

The Art of Billing

By Steven A. Meyerowitz

Years ago, it was not uncommon for a lawyer to send a bill to a client that stated "For services rendered" with a dollar amount typed at the end of the line. The lawyer determined the fee by multiplying the number of hours spent on the matter by the lawyer's hourly rate.

Those kinds of one sentence bills are "virtually dead, if not dead already," in the view of law firm consultant Howard Mudrick, a vice president of Hildebrandt, Inc., based in Somerville, N.J.

The hourly rate, though, continues to thrive—for now. In fact, despite the many problems and disadvantages of hourly billing, many of the alternatives to it that some firms are using or considering or that are being played up in the media are based on the hourly charge.

Choosing the Rate

For lawyers just starting out on their own, for law firms hiring new associates or bringing in new partners, and for firms simply facing a new year, selecting the

appropriate hourly rate at which to bill clients is a difficult problem. Yet lawyers often resolve it in surprisingly unsophisticated ways.

"Most lawyers," according to Alan M. Black of Allentown's Black, McCarthy, Eidelman and Feinberg, "just charge the going rate used by other lawyers."

Marketing consultant Gina Resnick, of Washington-based Jaffe Associates, agrees, noting that "a lot of law firms see what others are charging and do the same."

She adds, though, that "there is also a science to it." Some lawyers take the compensation level they are hoping to attain, the costs associated with their practice and the number of hours they expect to work, and come up with their billable rate.

Resnick's "science" also has some "art" connected with it, in Mudrick's view. "It's a sensitivity testing with clients to determine what the market will bear."

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Hourly billing is still the mainstay of compensation in the legal profession, but choosing rates is difficult, and some firms are experimenting with variations and alternatives.

he says. Different clients can afford to pay, and are willing to pay, different rates. "Large corporate clients generally pay higher rates; individual entrepreneurs generally pay lower rates," Black states.

Because hourly rates seem to be so dependent on a variety of factors, including what other lawyers are charging, the costs of maintaining a practice, and the ability of clients to pay fees, it's no surprise that the rates charged by firms within Pennsylvania vary to a large extent.

Rates in the Allentown area are in the "\$75 to \$125 per hour range," Black says. Some firms that handle insurance defense work may charge only \$50 per hour. "That's probably not profitable, but they act on the concept that volume will produce sufficient income," he adds.

On the other hand, one of the largest firms in the state, with offices in two cities here and in other cities outside Pennsylvania, has rates that range substantially higher—up to \$350 per hour for partner time.

That \$350 per hour fee is not unusual. According to a recent survey conducted by *The National Law Journal*, law firm rates for partners in law firms based in Pittsburgh or Philadelphia start at approximately \$165 per hour and go up to \$295, \$300 and even \$350 per hour.

Problems with Hourly Charges

Despite the range of hourly rates charged by most law firms, one of the major problems with billing that way is

that it is "sometimes not profitable for the law firm," according to Resnick.

For instance, if work is given to a younger associate who prepares a document that is then re-written by a more senior associate and finally reviewed and revised by a partner, the time charges might exceed the amount that the firm reasonably can bill the client for the project. The law firm would have to write off a portion of its bill. "That happens a lot," Resnick says.

On the other hand, an experienced lawyer or a law firm that has invested in computers or other forms of technology may be able to resolve a problem or prepare a document for a client faster than other lawyers. If a client is billed on an hourly rate, the lawyer or firm will be penalized for being better or for becoming automated.

An obvious problem with hourly charges is that a firm's revenue is limited because there are "only a certain number of hours that a person can work," says Joel A. Rose, president of the Philadelphia-based management consulting firm of Joel A. Rose & Associates Inc. Unless a firm uses — and bills out — a lot of associates and paralegals, the partners may not be able to reach their economic goals when charging hourly rates.

And even that may be difficult to do, according to Rose, in areas where clients do not have "deep pockets" because "you can't charge them as high an hourly rate."

Though hourly rates have risen substantially in the past few years, there also "is

a concern that they have increased at a lesser rate than overhead," Rose adds. Hourly billing, therefore, can't provide law firms with the same profits today that they may have achieved in years gone by.

Clients are not necessarily treated the best by hourly billing, either.

Different hourly rates are charged by lawyers in a law firm supposedly to reflect the lawyers' different abilities and experience. While the more junior lawyers in a firm will take longer to handle a matter than the more senior lawyers, the theory is the cost will be about the same because the junior lawyers bill at a lower rate.

