

# ChicagoLawyer

## Technology vs. The Billable Hour: With tasks that took weeks accomplished in seconds, firms look to new billing models

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Editor

Update: QuisLex was incorrectly referred to as a South-African firm in the 22nd paragraph. A correction has been made to reflect that it is Indian.

Chi City Legal's website has the requisite headshots of attorneys in suits. It has the map to its Loop office, the 312 phone number and the jaunty logo.

But the firm's website also lists something many, if not most, Chicago firms wouldn't dream of: its fees.

The firm, which focuses on eviction services for landlords, isn't listing hourly rates or retainer fees, but \$550 for a one-off eviction, \$1.09 per unit for a basic monthly eviction package, \$1.42 per unit for a standard subscription or \$1.84 per unit for the premium package, which includes complimentary 10-day notices, jury demands, demand letters for lease compliance and motion practice and discovery.

Partners Conor Malloy and John Norkus created the firm's landlord-focused subscription model guided by data they mined from a database Malloy compiled of the about 9,000 pro se filings Cook County sees each year. The firm website looks more like a place to pick cable packages than legal representation, but for Malloy and Norkus, this data-driven model was the best way to represent their clients.

"When you get the lady that's on Social Security disability and she has a tenant who's not paying the rent for the second floor of her two-flat ... she can pay a little bit every month and if she runs into trouble, we're there," Malloy said.

Alternate billing models are nothing new in Chicago, as firms like 24-year-old Bartlit Beck and 9-year-old Valorem Law Group can attest. But as apps and add-ons take seconds to do what an associate would have billed days for and new cognitive computing models help lawyers extend what they can do in a single hour, firms are starting to ask whether time spent is still the wisest way to set paychecks.

"I think it's the elephant in the room. I think people are not talking about as actively as they ought to, but change is coming," said Shamlia Naidoo, global chief information security officer for IBM and an attorney licensed in Illinois and Washington, D.C. "We're not really facing the future as it's heading for us."

Some firms are, if not abandoning the billable hour, adapting their relationship to it. Jackson Lewis stopped using the billable hour as an evaluative tool for associates in January 2016. **Riley Safer Holmes & Cancila split off from Schiff Hardin last year in part to try a suite of billing models.**

**"[Clients] want a menu of options from which they can choose," said Riley Safer partner Ronald Safer. "In some cases, the billable hour is the best model for the client, and that is what we use. We are not anti-billable hour; we are pro-client."**

Nicole Nehama Auerbach of Valorem Law Group said the billable-hour model can be dangerous to clients' pocketbooks.

"There is absolutely no inherent incentive to be efficient and, I would argue, quite the opposite," Auerbach said. "When you're trained to generate revenue by maximizing the amount of time it takes to do something, you maximize the amount of time you take to do something."

### Of apps and associates

While a startup can look at the market, crunch the data and design a business model around it, firms with existing structures, practices and clients can't reinvent on a dime.

In fact, switching to a different billing model without adjusting staffing, workflow and other related processes can be damaging for a firm, said Rebecca Weinstein Bacon, a partner at alternate-fee pioneer Bartlit Beck. When speed matters, so does everything from the number of associates hired to getting more senior attorneys — who might hit on the right solution faster — involved in cases early on.

It's a hard slog for firms that flip to a new billing model without adjusting how they handle cases, she said.

"Because hours matter to them, they've had a harder time of it," Bacon said.

But Chicago Bar Association Law Practice Management and Technology Director Catherine Sanders Reach said even big firms can turn tech into efficiency. The holdup can be the lawyers.

"Since lawyers are risk-averse by nature and by education, they recognize that oftentimes change brings about a period of insecurity," Reach said. "I feel like I spent four years trying to assuage attorneys' fears about using the cloud and I still get people who are like, 'Nope, I'm not going there.'"

Reach cited the example of document assembly software, which turns the creation of bespoke legal documents into fillable forms, automatically dropping in the appropriate boilerplate clauses based on clients' answers to a series of questions. She said early versions of the technology date back at least 25 years, and the modern version is quick, efficient and has faced mass resistance from the legal community.

"Once it's set up, you're going to be billing three minutes for something that used to take you an hour," Reach said.

Safer has seen similar efficiencies in document review.

"Document review, which used to be a labor-intensive exercise by groups of associates, can now be done through efficient search terms and the use of technology in a fraction of the time at a fraction of the cost," he said.

The tech can come from outside vendors. Valorem Law Group, for example, calls Chicago-based legal services firm Novus Law their "right arm" in terms of document review and document analysis. Bartlit Beck's outsource firms include U.K.-based Exigent and Indian-based QuisLex, Bacon said.

But increasingly, time-saving technology is as downloadable and convenient as spell-check.

"The products have gotten simpler and cheaper to do this, so now you're talking about [Microsoft] Word add-ons for \$99," Reach said.

If new add-ons are nibbling away at the busy work that filled the billable hour, higher-end technology is speeding the brainwork of law. At IBM, Naidoo works with cognitive computing models — often called artificial intelligence — to convert vast quantities of unstructured data into strategies professionals can use to make better, faster decisions. She specifically works in data security, but the technology has garnered interest in a number of fields, including law.

"With cognitive computing, the computer will learn and will get better," she said.

