

Task-based Billing **As a Strategic Component of Client/Firm Relations**

By Steven A. Lauer

The legal profession's clients are subjecting it to more rigorous scrutiny than ever before. This is due, at least in part, to the bottom-line orientation of the 90s. It is also a reaction to an historical advantage that the legal profession has held over its clients: it has jealously guarded information as to its costs of providing legal service. While clients have long complained (more or less privately, but more and more in public fora) about the costs of legal service, they now demand (rather than just ask) that lawyers justify their fees.

As companies examine their costs of doing business, they need to develop and apply tools that will enable them to measure and compare those costs intelligently. They must be able to break costs up among comparable activities and supplies. They want to isolate redundant, unnecessary or duplicative expenses.

Legal services must be examined along with all other costs. Unfortunately, however, the legal profession has lagged behind other industries in presenting its costs in a manner conducive to that analysis. The time has come for lawyers to re-examine those issues. Corporate clients demand it. It makes good business sense for the lawyers, too. (After all, law is a business as well as a profession.)

Fortunately, there are now tools available that can be valuable in that effort and it's time for the profession to apply them. The law firms that embrace their clients' need and desire for detailed information about the costs of legal services will demonstrate their client focus and improve their relationships with the clients. Firms that are slow to respond to requests for such data will find themselves increasingly disadvantaged. Even as to clients that are not now requesting such information, firms which provide it will improve the client-attorney bond in ways that redound to the firms' benefit in the long term. They likely will enjoy a competitive advantage over firms that do not.

Where to Begin? – Abandon Block-billing

Though specific cost information is usually available it is rarely presented in a helpful way. In fact, the way most law firms submit invoices to their clients is counterproductive. Most legal invoices obfuscate and this can lead to client frustration, dissatisfaction and distrust. Good business sense and professional responsibility demand that lawyers try to change that.

First, lawyers should stop preparing legal invoices that simply list their efforts on a client's behalf in chronological order. Those invoices, particularly when they aggregate dozens of pages of fine print, are impenetrable to someone who is trying to understand the relationships among those various efforts. Instead, their efforts must be categorized in accordance with the ways in which they advance the client's cause. One method of categorization that has gained acceptance is by *task* and *activity*. The concept is simple, but it requires that lawyers change the way in which they structure their invoices.

Since the creation of hourly rates, attorneys have often grouped tasks together, a format referred to as "block billing." The time devoted to each of the various tasks is aggregated into a single entry and that entry is used to calculate the fee due the firm. This prevents a reader of the invoice from knowing how much of that block of time was spent on each of the specific tasks or activities included within that single, larger classification. That, in turn, is a barrier to effective analysis of the specific activities undertaken by the lawyer and the time each actually took to perform.

For example, a "block-billing" formatted bill might include an entry for several hours of a senior associate's time, during which that attorney worked on several tasks for one client. The single entry does not distinguish among those tasks, yet the precise division of that block of time, if presented, might be extremely useful to the client in understanding what activities were carried out in the client's behalf. The precise division of that block of time, if broken down, would most likely engender different reactions depending on who was reviewing the invoice and for what purpose.

Even further, the same set of tasks might be acceptable or unacceptable depending upon which billing professional actually performed the tasks. In a case with very complex legal questions, a client likely would prefer that research on those issues be undertaken by a senior associate or a partner. If the issues are less difficult, a junior associate or a legal assistant might be acceptable. The time entries in the block-billing invoice do not provide enough information for a reader to form educated opinions about the necessity or value of the work.

In short, the use of the block-billing method of presenting invoices likely raises more questions in the mind of the reviewer than it answers. It can easily lead to misunderstandings and mistrust.

Employ Task-Based Billing

Task-based billing requires that the billing professional present the time very differently. The various chores undertaken by an attorney in the course of representing a client are individually identified in the billing records. Each distinct task or activity is listed separately in the invoice rather than grouping multiple tasks together, even if those tasks are related.

For example, instead of a single entry for an entire morning of time (if only one client's single matter were worked on during that morning even though several different tasks or types of activities were completed), the distinct tasks would be represented, each with its own time entry.