That "doesn't work in practice," Black says. In his view, the less experienced lawyers will take substantially longer to handle a legal problem than necessary, costing a client a good deal more than it would have cost to have retained an experienced lawyer or to be billed in some different manner.

Clients also become concerned when they see an itemized hourly bill "with all those hours listed," says Resnick. "They don't understand why it takes so many hours to accomplish one minor thing or why so many lawyers were involved."

In essence, clients often believe that lawyers "load up the hours" on their hourly bills, Rose says. "Excessive discovery, excessive intra-office consultations, lengthy opinions versus shorter memos," are all considered to be problems. He adds that clients are concerned about the pressure put upon associates to bill a certain number of hours a year. They are worried that the associ-

CONTINUED ON PAGE 23

CHARGEABLE TIME CONTROL JOURNAL

DATE	INITIALS	CLIENT'S NAME	MATTER OR FILE NUMBER	CODE	CHARGEABLE TIME	UNIT	AMOUNT
4-10-10	HC	Pepper Swenson		C 1	1		
4-10-10	HC	Jackie Worth		A 2	0		
4-10-10	HC	Arthur Schagen		A 2	5		1
4-10-10	HC	Mr. Nelson Brady		A 2	5		2
4-10-10	HC	Mr. Keith Miller		A 2	5		3
4-10-10	HC	Mr. David DeLuca		A 2	5		4
4-10-10	HC	Mr. Larry Johnson		A 2	5		5

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ates "may be generous" with their time sheets.

Alternatives

Although "the hourly rate has become a problem for attorneys," it is still, except for contingency fee billing, the "standard base for determining fees," Rose says. Indeed, Mudrick admits that Hildebrandt, the law firm consulting company of which he is a vice president, "still bills on an hourly basis," although, he says, it is exploring alternatives.

One alternative that many lawyers are using is a variation of the bill that reflects straight hourly time charges.

Black says that his firm often works on "an hourly basis with an adjustment based on complexity and result obtained." That means that clients are more likely to be billed a higher amount for work that requires complex court appearances rather than something that merely required numerous phone calls and negotiations.

Other firms, according to Mudrick, tell clients that "we will keep our time and share some risk with you." If the firm achieves a certain result in litigation, they will be paid, say, 125 percent of their hourly charges; if they achieve a lesser result, they'll be paid 75 percent.

The technological advances that allow law firms to prepare documents so quickly have made it possible for them to charge fixed fees for those services.

At Black's firm, forms for wills are computerized. "It's a simple matter to change names," he says. The firm, therefore, charges a client a fixed fee for preparing a will.

When a firm uses a fixed fee-for-service system, the charge to a client is more than the actual hours would reflect but less than the bill would have been had the firm prepared the materials from scratch. It is, therefore, important for firms to know the time charges that would have been incurred for these fixed fee services. (Fixed fees are something that could become a hot item with clients in the future, fitting in with their notion of budgeting as well as the need to control legal costs.)

Some law firms are adding fees to their time charges for various services they provide to clients, such as document preparation, photocopying, faxing,

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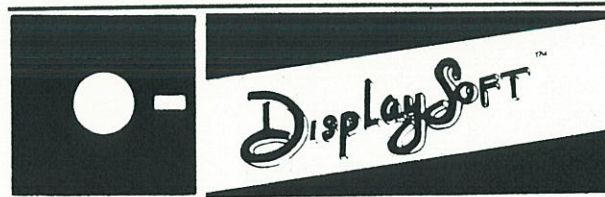
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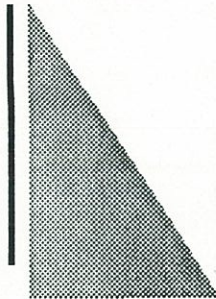


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secretarial services and the like. According to Resnick, some of these firms are trying to make these services into "profit centers." For example, a firm is likely to realize a profit when it charges 25 cents per page for photocopying, even after accounting for the cost of the machine, supplies, maintenance, space and employees to run it.

Conclusion

Abraham Lincoln once said that "A lawyer's time is his stock in trade."

That remains true, of course, because all a lawyer has is the time that he or she is expending.

It has never been more true than today, though, that how a lawyer values that time and bills clients for it makes all the difference in the world between more economically successful lawyers and less successful lawyers.

Where is billing for a lawyer's time and services going in the 1990s? Mudrick answers in one word: "Up." While that may be true, it does not appear that billing is going up at the same pace or, with hourly billing facing increasing pressure, on the same basis as it has in the past. □

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