

Value Billing v. Flat Fee v. Hourly Rates

According to the article below and a few others I've recently read, the trend seems to be a shift away from hourly billing to value billing. One rationale is that the client will be more satisfied with his bill and more apt to pay without complaint if his opinion as to the value of his case and ability to pay are taken into consideration.

I'd like to know how many of you use a value billing scheme. How is value billing more lucrative to the attorney than hourly or even flat fee?

http://www.attorneyatwork.com/how-hourly-billing-kills-law-firms/?utm_source=Attorney%20at%20Work%20Preferred%20Subscribers&utm_campaign=bbfa52f5bb-451_092912_P_WRAP&utm_medium=email

Amber Nicole Ying, Indiana

I do some value / flat fee billing and would like to move more of my practice to that model. Here's why: I don't like that hourly billing encourages people to do things less efficiently. In the areas that I've introduced some value billing I have the ability to produce the documents very quickly. I just set up my probate forms this weekend using theformtool. I did a couple of dry runs just to see how quickly I can produce these documents using data from previous estates I've opened. I got one of the simpler ones (2 beneficiaries) done in just six minutes. I can't justify charging \$1,500/hour in Adams County, Illinois but why shouldn't the fee for producing the document my way cost the same as the attorney down the street that has his secretary type it out on the typewriter who charges by the hour? I still use hourly billing for research and other things that can't be automated.

David H. has talked about this a little bit too with WealthDocx.

Right now I just do this with probate, but as I add functionality into my forms with theformtool I'm going to try to move some of my estate planning, real estate, and collections practices to this model as well.

Andrew

Andrew O. Mays, Illinois

I'm a big fan of value billing. A CPA named Ron Baker is a good source for information on this. He has written two books on the subject. I think the better of the two is "Implementing Value Pricing: A Radical Business Model for Professional Firms." Link: http://www.amazon.com/Implementing-Value-Pricing-Business-Professional/dp/0470584610/ref=sr_1_1?ie=UTF8&qid=1349186683&sr=8-1

There is a common misconception that "value billing" is the same as "flat fee" billing. It's not. Flat fee billing CAN be value-based, but it doesn't have to be. If you estimate that a matter will take five hours and then quote a flat fee equal to 4-5 hours of your time, then you are quoting a fixed fee, not a value-based fee. True value billing is independent of the amount of time the work takes. It focuses on the actual value of the service to the client.

It creates an incentive, arguably an imperative, that the attorney streamline his practice and make it more efficient. It also creates an incentive to innovate and offer additional features that clients want and are willing to pay for.

In my opinion, we can learn a lot from the software industry. They spend money producing a product. But, once the product is developed, the actual cost of delivering each unit is very small. I recently paid several hundred dollars for a piece of software that probably cost the vendor less than 10 cents to deliver to me. I didn't care, because I WANTED the software more than I wanted the several hundred dollars.

We can, and should, do the same thing in our practices. I have come to the conclusion that the best way to do this is to create law "products" - i.e. bundled packages of services that can be streamlined so we can efficiently provide a clearly-defined outcome for the client.

Consider a family law practice. For people contemplating a divorce, the attorney could perform an "Divorce Options Assessment" that tells them what the divorce process entails, the strategic options available to them and what they can expect to get at the end of the process. Depending on the amount of assets involved, it makes sense to spend \$2,000 to \$20,000 for such an assessment. After all, a person considering divorce might decide that being married to that no-good so-and-so is better than the life they are signing up for by filing. Or, they might sigh in relief as they realize things will be okay. Either way, that has value. And, it can be streamlined so that the value far exceeds the time it takes to provide the service.

You can take that approach to almost every aspect of what you do.

Cheers,

David Allen Hiersekorn, California

There was an interesting article in the ABA Journal (in the "Legal Rebels" series) on a related topic recently. You can find the full text at

http://www.abajournal.com/legalrebels/article/the_60_hour_lawyer--why_dewey_isnt_ab-normal/

The author of the article (Paul Lippe) quotes Jeffrey Carr (the general counsel at FMC Technologies) as breaking lawyering down into four types of tasks: Advocacy, Counseling, Content, and Process.