By aggregating the various entries over the course of the matter that relate to the same task, a reviewer is able to determine how much of the cost of that matter was a result of each task. Over time, one is then able to develop cost norms and a better understanding of what the expense of legal service is likely to be. In this way, lawyers would be better able to budget matters, produce estimates of expense and generally manage their business like a business.

Benefits of Task-Based Billing

Who benefits from this new method of formatting bills - the clients or the law firms? I believe that both stand to gain, though obviously the advantages for them differ. The clients will develop a more intimate understanding of the nature, the components and the cost of the legal representation they receive.

Once everyone has task-based data about the cost of various types of legal work, clients and firms will be able to negotiate fee arrangements based on solid information, rather than strictly on the basis of economic clout. At present, certain large corporate clients are able to dictate some of the terms by which law firms are paid, such as demanding a percentage reduction from hourly rates or refusing to pay certain costs. Better information about the cost of that legal service should allow everyone to make more-informed decisions on fees.

Do law firms lose out in this scenario? In some respects, yes. They will not have a monopoly on the information generated through task-based billing systems. Other types of gains can offset that loss, however.

- There is considerable evidence of increased client restiveness about legal costs. Some of that evidence is the use of legal-fee audits, after-the-fact fee disputes and the more prevalent occurrence of other contentious situations. This is evidence of a malady -- client distrust. If law firms do not acknowledge that distrust and the clients' demands for more accountability for legal costs, the problem can only get worse. A forthright attempt to address the concerns should do much to heal the rift that's developed between firms and their clients. Then the profession will be able to apply more business-like approaches to its own situation.
- Further, corporate clients are fed up with hourly rates. The hourly rate creates the perception (whether or not accurate) that lawyers are rewarded (handsomely, in the view of nonlawyers!) for inefficiency, whereas the push in business is toward efficiency. Accordingly, clients are requesting from their counsel more and more alternative fee arrangements. The purpose is to design compensation schemes that reward the lawyers when the client's interests are served efficiently, not merely served at any cost. But how many firms can propose alternative fees (such as fixed

fees, capped fees, blended rates, etc.) on the basis of actual data from their experience? How many instead propose such fees on the basis of a shot in the dark (leavened with a great deal of hope that the ultimate fee is not a financial disaster)? Task-based billing can help them understand what different types of work require. This will enable them to more intelligently propose fees that are fair to both parties.

- Task-based billing allows a firm to monitor with greater specificity the work volumes of its professionals. Not only can the firm identify the amounts of time the various individuals are devoting to the work, but it is also able to review the types of work to which they are attending. If those types of work are very divergent in terms of the level of effort they demand, the firm can adjust the assignments to a more equitable allocation.
- Task-based billing will become more valuable strategically for clients and firms when used in budgeting, for litigation and other tasks. Particularly in the context of litigation, budgeting is still a nascent expertise. If lawyers can accumulate information as to the effort needed for each aspect of a case (measuring the same aspect in multiple cases so as to identify a norm or average), however, they will be much more able to estimate the costs of future litigation. They will be able to take into account similarities and differences between cases with greater assurance.
- Task-based billing will allow invoices to be added together to understand the actual costs of a case as compared to previous estimates. It should become possible to learn whether budget overruns are in fact due to the excessive discovery demands of one's opponent, or whether they result from too much research for a particular case or because of overstaffing.

Technology

Task-based billing, by itself, can assist the legal profession to adopt practices that are more like those of its clients. Realization of its full potential, however, probably will be proportional to the degree to which newly available technology is applied to the task.

Software that includes task-based codes can be invaluable. Such software can isolate time entries by billing professional, by discrete task or activity, or by the phase of the litigation (pretrial vs. trial, for example). Examination of the same data arrayed in different ways enables one to identify relationships among the entries that otherwise escape detection. Those might suggest issues regarding resource allocation or use, or training needs, for example.

Conclusion

In short, task-based billing, if implemented properly and with the appropriate technology tools deployed, can provide significant controls over costs for legal services. It is an element that can empower both parties (albeit differently) with respect to the cost components of that relationship. Clients and firms should embrace it.

