

An Experiment in Task Order Billing

As a solo I have wrestled with billing issues for over a year. This actually started before the ABA Journal article by Scott Thoreau on the demise of the billable hour. After talking with a number of clients and potential clients I've discovered that they really do like the idea of fixed-price billing. Then I read and reviewed many of the "value billing" articles on the web, took a seminar, and talked with a lawyer/consultant who specializes in helping firms use "value billing". None of these have been able to give any help to me.

I've been unable to make this model work however for litigation and business and commercial litigation is over 90% of my practice. The complex business and commercial litigation I practice, with multiple parties, claims, counterclaims, 3rd party claims, electronic discovery, various discovery disputes, (tens of) thousands of pages of documents, and various injunctions and experts just were not sufficiently predictable to let me give a fixed price for the litigation. It was frustrating for me and the unpredictable bills were driving my clients crazy.

Then, while I was remodeling my kitchen, I had an idea: treat litigation as a Task Order contract. If I could find a way to list all the tasks that could occur in litigation I could then use that list as a way to create a fixed price for each task for my client. Back to the internet. Amazing creation the internet: somebody who is even more compulsive than I actually tried to itemize the individual steps to a case from start to finish. They came up with a total of 987 separate and distinct steps (without duplication) to a case. Note however, that if you have to go to court for more than 1 Motion to Compel you have to repeat that step. The same is true for each deposition or expert discovery etc. I've taken that exhaustive list of steps and condensed them down to the attached list. It's a 5 phase, 29-step process. Then, what I do, is I give this document to my client so s/he can follow along the progress of the case.

What does this have to do with my experiment in Task Order Billing? Everything. I'm trying a new billing method instead of the usual hourly billing. I don't know how well it will work, whether or not I'll make more money or less money or even whether my clients will like it. But I've got a corporate client who is willing to try it out because it likes the idea of predictability. What is the new system?

Actually, it's simple: My retainer agreement incorporates by reference the attached list and specifies the fixed price for each task. For example, I might charge \$5,000.00 to draft a Complaint. Only the Complaint. If a Counterclaim is filed against the client, that requires another Task Order to Answer. The retainer agreement also contains a clear statement in several places that, if I recommend a Task be done and the client decides not to pay for the Task (not that the price is too high but that the task not be done) then I may withdraw immediately.

Will this work? I really don't know. It's an experiment. Will it work? I don't know. But I'm sure of 1 thing: any work done will have the explicit approval of the client and the client will never be surprised by the bill. Stay tuned for more details.