It seems to me that the types of "products" that David suggests as an approach to Value Billing should be very good at addressing the "Content" parts of lawyer tasks, and at least pretty good at addressing the "Process" parts (depending on how well things can be standardized). On the other hand, those "products" are unlikely to be as good at the "Advocacy" parts. Of course that still leaves the "Counseling" part, where products as an approach to Value Billing may or may not work. Even at that, you have a way to subject half to three-quarters of what lawyers do to some form of Value Billing.

One final note: according to Mr. Lippe, the parts of what lawyers do that are most valuable to clients are Advocacy and Counseling. So coming up with ways to provide Value Billing for the lower-value tasks may be a way to allow more flexibility in billing for the high-value tasks.

Brian H. Cole, California

I do think a lot of people misunderstand 'value billing'. AS others point out, it's based on the value to the client; not how long it takes the lawyer times a certain hourly rate equals a flat fee.

I do some value billing. Deeds, in particular, lady bird deeds, which avoid probate; it takes me maybe 10 to 15 minutes to interview, draft and have client come in to execute the thing. On an hourly basis, I'd be making next to nothing. I don't sell it to the client on an hourly basis though I sell it to the client on the basis that "it will avoid probate on your house entirely, it's Medicaid transparent [does not count as transfer for Medicaid purposes] and you can undo it at any point and take the house back'. What's that worth to the client? Avoiding probate on a house? That's what I charge. What it's worth to the client.

Likewise, landlord tenant evictions; I handle them for a flat fee which includes everything except a hearing; if I have to go to hearing it's additional fee. It works out to somewhat more than I would make on an hourly basis; but it's worth it to the client; it's low enough for most landlords to pay me but high enough that I can justify charging it given the time it takes.

SoloSez Popular Threads, October 2012

The key is, what's it worth to the client to get this job done? That's what you charge.

Ronald Jones, Florida

I agree 100% the problem is a lot of people don't. Meaning, in particular, as you well know you can establish an Irrevocable Life Insurance Trust for a client which will (hopefully) save hundreds of thousands of dollars in estate taxes (depending on the face amount, of course). Where the insurance agent is getting an 85% payout (commission) on a \$50,000 annual premium, for example, the insurance agent is often very much aware of the type of conversations we have here: "in 20 minutes or at least less than 2 hours anyone can use the AutoDocs program and knock out an ILIT." So the agent says if it only takes you, the lawyer, two hours to prepare a "simple ILIT" (aren't all documents "simple"?), how can you charge \$xxxx, regardless of the fact that I'm (the insurance agent) earning an 85% commission and the client is saving \$300,000 in estate taxes."

So that's the push back which I personally get constantly from many of the financial advisors who

Rick Bryan, New York

The answer is, because I know how to do it, and to do it right. You're not paying me for my time but because I'm assuming liability for doing it and making sure it's done correctly.

Any fool can fill in a form. Knowing the legal consequences is what matters. An analogy is, surgery. There's local surgeon who charges Medicare 6 figures, like \$11,000, for doing laser cataract removal. The actual surgery takes about 30 seconds; even including prep time and post surgery treatment, he moves them in and out of the chair in under 15 minutes each. I know this because my father had this surgery.

Why's he charge so much? Because he's got the skill to do it.

Look, I am by no means the most expensive lawyer in town; in fact I'm one of the cheaper, on the average. I STILL get occasional push back from potential clients. I know what I'm worth ,and I don't budge.

Ronald Jones

This is the problem that I run into with value billing. I would love to implement it; in fact, I think it's *essential* for small businesses who can't otherwise afford tailored Labor & Employment stuff like handbooks and confidentiality agreements.

I have no problem convincing a PC of the benefits - those things will create a more efficient workforce and will minimize liability for a host of employment issues. My problem is that I don't know how to figure out what the value is to them. Just because I'm saving you \$X in liability doesn't mean you're going to pay me even half that for a handbook.

I've never worked in business or management, and my liberal arts degree isn't helping me out here. Is there a way to discuss how those benefits up there get converted to a billable amount without violating the "don't talk about money" restriction?

- Tim Eavenson

Well, that's the key, how you set it. And how you figure that out. Can't give you detailed advice but consider;

This employee handbook, is this something that you largely use over and over again, maybe with some tweaking; in other words, you start with a template and adjust or customize based on client's situation? And you determine client's situation based on your knowledge and experience, in the sense that you know that certain situations have happened and you try to address those situations?

