

Law firms and clients think twice about the 'billable hour'

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SPECIAL TO THE BUSINESS JOURNAL

The iconic Billable Hour is under pressure as belt-tightening across the economy forces law firms to reconsider how they charge clients for their work.

Lawyers and companies in Philadelphia say they are seeing some stirrings of change in the traditional way law firms earn money — by charging an hourly rate. Even relatively conservative law firms are looking at alternatives, such as charging a flat fee for certain work, or tying the firm's compensation to legal outcomes.

"The bottom line for a client is paying law firms less money," said Mary Platt, co-chair of the law practice management division of the Philadelphia Bar Association. "Whether it's by alternative rates, alternative billing practices, or lower rates, the economic times are going to accelerate that."

The issue got a public boost in January, when the head of one of New York's largest and most expensive law firms came out against the billable hour, the very concept that had made his firm rich.

"This is the time to get rid of the billable hour," said Evan R. Chesler, presiding partner at Cravath Swaine & Moore in New York, in a front page article in the New York Times.

That caught the attention of attorneys in Philadelphia's larger firms.

"When the people in New York start

talking about moving away from billable hours—they're the ones that led us into the outrageously high billable hour rates — I think there's probably something to it," said Larry Shiekman, chair of the finance committee and co-chair of the litigation department at Pepper Hamilton.

Shiekman said the economic downturn "is an opportunity rather than a problem because it really does force us to go back and think about what is the economic model of a law firm and how is it going to work."

Others wonder if news of the death of the billable hour is a bit premature.

Despite endless discussion of alternatives over the last decade or more, remarkably few law firms or clients are willing to try something new, said Pam Waldrow, principal and general counsel of law consultancy Altman Weil Inc. in

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Larry Shiekman
Pepper Hamilton



CURT HUDSON

Newtown Square.

"There is just a tremendous resistance, despite how reasonable it is, how rational, how compelling," she said. "I am flabbergasted by the resistance."

The billable hour has been a matter of controversy for decades. Clients complained of staggering rates and extravagant numbers of hours billed. Attorneys complained that the pressure to bill hours — 1,500 to 2,000 per year per person, sometimes even more — was destroying

their personal lives, chaining them to dreary boilerplate work, and edging out pro bono work.

But for all the talk, relatively little has changed, lawyers say. In part this is because the billable hour is an easily calculated measure of work both for the firm and the client. Other methods, such as flat fee pricing, are somewhat more complicated because it is often difficult to calculate in advance how much effort a legal matter will require.

If the economic downturn does not end soon, however, it might force law firms and clients to change their habits.

"We have to have client buy-in to alternative approaches as well as law firm buy-in ... they see the economic times may be such that it's going to create a window of opportunity," said Bob Hirshon, a former ABA President.

Todd Borow, senior corporate counsel for Johnson Matthey in Wayne, said billable hours make some clients feel that they are subsidizing the cost of training young associates.

"Even if the rate is lower, it still costs more if it takes the associate two hours to do something that a more experienced lawyer can do in 15 minutes," he said.

Borow, who is also president of the Delaware Valley Corporate Counsel Association, said this issue is a top priority for his organization this year. The organization theorizes corporations can have lower

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legal fees and law firms can have higher profits if law firms retain more associates so they aren't constantly retraining.

DelVacca will host two events this year that will discuss how to reconnect legal costs to the actual value of work performed: a think tank discussion of in-house counsel in June and another that includes dialogue with outside counsel in September.

Joel Rose, a Cherry Hill-based legal consultant, said there will probably always be some matters where paying by the hour makes sense.

It's possible, Rose and others say, that law firms will turn to some kind of hybrid, perhaps charging a lower hourly rate in return for the promise of a bonus upon the successful completion of a legal matter. Or perhaps dividing a case into parts — charging a flat fee for routine work and using an hourly rate for complex matters.

David Antzis, managing partner of Saul Ewing, says his firm has used this kind of arrangement successfully. The firm has a contract with one client, for example, to handle all their single-plaintiff employment discrimination cases for a flat fee.

"The feeling is we may make a little bit more than our billable hour rate in some cases, we may lose a little bit in others, but we and our client are both comfortable with that," he said. ■