

## Lawyers and your money

# Curbing those long, lucrative hours

**The billable hour is not dead, but many people would like to kill it**

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You want me to do  
what with my bill?

LAWYERS hate keeping track of their billable hours. Clients hate them even more; each month they receive bills showing that their legal representatives have worked improbably long hours at incredibly high rates. Billing by the hour often fails to align lawyers' interests with their clients'. The chap in the wig or the white shoes has an incentive to spin things out for as long as possible. His client would rather win quickly and go home. Since there is clearly a demand for an alternative to the billable hour, you would expect someone to supply it. And indeed, this is starting to happen.

Many legal tasks, although not quite easy, are variations on a theme. The production of a certain document (such as a trademark registration) does not differ vastly from one instance to another. So more firms are using "document assembly" software such as that made by Basha Systems; Seth Roland, the company's founder, says that his company's software reduced the time needed to put together a certain type of real-estate lease from 40 hours to one. Automating the automatable stuff allows lawyers to spend more time talking to the client. Everyone wins (including Basha, which Mr Roland says has grown by between 15% and 20% a year for more than a decade).

More and more firms' in-house lawyers, who typically hire and manage outside lawyers, have turned to alternatives to the billable hour since the beginning of the global recession in 2008. According to a survey by the Association of Corporate Counsel (ACC), which represents companies' in-house lawyers, 44% of members asked their lawyers for alternative billing to cut costs in 2009, more than any other cost-reducing measure. Susan Hackett, the ACC's

general counsel, says that just a few years ago what she calls “value-based” billing was only 3% of her members' legal spending. Now, she says, surveys show the average client laying out between 15% and 30% of their legal spending this way.

Evan Chesler, the presiding partner of Cravath, Swaine & Moore, one of the world's largest law firms, wrote an article in 2009 called “Kill the Billable Hour”. It has not been killed, but he is confident that clients will continue to ask for alternatives. The recession may have boosted this trend, he says, but it was not its primary cause. Clients are not merely trying to screw down fees, but rather are aiming for predictability and fairer, not just lower, bills. This means lawyers must sit down with clients at the start and discuss what exactly they want to achieve, and how much success might be worth to them.

Different needs call for different billing structures. Repeatable documents are one thing; complex litigation is another. Lawyers often remind their clients that litigation (and hence the bill) is unpredictable. But even litigation can sometimes be billed in ways other than by the hour. A “bet the company” case, in which price is no object, will probably still be billed by the hour. But many cases are settled, and companies can try to figure out how much they want to spend on, say, depositions while trying to prepare themselves to sue or settle. Since the time and money needed for a deposition can be relatively predictable, says Ms Hackett, the client can decide how many are needed.

That still leaves many hours being billed the old-fashioned way. Experts and surveys estimate that between 10% and 30% of hours are never billed by tired and overworked attorneys who cannot keep track of every piece of work they do. A firm called Chrometa addresses this problem by producing a software programme that automatically tracks a lawyer's computer usage, showing how much time she has spent on which e-mail, document or spreadsheet. These can easily be filed by case and client, so the client gets a more detailed invoice. This may not result in many more hours billed, but it saves strain on both lawyer and client in keeping track. Both sides can then focus on the case at hand, rather than the bill.

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