"Alternative" Pricing in a Billable Hour World

Written on February 10, 2010 by Donna Seyle

As more and more attorneys migrate from their unemployed status to solo or small firm practices, and law clients clamor that they just won't pay it anymore, the business of law has become yet another subject they didn't teach you in law school. Suddenly, new and newly unemployed attorneys are faced not just with acquiring the skills of the practice, but also with the economic realities of maintaining a successful business. And let's face it, being trained to think like a lawyer simply does not intersect with the attributes of a successful business person trained to forecast market vagaries and position themselves to respond accordingly.

Among many of those vagaries is the advent of a market demanding changes in lawyer's traditional billing structure, commonly known as the billable hour. For the past 60 years, the only variation to the billable hour was a contingency fee arrangement, employed almost exclusively in personal injury cases. Now, clients are refusing to agree to open-ended hourly billing at astronomical rates (can you imagine?). Even in the face of this uproar, big law has made it clear they intent to increase their hourly fees, leading to what Jordan Furlong calls The Boutique Exodus:

What's happening now, however, is that the clients and their lawyers are teaming up and doing an end run around the firms. . . .It's a four-step process: client tells lawyer it can't afford her rates anymore. Lawyer tells client she doesn't control her rates and doesn't want to lose the client. Light bulbs appear simultaneously over their heads. And a few months later, a new small firm is born, with at least one A-list client on its roster. . .It's also no coincidence that in many of these new firms, lawyers are selling their services on a flexible- or flat-fee basis. That's the new reality of the lawyer-client relationship, and these boutiques are among the first to get it.

So the question now is, how do you price your work if not by the hour? The tendency is to simply estimate the time you anticipate will be required in performing the legal work, multiply that by your hourly rate, and come up with a final fixed fee. But there are two problems with that approach: first, your estimation of the your time is just that: only an estimate. If it takes longer, you'll feel like you lost money and be resentful. If fewer hours are necessary, you're cheating your client. Second, it doesn't include the underlying focus shift from service provider to knowledge provider.

The truth is, the shift is not about money at all. It's really about two things; 1) how you perceive your work, and 2) how you perceive your relationship with your client.

First, hourly billing categorizes what we as lawyers do as a service, and that is wrong. We are knowledge providers. We sell intellectual capital and innovation to get the best possible results for our clients. Out knowledge has intrinsic value. It has nothing to do with how long it takes to apply our knowledge to our client's circumstances and create solutions. The pricing of our product must relate to the value the client places on that solution.

Secondly, billing by the hour creates a conflict of interest with the client. It is to our benefit to work longer on the case, whereas it is to the client's benefit to work less. Instead of creating a working partnership with our client, we create an underlying conflict where the client is constantly requiring justification for our work and we feel defensive about it.

Ron Baker is one of the founders of Verasage Institute, a think tank dedicated to promulgating and teaching Value Pricing, Customer Economics, and Human Capital Development to professionals and businesses around the world. He has developed an 8-point approach to pricing a client's legal matter based on the valuation of professional knowledge and partnership with your client.

1. During your initial consultation, determine the client's level of expectation and understanding of the scope of work involved. Be specific. Understand what it is about the circumstances that keep him/her awake at night. The higher the level of expectations, the greater the value of your work.
2. Review the results of your consultation with a pricing partner. This could be a business partner, a friend, or whomever you rely on to help you make decisions. Never make this decision by yourself. When pricing, be sure to add premium for pricing certainty (like paying a higher interest rate on a 30-year fixed mortgage because you know what your payment will always be).
3. Develop three pricing options, each one based on a particular client expectations: your walk-away price (if the client won't agree to this, you won't take the case; this is the lowest level of expectation price); your hoped-for price (highest level of expectation and access); and your aspiration price (somewhere between the two).
4. Present pricing options to client, using an analogy to compare the three prices (i.e., where do you want to sit on the plane?).
5. Codify the client's choice in a Fixed Price Agreement. Be sure to include all the specifics of the scope of work, payment terms, timeline, degree of access.
6. Conduct a before-action review with anyone who will work with you on the matter to discuss intended results, anticipated challenges, what has been learned in similar situations, and what action will make this successful.
7. If client requests or agrees to performance outside the scope of the agreement, execute a change order.
8. Conduct an after-action review, or debriefing, to reflect on what you have done, how you added value, what more could be done in the future, etc. This is essential, as it will force you to address these issues in the future.

There is much more theory and analysis involved in thinking through these concepts than I have presented here. For a more in-depth understanding, listen to Ron Baker's and Jay Shepard's seminars at Solo Practice University. Also, read Patrick Lamb's blog posts at In Search of Perfect Client Service. There are also many resources regarding alternative billing methods at the ABA's website (even if you are not a member, go to the site and do a search to pull up relevant articles).

Whatever you do, don't ignore this important element of your law business. Value pricing, fixed fees, any billing method other than the billable hour not only creates one more way to distinguish yourself in your marketing efforts. It creates a level of trust and team play between you and your client that helps to make the legal process more palatable for your client and more fulfilling for you. That can't be a bad thing!