

Can I buy a few hours of your time?

I have been a lawyer for more than 30 years but have never had a client ask if he could buy a few hours of my time. My experience is that clients are not asking to purchase a lawyer's time when they come to see me or any other attorney, and I do not want to purchase time when I hire a lawyer to work for me or as co-counsel.

Why do we sell our time rather than our legal education, knowledge, skill and experience? That we should quit hourly billing practices and start value pricing our service is the focus of this comment.

The fees lawyers charge are governed by Rule 1.5 of the Rules of Professional Conduct, and the overriding issue is that we shall not make an agreement for, charge or collect an unreasonable fee. The fee rule goes on to list the factors that properly may be used to set a fee – across eight categories. I find 14 different factors listed in the eight categories. The “time involved in the representation” is just one of those factors.

There have been questions raised about the method of charging legal fees in the past few years, especially questioning the wisdom of using “time spent” as the primary or sole factor in billing for legal services. It is often called “hourly billing,” but no one is known to bill in one hour increments, with most increments being 1/10, 1/6 or 1/4 of an hour for time spent on the legal services provided. Some lawyers who bill tenths or sixths of an hour will have a minimum two or three units for each billing event they submit. *Beware!* The Disciplinary Commission may frown on this (see *In Re Zirkle*, 911 N.E.2d 572 (Ind. 2009)).

Time is a unit of measurement that is used for many things. Why do lawyers use it as a base for the services we provide? There are two known benefits for using hourly billing – it is simple to calculate, and it gives bragging rights to lawyers. The simplicity reason is easy to understand – you multiply the units of time spent for the client by your hourly rate. A bill takes moments to prepare. It is easy to complete, if not to defend:

Client: Why did this simple legal problem cost so much money?

Lawyer: It took so many hours to review the facts, research the law, draft the document and go to court. You said you would pay the hourly rate, and this is what it took.

Client: But your bill is for more than the problem we were dealing with. Why didn't you tell me how much it would cost? I could have done something different.

The lawyer may get paid, but has lost the argument with the client – and possibly the client's future business. The lawyer has not proven her professionalism in this transaction.

And what lawyer has not had the “my rate is bigger than your rate” debate with classmates and other lawyers. Did we all feel a bit angry/envious of the announcement a few years ago of the \$1,000 per hour rates charged by some NYC lawyers? You can choose your reaction. I can still recall the first time I got a “rate sheet” from one of the larger Indianapolis firms and saw that senior paralegals were billed at higher rates than most small town senior partners.

Are those the best reasons to quit a bad billing system? They are among the reasons to stop billing by the hour.

“When you sell your time by the hour, you lose the value of ideas. This one's for professional-service providers.” Bruce Hetrick, the Indianapolis public relations guru, wrote this in his farewell article in the *Indianapolis Business Journal* at <http://tinyurl.com/3dp295u>. For the leading thoughts on changing from hourly to value pricing, you should read billing guru Ron Baker's latest book, *Implementing Value Pricing: A Radical Business Model for Professional Firms* (Wiley, 2010). For more information on the topic, you can also read my blawg, www.tedwaggoner.wordpress.com.

More lawyers are moving to value pricing their legal services. These lawyers are trying to capture the value of the services they provide, the ideas they share in a way that is more fair to clients and to the lawyer. Telling a client up front what the fees are going to be and then letting the client decide whether to hire the lawyer works far better than surprising the client when the case is over. If the client rejects the proffered fee, fine. She did not share your value in the work. Some people do not buy Ben & Jerry's ice cream.

There are ongoing opportunities to discuss these ideas in greater detail, and several have occurred this year. The Legal Education Conclave, the ISBA Annual Meeting and the Solo & Small Firm Conference each had sessions on the topic. The ABA and corporate counsel groups are also hot on the issue.

Pay attention and learn how you may get back to one of the real traditions in the practice of law – charging clients a fair amount for solving their problems and not for just spending your time. Sell what you have and others lack, as your clients thought when they came to you – *sell your smarts.* 🍪

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