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Has the billable hour run its course?

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The billable hour, long the lawyer's friend, is facing a tough challenge because of the bad economy.

Although the American Bar Association has been urging law firms to move away from the practice for years, the call is now coming from an even more persuasive party: clients.

Law firms across the country expect 2009 to be a tough year. The industry has seen layoffs from New York to San Francisco. Even Las Vegas firms have had to downsize. And most American firms are trying to find ways to protect their bottom lines amid an economic nightmare.

At the same time, clients are increasingly cost conscious and more frequently question legal expenses,

according to an ABA study last fall. Many companies are now requesting alternative billing as a way to better predict their expenses.

The Association of Corporate Counsel last fall announced the launch of a "value challenge" to outside counsel to more closely align the value of legal services to the costs.

AT&T over the past few years has asked its outside counsel to cut the costs of their services and replaced those that didn't comply.

And a new law firm in Chicago, established by three former large-firm lawyers announced in January their business model would depend almost entirely on alternative billing methods for all commercial litigation matters. They plan to cut costs by outsourcing legal work to offshore firms.

At the same time, lower demand for legal work on average has given corporate clients more leverage to ask for alternative pricing.

The New York Times recently published a story about how that city's largest law firms were considering alternative billing as a way to maintain or increase revenue during the downturn.

So it begs the questions: What is the alternative billing all about and will it reach Las Vegas?

Billable hours: They have worked out OK until now

For centuries lawyers found ways of billing that did not include hourly rates - that didn't come into vogue until the 1950s and '60s.

By the 1980s, the billable

hour was the norm, and firms were setting billable hour goals for associates. By the early 1990s those goals turned into quotas at many law firms, meaning highly paid associates, mostly in the major legal markets on the coasts, were working ridiculous hours.

But even Las Vegas hasn't been immune.

Today every major law firm in Las Vegas bases its business plan on the billable hour. Although some allow flat rates for services such as wills and trusts, most work is compensated based on how many hours it took the legal team to complete it.

Why do law firms use the billable hour? There are lots of reasons, but mainly it's an easy way to track how much a client owes, and the firm is guaranteed a profit as long as it has enough clients willing to pay for the work, according to a 2002 report on billing by the ABA Commission on Billable Hours.

That system rubs some legal academics and ethicists the wrong way.

For one, the only ways to increase revenue under a

billable-hour system are to increase clients, the billing rate or the number of hours worked.

With this economy, new clients are few and far between, and the resulting heightened competition among firms means they can't raise rates. So the only way to raise revenue under the billable-hour system, critics say, is to increase the hours billed.

The ABA's report contends the system punishes efficient lawyers and encourages associates to pad hours to meet quotas and compete with colleagues.

"Lawyers are no longer being recognized primarily for the quality of their work and their talent," the report stated, but instead they stand out for the number of hours they can bill a client.

That is just one of several problems the commission found with the billable-hour system.

The study claimed that relying solely on billable hours has led to or could lead to several negative outcomes including the decline of collegiality in law offices, less pro bono work,

reduced case planning, unpredictable prices for clients, less communication between clients and lawyers and duplication of work.

The report also states that the billable hour is likely forcing clients to foot the bill for associate training, associate turnover (and new training), lawyer incompetence or inefficiency and hours not actually worked.

The ABA would like to see more variety in billing methods as a way to combat these potential evils.

Alternative billing: Huh? What?

There is no strict definition for alternative billing methods — which irks some lawyers. There are many online debates raging about what qualifies as an alternative billing method.

But at its simplest, alternative billing is any method of pricing legal services that is not based solely on the number of hours the work took to complete.

But can it happen here?

Las Vegas tends to be a more conservative legal market than other cities. Six-figure salaries for first-year associates only reached the valley in recent years, and many out-of-state regional or national law firms are still struggling to gain a foothold.

But some firms have been doing at least some fixed-rate work for years.

Local small-business law firm Lubbers & Borg recently launched a fixed-rate program for its clients. The firm sees it as a way to keep clients from making uninformed decisions that will cost them more in legal fees later.

“In this economy, a small business is going to cut its legal budget,” partner Brooke Borg said. “We want to prevent them from cutting off contact with their lawyer altogether.”

Some of the larger corporate firms also have adopted fixed rates for certain services for long-term clients.

Lewis and Roca has offered flat rate billing in its intellectual property prac-

tice for at least the past six years, according to partner Michael McCue.

He said interest from clients has peaked in recent months.

“We find that clients are opting more for flat fees because it makes legal fees more predictable,” McCue said.

Lewis and Roca is also open to discussing other types of alternative fee arrangements including blended rates, contingency fees, fees based on performance and discounted fees based on volume.

The firm thinks this will make it more attractive to clients during a time when competition has become even more heated in the legal market.

Lewis and Roca is already attracting new clients seeking more bang for their buck, particularly from California companies.

Some companies are actively searching for Nevada lawyers and firms because of their lower rates.

“They’re looking for both lower hourly and flat fees,” McCue said. “For example, my rate is \$455 an hour and I’ve been practicing 19

years. A fourth-year associate at a large international firm at an office in Silicon Valley is charging the same amount.”

There is a downside for the firm — they don’t always make money from a client using a flat rate.

“That’s the risk to the firm when using the flat rate,” McCue said. “We may lose or gain money but it promotes efficiency. Whereas billable hours do not.”

It can also be an administrative headache when a client wants both fixed and hourly rates for work.

Jolley Urga Wirth Woodbury & Standish also offers flat fees to some of its larger corporate clients for types of work that are predictable and frequently requested such as forming corporations, wills and trusts.

Jolley Urga also requires some clients to keep their trust accounts full to ensure the firm gets paid for work already done if the company goes under.

But the firm has no plans to expand into other forms of alternative billing, partner Bill Urga said. Most of

his firm's clients know what their legal services are going to cost for a given type of work.

"We've not looked at other alternatives," Urga said. "Our practice isn't conducive to it. We try to use our associates more, under monitoring from partners, because they're less expensive."

He said it's too risky to allow a flat fee or other billing mechanism on the types of cases his firm handles.

"It's been suggested over a period of time to get rid of the billable hour — that's very difficult," Urga said. "I don't know how you could estimate the cost of actually doing legal work like getting a patent approved or getting a license. You don't know how many hearings are involved — anything could happen. So you never know how much work something is going to take."