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At Last! A Metric to Measure the Value in Value Billing

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Actually, I was just kidding. Here is a new yardstick to measure lawyers' productivity and compare that productivity to their peers

In the continuing wide ranging assault on the citadel of hourly billing in which all stakeholders are currently engaged, Professor Steve Harper [recently suggested](#) that law firms should not measure productivity of lawyers based on the number of hours billed. "Rather," he said, "than mislabel attorney billables as measures of productivity, an index should permit excessive hours to convey their true meaning: attorney misery." Professor Harper then went on to propose a detailed and thought provoking system for calculating this metric. Harper's misery index is aptly named, not only because it highlights the misery caused to lawyers by hourly billing, but also because hourly billing so often creates friction between client and lawyer.

Because so much of our work in the last two years has involved [alternative fee arrangements and value billing](#),

The lamentable hourly billing system, a system which breeds and promotes inefficiency and, as Harper and I previously noted, sometimes worse. Lamentations seem to be wearing off as alternative fee arrangements and similar value billing arrangements proliferate. Recent surveys show that 46% of large corporations require some form of AFA's from law firms and 95% of surveyed law firms offer AFA's.

Perhaps, instead of a "misery index," we could develop a "value index" under which lawyers would be rated on the basis of the efficiency in which they deliver a quality product.

Let's suggest that each assignment is rated on a scale of 1 to 5 based on the complexity of the assignment, with 5 being the most complex. Complexity Level 1 might be one in which, based on historical data might take up to 25 hours to complete; Complexity Level 2 might be one that might require 26 to 100 hours to complete and so on up the scale.

In our Value Index, a lawyer completing a Complexity Level 1 assignment in 15 hours would be graded as +10; if he or she completed the assignment in 30 hours, he or she would be graded at -5. In addition, as part of the process, supervising lawyers (or perhaps even clients) would value the quality of the work using a similar 1 to 5 system, with 1 being unacceptable, level 3 being acceptable and 5 being superlative. A quality review of five would result in a doubling of the individual Value Score, a quality level of 3 would be neutral, a quality review of 1 would be a reduction equivalent to the total initial Value Index score. Thus, in the latter instance, if the initial Value Index score was 10, it would be reduced to 0.

To keep the playing field level, each firm's Value Index scoring system would be peer reviewed by a competing firm randomly assigned, similar to the fashion in which accounting firms are peer reviewed.

Scores would be collated for each lawyer at year end. Work assignments would be monitored so that to the fullest extent possible, lawyers would be assigned a combination of work at different Complexity Levels, which at the upward end of the grid, would add up to a total of 2,000 hours annually (computers could help monitor the assignment process keeping tabs on the Complexity Levels). Annual reviews would include aggregate Value Index scores for each lawyer. Those lawyers scoring highest would of course be the most highly compensated.

Law firms could then post their Value Index scoring on their web sites and utilize the data for recruiting purposes. Lawyers moving laterally would include their individual Value Index scores on their resumes.

This is very much a concept which is a work in progress and certainly requires refinement, but once refined and implemented, lawyers could properly boast of the value of the services they deliver to clients, utilizing a metric adopted by universal convention, instead of the number of hours they sold to their clients. I know that there are some lawyers who are staunch value billers who loudly reject the very idea that in the brave new world of AFA's, recording

time has no place and the very thought of recording time in this world is a mortal sin. However, it is [my considered view that recording time is a vital management tool](#) and that until the Model Rules of Professional Responsibility [are amended to specifically address value billing and alternative fee arrangements, recording time is one more burden we will need to carry.](#)

I would welcome readers' thoughts, suggestions and comments on our Value Index proposal.

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