

Time To Stop Time Recording

“The times they are a changing”,

The traditional method of an attorney charging his client on the basis of the amount of time it took to perform a certain task will soon be a thing of the past. This antiquated concept of hourly charging rates, and subsequently recording time, on a time per unit of work undertaken basis, depending on seniority of fee earner, is in the technologically advanced and global age we operate in, absurd.

In the US, contingency fees are the norm in a wide variety of areas. In UK employment law there is also a widespread use of contingency fees, with fixed fees having existed for several years for industrial disease cases and Road Traffic Accident cases with a value of below £10,000.

The question must be asked that if a fixed fee or contingency fee is to be charged, why bother wasting time, recording time? Here in the US firms no longer regard offshoring of legal services and outsourcing as dirty words. Offshoring legal services to common law jurisdiction destinations such as India and South Africa, enables a huge variety of legal work to be carried out at a fraction of the cost of carrying out that same work in-house in the US.

As more and more tasks are offshored firms will simply not be able to charge their client on the basis of an over inflated hourly rate. How can a US Law Firm justify charging a client \$800 per hour on a case? In the past this would be on the basis that an experienced partner had conducted the matter. Today, how much of the “work” would actually be done by the partner, and how would you value the input from everyone else? Do you need to have an hourly rate for every single member of the “team” working on a project, and should everyone be recording the amount of time they spend? Think outside the box a little: How does the IT department who created the case management system and the offshore legal service provider who is carrying out the client's legal research and coding requirements, bill their time? The straightforward answer is that they don't. The Law Firms that survive will be those who provide their clients with fixed fees and consign the system of billing and time recording to the history books.

As clients' demands for greater transparency of charges become more prevalent it will be up to the Law firm to move with the times, to charge for their work on a fixed fee basis and to begin to offshore at the very least, non-core legal services. If they fail to do so they risk losing out to those firms or larger organizations who do embrace these changes. In the UK, “Tesco Law (Ralphs/Walmart Law)” when it arrives, plus on both sides of the Atlantic the currently hitting our computer screens, “internet DIY Law” will further speed up the inevitable changes.

Law Firms need to consider what their core services are. Anything else can be outsourced. Should US and UK Law firms really be wasting associate attorneys' time in labour intensive, and mind numbingly boring document review projects. Should senior paralegals, be involved in coding and indexing? When did creating huge databases of litigation documentation become “legal work”? As soon as clients understand that this work does not need to be carried out by highly paid US and UK Lawyers, they will no longer accept blindly paying over-inflated hourly rates, on a time recorded basis. They will demand better value for their money and a fixed fee!

Outsourced legal work will no longer be restricted to offshore transcription. When the public realize that for a fraction of the cost their wills, real estate transactions, due diligence and contracts can be drawn up and conducted overseas, to the same or better level of quality for a fixed fee, it is not difficult to see where they will turn. They will retain Law Firms who embrace offshoring and fixed fees or simply turn to other more forward thinking legal service providers.

There is an appetite for change in the judiciary. With increasing deregulation many anticipate that the previously mentioned “Tesco/Walmart law” is only round the corner. It would be foolhardy to suggest that such a provider would revert to the traditional time recording technique of charging its potential customers for services provided.

Clients are becoming increasingly aware that excessive hourly rates are simply no longer merited given the generally routine nature of a significant proportion of the legal work carried out on their matters. If one follows the logical conclusion that a fixed fee should be provided to the client for the work to be done, where is the need to time record?

But perhaps most significantly, the advance of technology, the same technology which has enabled us through increasingly more advanced case management systems, to time record effectively, will ultimately see an end to time recording, and indeed billing as we know it. Once lawyers realize that technology enables them to carry out even the more complex legal tasks, at the simple push of a button, in a fraction of the time, then recording time accurately and billing on the basis of this time becomes less and less profitable. The argument that time recording enables managing partners to assess the level of work being carried out by their fee earners also no longer holds true, because the technology in place enables tasks such as

standard letters and documentation to be processed in a fraction of the time which would be recorded as single unit for time recording purposes. Those firms that survive will be those who embrace such technology, together with the desires of the client for greater transparency, and provide clients with a fixed fee quotation for the work to be undertaken.

No doubt hourly rates were introduced to reflect the fact that certain tasks would be carried out more effectively by a more senior fee earner who should in turn be more appropriately compensated for his efforts; Firms that continue to thrive will be those who embrace technology, offshore all but non-core legal services, share knowledge with each other, streamline tasks and charge a fixed fee for the work to be undertaken. Senior fee earners are not required to conduct the vast majority of litigation at inflated hourly charge out rates. Senior Lawyers and managers should be out there talking to offshore legal services providers, marketing for business, creating new ventures, clarifying and defining legal issues. The pace at which technology advances is exponential, unless we move with the times in respect of how we charge for the work we do, the client will go somewhere where there is certainty and clarity provided.

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About the Author

I was formerly a partner at the UK law firm Underwoods Solicitors. Chambers Guide to the Legal Profession 07 refers to Underwoods as “a highly influential flagship firm and model for other firms...It has pioneered offshoring of legal work.” I oversaw the firm's applications for Investor in People and Lexcel (UK Law Society Quality Standard) accreditation. I also developed a case management system for the offshoring of personal injury cases to South Africa. I immigrated to Los Angeles and joined LawScribe in 2006. I am a regular speaker at legal conferences on outsourcing and offshoring and have had numerous articles published in legal journals on subjects as varied as: death of the hourly rate, liberalization of the Indian legal sector and the ongoing salary hikes by the US and UK's top law firms. My article calling for Accreditation and Self-Regulation for the Legal Process Outsourcing Industry has been widely acclaimed and published as a white paper by the LPO Network, and the International Association of Outsourcing Professionals (IAOP). I am a professional member of the IAOP, and Chapter Chair of the IAOP Legal Outsourcing Topic Chapter.