How Task-Based Billing Works

Let's assume that a firm is handling a relatively uncomplicated case and the expectations of the inside and outside attorneys are that it will cost less considerably than \$100,000 in fees for the company. One partner, one associate and two legal assistants bill time to the file. The case is well into the pretrial stage. There has been discovery and the judge is considering a motion for summary judgment, which was prepared and filed. An invoice arrives with the following time entries (in the "block billing" format):

1/1/98 Partner
Conference with Associate and Legal Assistant; review documents produced by opponent 2.25 hr

1/1/98 Associate
Conference with Partner and Legal Assistant; conference with Legal Assistants; research *re* motion; draft

motion			9.00 hr
1/1/98 Legal Assts			
Conference with Partner and Associate; conference with Associate			1.00 hr
1/2/98 Partner			
Review draft motion; research <i>re</i> motion			1.20 hr
1/2/98 Associate			
Review documents; prepare trial notebook			6.50 hr
1/2/98 Legal Assts			
Review documents; prepare trial notebook			23.16 hr
Summary:			
Partner	3.45 hrs @ \$200 =	\$ 862.00	
Associate	15.50 hrs @ \$150 =	\$ 2,325.00	
Legal Assts	24.16 hrs @ \$75 =	\$ 1,813.00	

The total amount of the fees reflected in the invoice (\$5,000) is not an exceptional amount, as litigation-related fees go. The block billing entries make it difficult to reach any firm conclusions about the efforts expended by the attorneys and legal assistants during those days, though. Despite that, the invoice might be approved as submitted, perhaps without any questions.

Suppose the case were being billed in a task-based format, however. The *budget* for that case (as broken down among the UTBMS [Uniform Task-Based Management System] phases, but not including the finer details as to tasks) might be as shown in figure 1 as of the time that the invoice arrives (reflecting charges for previously billed and paid time).

The law firm should prepare its invoices for that case using the same UTBMS codes for all the time entries. As the law department processes invoices for payment, the data can be entered into the budget in order to show the amounts spent to date in addition to the amount budgeted. Moreover, the amounts will be categorized according to the UTBMS codes used. In this way, it is easy to monitor the progress of the case financially. The use of the UTBMS codes also enables the reviewing in-house attorney to see at a glance how the efforts expended compare against the litigation plan (which underlies the budgeted amounts). If the invoices indicate that the efforts of the outside attorneys do not conform with the expectations that are set out in the litigation plan and budget, it is easy and effective to speak with counsel in order to determine why that is so.

If it were prepared in a task-based format, the same invoice for \$5,500 would categorize the various efforts of the individuals among the phases of the litigation. The fees of \$5,000 (costs reflected in the invoice equal \$500) are broken down as follows: (1) \$750 for intra-firm conferences by one partner, one associate and one legal assistant, related to plotting strategy (those time entries are coded at L100); (2) \$950 for preparation of motions to exclude evidence (motions *in limine*) (L200); (3) \$2,000 for efforts to review and organize documents produced by the opponent (L300); (4) \$900 for the time of two legal assistants and an associate to prepare a trial notebook (L400); and (5) \$400 for research by a junior associate related to the pending motion (L200). An updated budget to reflect that invoice is shown in figure 2.

Clearly, the same information displayed in a task-based format allows a reviewer to reach some tentative conclusions about the efforts of the outside legal professionals. The efforts related to the already-pending motion would exceed the budget line for that phase of the case. An in-house attorney might therefore question, for example, why it was necessary to research issues related to an already-filed motion.

Figure 1

<u>Phase (UTBMS code)</u>	<u>Amount Previously</u>	
	<u>Budgeted</u>	<u>Expended</u>

Case Assessment, Development and Administration (L100)	\$ 15,000	\$ 13,000
Pre-Trial Pleadings and Motions (L200)	25,000	24,500
Discovery (L300)	10,000	6,000
Trial Preparation and Trial (L400)	15,000	0
Appeal (L500)	0	0
TOTAL	\$ 65,000	43,500

Figure 2

<u>Phase (UTBMS code)</u>	<u>Amount Budgeted</u>	<u>Previously Expended</u>
Case Assessment, Development and Administration (L100)	\$ 15,000	\$ 13,750
Pre-Trial Pleadings and Motions (L200)	25,000	25,580
Discovery (L300)	10,000	8,000
Trial Preparation and Trial (L400)	15,000	900
Appeal (L500)	0	0
TOTAL	\$ 65,000	48,500

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