Ok, so this is how I do Leases, say. Residential, I got basic form; and to be honest most residential leases I do up are very similar. They're good leases, based on 15 years of seeing what can go wrong, but there's little customization. I usually quote maybe \$250, but I can do one up in 15 minutes. Is it worth \$250 to most residential landlords to get a GOOD lease? Heck yes.

Commercial leases, they're more custom; depending on the term, the nature of the business, the business structure (personal guarantee or not); and other factors. Normally I start with a 'base', maybe \$500, and then charge for customization. I can charge as little as \$500 to maybe \$1200;; but this is worth it to the client. They're looking at 3 year triple lease with option to renew; \$1200 is less than one months rent, and my leases are landlord favorable.

SoloSez Popular Threads, October 2012

Think about what you do; start with a 'base' that is set not based on how many hours it'll take you to pull up basic form, because it may take you ten minutes to use template you've used before; but what it's worth; how many years did it take you to develop this form; then adjust based on 'customization'.

Ronald Jones

Have you sat down and really thought about what would happen if they didn't have one? What kind of catastrophe is not only likely, but certain to occur? How much would they lose if they didn't have one? How much they'd save if they did?

That's your starting point.

Then figure out what your target market is. How much do they have at risk? How much are they willing to pay to avoid that risk? Are they a small employer with their personal assets on the line? Do they have to answer to shareholders? Do they have sufficient coverage for employment law claims?

That's factor two.

Then figure out what the market will really bear. Start with the figure you'd pay if you were buying it for yourself then double it, because your price is never your customer's price. If you get some price resistance, you're probably charging it just right. If you get none, you're undercharging. If your clients turn on a heel and walk out the door, you're charging too much. Ultimately, the fair value of your services is what a willing buyer (your client) would pay to a willing seller (you). Most lawyers underestimate what this value is because they've been locked into an hourly-billing mindset.

I'm not saying you should jack up prices just because you can get away with it, but the willing buyer's payment to you is the best measure of your value.

Michael Alex Wasylik

Are you doing the initial intake over the phone, or in person? Because if the client comes into your office, then it's not really 15 minutes; you have to add the time he's in your office "let me ask you this . . ." to the total time.

SoloSez Popular Threads, October 2012

How do you handle it when the client wants to sit in your office then for three hours so you can go over the meaning and purpose of each paragraph in the documents, and you've already told him \$250? What do you say to the client to make her aware that while you quoted a flat fee for the lease, that doesn't include a lifetime of answering questions over the phone regarding the lease?

Rick Bryan

"The answer is, because I know how to do it, and to do it right. "

There's an old story about a company that had a "legacy" computer program running one of its most-important functions. All of the people who had written (or worked on) the program had long ago either died or retired.

After many years of functioning perfectly, the program suddenly stopped working. None of the new wunderkind programmers working for the company could even begin to figure out what to do. Finally, the head of IT suggested that they call one of the retired programmers who had worked on the original program. Finally, they found someone who was willing to come in and try to assist.

The retired programmer listened to the description of what the computer was doing wrong, then he walked over to where the computer was located. He reached down and hit the side of the computer with the side of his fist. Suddenly, everything started to work again, just as it should.

When he finished, the retired programmer wrote out an invoice: "Fix Computer
\$25,000.00."

The wunderkind who had been interacting with him was shocked, and said that the accounting department would never pay such a vague invoice. So the programmer wrote out a new invoice: "Hitting computer on side \$25.00; Knowing precisely where to hit computer \$24,975; Total \$25,000."

The invoice was promptly paid.

There's a moral in there somewhere, but I'll let you figure out what it is.

Brian H. Cole

SoloSez Popular Threads, October 2012

Yeah, this is sort of a folk tale or whatever that goes around. Other iterations have a TV repairman coming in to fix an expensive TV, and simply tightening a screw. And the invoice is \$10 for tightening the screw, \$299 for knowing which screw to tighten.

It's apropos, though.

Ryan Phillips, South Carolina

Thank you All for your insight on the topic of value billing.

Amber Nicole Ying
