. Experiential Work (16 percent) is high risk or high impact work for the client, and the client will seek a particular lawyer to handle this personally and will find fewer lawyers qualified to do so. Unique Work (less than four percent) the authors define as a nuclear event to the client. The greater the perceived value of the work to the client, the more he will be willing to pay.



Since the majority of legal work is commodity work, the lawyer must be competitive in fees charged.

Once the reader grasps the value curve concept, the remaining chapters lead you through a series of assessments that will clarify the type of work you do, how long specific legal tasks take you, and changes you can make to increase your profitability as you implement alternative billing strategies in addition to the billable hour, which may still be appropriate in certain circumstances. The chapters on "Developing a Case Plan" and "Billing as Part of the Communication Process," if implemented, will create better client relations and reduce the stress so often associated with the practice of law.

The appendix and CD provide several variations of fee letters, agreements and examples of case plans and other resources.

Calloway adds that the third edition will include case studies of firms that have implemented alternative billing strategies. He acknowledges that the billable hour will persist to some degree, certainly in cases where the lawyer is required to be present and the only equitable compensation is to bill for his time. His advice to attorneys just starting out – if you are going to work for a firm take a good look at their policies and billing requirements imposed on associates – avoid the trap billable hours can present. If you are going solo spend the time to

develop office management systems that will ultimately make the difference between success and failure.

I wish I had read this book before I started my own solo practice. And I wish I had read this book when I was in law school so I could have had a better understanding of the business side of law. My choices, at least, would have been better-informed choices. Fortunately, it is never too late for good ideas. You will find more than a few of those in the third edition of *Winning Alternatives to the Billable Hour*.

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