

# Think of Services in Terms of Value—Not Rates

By Gerry Riskin

Earlier this year, I received a note from a client which appears below (but has been modified to protect the lawyer's identity and the lawyer's clients). This lawyer is very bright and accomplished yet understands the importance of family as well as the practice of law. (He gave me permission to use this communication.)

Gerry,

Boldness takes time.

The last two matters I have taken on have been fixed cost. Priced intentionally high.

The most recent one (today) was for [details concealed] I (almost) doubled my initial thought for a fee, and included a satisfaction-guaranteed-or-your-money-back clause. No questions. Just signed.

Memo to self:

1. Pricing is still too low.
2. This requires hard thinking (which is why I didn't do it before). And a willingness to be wrong about pricing.
3. I am going to spend a portion of the fee from [details concealed] to jump on a plane and fly to [European Destination] to [details concealed - but to participate in the European end of the matter that exceeds the expectations of the client]. That's a Gerry lesson I learned. When I was talking to you I got my first engagement from [very major financial institution]. I used a chunk of it to jump on a plane to New York to meet the guy who gave me the job. This has translated into probably \$300,000 of fee income so far from them.
4. Moving away from a billable hour strategy forces me to be more personally involved with the client (a good thing) and judge my employees on things other than billable hours (amazingly hard, but also the right place to be looking).

5. Do you realize how much administrative overhead this eliminates?  
The billing software, the administrative time, the people.

Thanks for the input you gave me. You may not believe that the stuff you talk about sticks. But it does. (I also subscribe to your blog to pick up ongoing hints).

[Name of author concealed]

The arrival of time recording in the 1960s boosted lawyer incomes by 40%. That is why firms were willing to go through the heartache of imposing the necessary discipline to record time. The reason for the increased revenue was simple...lawyers did not know how much effort they were expending on a matter. When they billed, they used entirely subjective criteria and dramatically underestimated. The billable hour became not only a cost assessment tool (for which it was originally intended) but a price.

Fast-forward to the present day and the billable hour alone does not work as well.

- It does not distinguish between a high value hour and a low one.
- It diminishes the importance of project management.
- It makes accurately estimating fees nearly impossible.
- Lawyers *think* in “time” rather than in “value.”

The last point is the most critical: Lawyers *think* in “time” rather than in “value.” I find that lawyers do not think in terms of the value they offer to clients except in the most abstract terms. They know they “help” clients by reducing risk or exposure and they know that they resolve contentious situations but when asked to *quantify* the benefit to the client (code for “value”) they struggle a lot more than I had expected—I believe because it is simply a foreign thought.

A tutorial on this sounds amazingly trite but is necessary to get the lawyer mindset changed. Here are some of the questions each lawyer might ask.

In transactional work:

- What are the risks we are avoiding? Quantify them (ranges are fine).
- What is the cost of defending against those risks if we do not prevent them?
- How much client (CEO; executives; other staff) time would be consumed in such defenses (expressed in tasks they would have to undertake)? (While this may not be directly quantifiable, the client will understand well the disruption factor.)

In litigation:

- What is the exposure? (Again, a range is fine.)
- What is the overall cost if not settled so that with every settlement opportunity you can add legal fees saved by settling?
- How much client (CEO; executives; other staff) time would be consumed? (Same as above.)
- What is the public relations cost to the client (damage to reputation and therefore to business) and can we manage the matter in a manner that minimizes such damage or even produces positive PR?

There are other questions to ask and other answers to give but the punch line here is to constantly *try* to quantify so that you are talking in numbers rather than abstractions. Your client can understand mathematics with precision—an hourly billing rate with qualified explanations simply frustrates the client who interprets such communications as *gobbledegook*.

The consequences of this *different* approach will allow the following:

- Better communications with clients, instead of hourly rates with explanations that the client finds “suspect,” you can clearly communicate (or negotiate) fees in the context of value (benefit).
- Fee setting that considers the value to the client (which can be far more lucrative).

**A footnote:** A common myth is that leaving hourly rates simply leaves you in a battle where the client wants lower fees and the lawyer/law firm wants higher fees. NOT NECESSARILY TRUE! I believe that the missing ingredient is sophisticated project management which allows the legal team to configure the legal services in a more cost efficient way to increase margins. If the value to the client does not support the work done as efficiently as possible then you need to decline the matter. In many cases the value will far exceed your most efficient approach to providing the service and the client will not blink because the fee is commensurate with value.

**The caveat:** The client must be weaned off the hourly rate approach. Insurance defense will be the last area to accomplish this because insurance company inside counsel loves micromanaging their outside firms and they need your cost data to do it. Other clients will be more amenable as they see the benefit of more certain legal budgets and fees that are based on a rationale assessment of value. The really tough part may be dealing with the inside lawyer who needs to demonstrate internally that they forced a reduction from you. I hear anecdotally that some don't care what the rate is provided they get a 15% reduction from it. This kind of situation will be overcome only by candid communications between you and your client and your persuading that you really are looking for a win-win that is in everyone's best interests.



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