



**“As young lawyers, we are part of the movement toward an alternative billing world and should be prepared to embrace it.”**

# Young Lawyers

BY RYAN J. WORKS, Young Lawyers Chair

## DEATH TO THE BILLABLE HOUR?

Rarely do I ever hear lawyers say that they don't mind the billable hour. Never have I heard a lawyer say "I love billing my time." Frankly, there is nothing quite as tedious as tracking your daily activities in 10-minute increments or writing down your every action in excruciating detail for client critique. The billable hour generates an enormous administrative burden for the lawyer, firms and staff members, while creating economic uncertainty for the client.

I recently had the opportunity to travel to Atlanta for the ABA's Mid-Year Meeting. The Presidential spotlight CLE event included a panel of distinguished litigation attorneys and in-house counsel who discussed the future of the billable hour. The panel consisted of the extraordinary David Boies, managing partner of Boies, Schiller & Flexner LLP; Thomas Sager, general counsel of DuPont; Amy Shulman, general counsel and executive vice president of Pfizer; and Joseph K. West, Wal-Mart general counsel, to name just a few of the participants.

Although there are several types of alternative fee arrangements, companies like DuPont, Pfizer and Wal-Mart have set the standard for so-called "value billing," which is defined as billing a client based on the value of the information or service provided rather than billing based on the time spent providing the information or service.<sup>1</sup> Doing away with the billable hour from outside legal counsel has allowed for predictability in legal expense and increased efficiency.

In a typical value billing arrangement, companies such as Pfizer will set a legal budget with each of their outside firms, on an annual or bi-annual schedule, for instance. This allows the company to better forecast their legal expenses while giving the law firm a guaranteed fee. Although outside counsel must still track their time internally for statistical purposes, the stringent reporting and invoicing requirements to the client are greatly reduced.

While value billing may provide certainty while increasing efficiency, on the other hand, it also creates

some risk. For outside counsel, the flat fee may fall short, creating a financial disincentive to continue vigorously representing the client. From the client's side, they may overspend on their legal budget creating a windfall to the outside counsel. These risks can be insured against by setting forth periodic adjustments to the value billing contract depending on certain extraordinary events, or by instituting so-called "risk collars" that protect the client if the lawyer comes in under budget and protects the lawyer if they go over budget.

Where value billing is unrealistic, because the task is difficult or impossible to predict, other alternative fee arrangements are available such as success fees, contingency fees, fixed fee menus and blended fee agreements. Whatever the alternative arrangement, the Fortune 500 companies on this panel were clear that the billable hour is no longer their standard. More companies are certain to follow suit.

In my practice, many clients demand similar alternative fee arrangements. I routinely work for a flat fee or blended hourly and flat fee. I have also instituted certain risk collars in my fee agreements that protect against unforeseen events. However, I still find that the majority of my time is spent counting and invoicing my time. This may not be true for long.

As young lawyers, we are part of the movement toward an alternative billing world and should be prepared to embrace it. Doing so will increase marketability, efficiency and (hopefully) profits. Oh, and it may also lead to the death of the billable hour, something none of us would be sorry to see. ■

1. [www.accountingcoach.com](http://www.accountingcoach.com)

**RYAN J. WORKS** is chairman of the Young Lawyers Section and an attorney with McDonald Carano Wilson LLP in Las Vegas.