

# The End of Billable Hours- 5 Alternatives Offered by General Counsel

**“The hourly rate exists because lawyers and clients are lazy”** -David Boies (David Boies is Chairman of *Boies, Schiller & Flexner* LLP and is widely regarded as one of the nation’s preeminent trial lawyers.)

Imagine for a second that you drop your car off at the mechanic to get it fixed and the man in coveralls says to you,

“Please make a down payment of \$500 for me to start work on your car. It may cost even more, but I’m not making any promises. It could even cost as much as \$2,000, and after you have paid up- the car still may not run. Sound good?”

That is pretty much how lawyers’ current billable hour model works. There are two major problems with the model. First, the companies that hire attorneys hate it because they have no idea what they will end up paying. Second, the associates that actually do most of the legal work have no incentive to hurry, and will be criticized if they solve the problem too quickly. So why are we still using the billable hour model? Oh that’s easy, its the most profitable model for the partners- and its the way its been done for over a century. This reminds me of the keynote by David Boies, at last week’s Superconference put on by InsideCounsel:

Lawyers don’t ask “Whats the best way?” they instead ask “What has been done in the past?”

While this unfortunately seems to be the case, tough economic times are creating more demanding clients, and in turn, pushing forward thinking law firms to re-think the way they do business. Where do they start? Here are some great suggestions for alternatives to the billable hour that were suggested at last week’s Superconference.

## 1. Incentive Arrangements

The General Counsel from Centerpointe provided some excellent recommendations that have worked very well for their firms. They use a tiered system that works in the following way. Attorneys keep track of their billable hours and upon completion of the matter they use a three tiered system:

tier 1: 75% of billable rate is paid if the client is not satisfied with the work.

tier 2: 100% of billable rate is paid if the client is satisfied.

tier 3: 125% of billable rate is paid if the client is more than pleased.

Just think about how great this is, suddenly there is incentive to do a great job. This boosts moral for the underlings (associates), it create incentive in the right place (the client) and it changes the way the game is played.

## 2. Hire Boutique Firms

Boutique firms are hungry for the work, and are willing to change their model for the right client. The GC from Centerpointe added that if they go with a big firm, they don't allow junior associates to do ANY of the work on their files. Good for them, why should they pay \$300 an hour for an attorney that knows less about research than the paralegals? They have reported that every single firm has complied with their request. If you are a GC, why wouldn't you ask for the same treatment? Should the junior associates be learning on your dime?

## 3. Alternative Fee Arrangements

In this incentive based model there are bonuses awarded for dismissal or dismissal without class certification and a variety of other combinations. This won't work every time, but according to the panelist: "This engendered enthusiasm- excitement for the goal." How often do we hear that at law firms? Wouldn't you love for all your attorneys to be excited and enthusiastic?

## 4. Take Bids Every Time

There was a time when companies used the same outside firm for all their matters. The times are changing. One GC on the panel said that for more straightforward matters they will put them out to bid every time. They also request all the work be done by mid-level associates. This way they know they are getting experienced attorneys- but won't have to pay the high billable hour rates of the senior partners.

## 5. Offer Trial Experience at 1/2 the billable rate

The Centerpointe GC mentioned a new program they had started where certain tort matters would be taken all the way to trial- every time. To make this cost effective they would bid the project out at 50% of the billable rate. Now this wasn't a lot of money for the firms, but it provided them a way to give experience to their associates. This ended up saving the company substantially; not just because of the decrease in trial expenses, but there was a marked decline in tort actions once it was know that every one would be taken to trial.

## Conclusion:

These may not be the best solutions or alternatives to the billable hour- but they are a great start. The billable hour is a dinosaur, and its time is up. Any other suggestions? Please feel free to share them here.

