

**Billing & Wooing:
Firms Offer Payment Options**

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Economic pressures on businesses have led to greater scrutiny of legal bills, and in many cases, requests for alternatives to the legal institutional standard, the billable hour.

Firms of every size and concentration are being asked for more flexible billing options, though midsized and smaller firms may be in a better position to accommodate them, according to legal industry experts.

While alternative billing is nothing new — one consultant pointed to the Dupont Legal Model introduced in 1992, which focuses on strategic partnerships, early case assessment and alternative billing — it is becoming more and more prevalent.

In a 2006 survey of 240 corporate counsel by the BTI Consulting Group, “flexible billing arrangements” was cited by 5.6 percent of counsel as an innovative strategy that drives clients to recognize firms as market movers. The percentage may not seem high, but it ranked above “high value.”

Lisa Goldstein of Rainmaker Trainers said the push for alternative billing was here to stay, and would only increase. But she said many law firms hear “alternative billing” and incorrectly assume it always means reduced rates.

Attorneys and legal industry experts generally defined alternative billing as any type of billing outside of the billable hour. They listed such arrangements as fixed-fee schedules, contingency fees, bonus/incentive structures, task-based billing, retainers, cap fees, volume discounts, blended or hybrid fees, or just plain discounted fees.

“The problem is that firms don’t have a good handle on how to calculate alternative fees. ... One issue is that firms perceive that it is easier to do billable hours than invest in tracking the trends and looking at the costs and time going into each matter,” Goldstein said, adding later, “But the ones who do will be the firms that succeed.”

Goldstein said that firms with lower overhead — small and midsized firms — would

have an easier time adapting to the demand for different billing options. She said bigger firms with more locations, higher salaries, and more levels of bureaucracy would be slower to change how they bill.

BTI principal Marcie Borgal Shunk said that currently, firms that are aggressively looking to boost client relationships are the ones actively doing alternative billing, regardless of their size.

What Clients Want

Above all, Shunk said, clients are looking for flexibility and predictability.

“They want to be able to look at a budget and know what the end game will be,” Shunk said.

That rings true for Mark Hershey, general counsel for IKON Office Solutions Inc.

Hershey said IKON utilizes a fixed-fee arrangement with a law firm that does its noncompete litigation. He said the arrangement was mutually beneficial— the firm is assured steady work and pay, and it’s cost effective for IKON.

Hershey said IKON was also focused on establishing case budgets, a form of task-based billing.

“If [a law firm] exceeds the budget, then they eat [the difference.] We expect an honest number and we expect them to live by the budget process,” Hershey said.

Of course, Hershey said, there are cases where an unforeseen twist changes the initial budget, in which case re-negotiation is necessary.

Hershey said these arrangements made sense to him and the firms IKON worked with. He said establishing alternative billing methods can prevent billing disputes and save everyone time.

Jeffrey Norton, general counsel for Glatfelter, headquartered in York, said Glatfelter had had situations where it established certain milestones and when a law firm met them early, it got a bonus— a type of bonus structure.

“We try to work with law firms to find a way to provide value to our company and if it’s a corporate business matter we would like the law firms to develop creative suggestions on how to get to a successful conclusion ... and we are open to alternative billing arrangements other than hourly rates,” Norton said.

Norton said most firms Glatfelter had worked with were open to alternative billing arrangements, but some more so than others.

Law Firm Perspectives

Mitchell Kaplan, managing partner of Zarwin Baum DeVito Kaplan Schaer Toddy, said his firm had been approached by clients about alternative billing options, including fixed-fee deals and lower hourly rates against contingencies.

Kaplan said that for good clients, the firm was willing to take on smaller matters at a contingency or a flat fee because the firm knew there would be other larger matters it would continue to receive from that client.

He said alternative billing requests were a growing trend; 10 years ago, Kaplan said the firm wasn't getting these kinds of requests.

But Kaplan said that hourly billing was still the fairest way to bill.

"The basic method of hourly fees for service is the best way for both clients and law firms. Once you start getting into creative methods, someone's rolling the dice. [Clients] get predictability, but maybe they don't get the same amount of services. The time spent may be less than they are paying for [or vice versa]. Both sides are at risk," Kaplan said.

Kevin F. McKeegan, managing partner for Pittsburg-based Meyer Unkovic & Scott, said his firm has accommodated a lot of blended fee requests. In those cases, the firm combines its associates' hourly rates with partners' hourly rates, based on how the case will be staffed.

And on some significant insurance coverage cases where the firm represents the claimant, Meyer Unkovic utilizes a sliding scale on recoveries, which amounts to a performance bonus structure, he said.

According to McKeegan, requests for alternative billing are still in the minority. And the requests are usually based on the type of work involved, not necessarily the sophistication of the client.

But in some areas of law, alternative billing dominates.

William A. Stock, name partner at Klasko Rulon Stock & Seltzer, an immigration boutique, said for the last 15 years much of the immigration work industrywide had been done on a fixed-fee basis, though the nature of the arrangements vary.

"The practice is [made up of] discrete projects. Within the context of legal work, they are short-term projects ... in terms of management and planning," Stock said, later adding, "we have a broad experience on how much work it takes to obtain certain results."

Stock said some firms still charge hourly rates for immigration work, but that doing fixed fees allowed stronger relationships to form between his firm and its clients.

For example, he said, if a client needs to call and go through some options for a potential employee, Stock said he can spend time on the phone with that person without having to “nickel and dime them.”

Stock said the fixed-fee arrangements were evaluated at least once a year, and more often if government regulations changed or there was a need to re-examine the arrangement.

End of the Billable Hour?

Though attorneys defend the billable-hour convention, at least one consultant is predicting its eventual demise.

Goldstein, of Rainmaker Trainers, said she sees billing being completely results-based in the future. Right now, she said, a firm would hypothetically make more money if it loses an appeal and is then retained to continue a case to the next appellate level.

“I can’t say a timeframe ... it depends on if firms start to figure it out — when they grasp how to use alternative fees in a way that makes good business sense for them — at that time, yes, [billable hours] will go away, but it will be a slow process,” Goldstein said.

Another reason for the decline of billing by the hour, Goldstein said, is that most lawyers are working to meet billable-hour requirements, which doesn’t foster working efficiently. Alternative fee arrangements, if properly established, force attorneys to work efficiently, she said.

Goldstein suggests that firms start tracking their activities and break each matter down to each activity to develop a knowledge base to know how much time is spent on each matter. Then, when they are approached about alternative billing, they can project their costs and time correctly.

But few others are ready to foretell the end of billable hours. Most attorneys and consultants who spoke to *The Legal* for this article thought there was a place, if diminishing, for the billable hour.

“Truth be told, a great many corporate clients aren’t really interested in [alternative billing methods]. They still want to maintain the hourly system,” said Joel A. Rose, a legal consultant.

Rose said he had found, through a recent survey he did of law firm clients, that many of them feel a certain level of comfort with the billable hour system and are resistant to alternatives.

For those clients, he said, a firm would need to have a long, established relationship of trust in order to convince them to accept alternative pricing. But Rose also said he

thought alternative billing was a way to get a firm's foot in the door with a new client.

Jeffrey Feirick, general counsel for Clemens Family Corp., which owns Hatfield Quality Meats, said he had no issue with paying for legal services on an hourly billing cycle.

"I would like to be treated fairly, and at the same time I'd also like to treat law firm partners fairly and adequately compensate them for their services. That's why I've chosen to do hourly billing," Feirick said.