The purpose, she said, is not to replace humans but to extend their capacities. This includes streamlining and speeding the portion of the billable hour spent on strategy. Great for clients, bad for lawyers who provide top-notch service but base their bill on the amount of time spent.

It's a new balance of power, Safer said. And it's one clients like.

"The legal industry has been one where the terms of engagement are dictated largely by the law firm, not the client. That's, in our view, a mistake in a service industry," he said.

Adding to that is another problem the legal community doesn't often like to address: A lot of people don't trust lawyers where money is concerned.

## Budget certainty

Chi City Legal's target market is small-scale Chicago landlords — think the old lady renting the top floor of her house rather than a property management company. Malloy said they tend to be "people who have a natural distrust of lawyers, which can come from anywhere from Shakespeare to TV."

Firms that aren't forthcoming with fees "add to that the idea that lawyers are expensive," Malloy said.

Before Valorem Law Group set up shop, the founding partners, all of whom worked at various Big Law firms, asked their clients "what drove them crazy about their legal representation," Auerbach said.

The lack of budget certainty was at the top of the list.

"They wanted firms that have skin in the game. They wanted lawyers to be looking at if every single thing absolutely has to be done in order to get the results the client wants," she said.

For its flaws, the billable hour is a model of transparency, Bacon said. At Bartlit Beck, lawyers work out with each client how to show they're getting their money's worth, an individually tailored plan that has gone as deep as cc'ing the client on every e-mail related to a case.

"As much as they hate [the billable hour], there's some comfort to that monthly bill where they can see what their lawyers are doing," Bacon said.

Valorem gives their clients a greater sense of control by including a "value adjustment line" with every invoice. A client can pay more or less than the agreed-upon price based on how satisfied they feel with the work. Since one of the firm's most popular billing model is fixed fee by phases

of litigation (for example, summary judgment is one phase), an early low paycheck would be an indicator the client is unhappy. They can adjust their approach for the next phase.

"They can say this is worth \$18,000 or this is worth \$3,000 or they can say 'Oh you were amazing, this was worth \$40,000,'" Auerbach said. "People don't use it often, but it's the fact that we have it on there."

Malloy recently completed a flat-rate divorce case referred to him by an attorney with a more traditional billing model. The client had already spent a considerable sum on legal fees and wanted to budget, so she and Malloy worked out flat rates for different stages of trials, sliced as finely as different block rates for a.m. and p.m. work.

"Sometimes flat rates work out, sometimes they don't. Sometimes you get dinged on one, but it makes you better for the next one," he said.

This also involves lawyers sitting down with potential clients, reviewing the options for payment and asking them a hard question: What do they want to accomplish?

"The goal sometimes is not winning at trial," Safer said. "The goal could be obtaining a quick alternative resolution of a matter in a creative way. We lawyers tend to define success in winning and losing. The client approach is often much more nuanced. The lawyer has to respect and respond to the client's definition of success."

Safer said redefining success with each case is time-consuming, but vital.

"We believe that this dialogue that takes place at the beginning of matters that sets the goals and the expectations of the client and discusses how the law firms will be compensated for trying to meet those goals is not only a good practice in terms of price, but also essential on getting the client and the law firm on the same page," he said.

Mark C. Palmer, chair of the Illinois State Bar Association Standing Committee on Technology, said the same technologies that turn billable hours into billable seconds let lawyers focus on being lawyers through additional time spent on strategy and trial prep.

"They're realizing 'This is freeing up my abilities. Not just my time, my abilities,'" Palmer said.

Reach said many lawyers she's seen use that newly freed time to grow their businesses.

"You don't do that busy work anymore," Reach said. "You focus on client relationships, you focus on explaining things to them. You focus on more important things."

## The robot lawyers

But to the big question: Are these technologies taking legal jobs?

Yes.

"In the solo and small firm, with consumer clients, people are just not often in a position to say 'Yeah, do my will. Let me know when the bill's ready,'" Reach said. "At the consumer-based practices, you're actually seeing competition from things like RocketLawyer, LegalZoom and the ilk."

And no.

"The reality is that the human will always remain in control," Naidoo said. "The purpose of cognitive computing is to extend human capabilities."

The question isn't whether a computer program can replace a qualified, experienced professional. The question is whether potential clients will care when the download that can build their will, file their divorce or search relevant citations is so much cheaper.

Don't think your clients will choose cost and convenience over your years of experience? Ask a CPA about TurboTax. Ask a stockbroker about Ameritrade.

Cost-cutting pressures aren't limited to consumer clients, Palmer said. Corporate clients aren't trying to get wills or divorces on a budget, but they're facing many of the same problems the law firms are — large overhead, increased client expectations and startups nipping at their heels.

"We're answering more to the clients and they're holding us more accountable," Palmer said. "The clients have become more and more educated on what's more feasible. Whether it's a small or solo practitioner or a Big Law firm doing work for a corporate client, that same bill scrutiny exists."

Naidoo, however, considers it spurious to compare a lawyer to a CPA, a field where the numbers crunch the same whether a machine or person does the figuring. She considers law akin to medicine, where she believes a human presence will always be needed.

"You never take the doctor out of the loop. The doctor's always the one making the final decision on the treatment plan, but with this cognitive computing, the computer would present many, many options they might not know about and put it on the table to make a decision," Naidoo said. "You use that as an advantage to leverage what the computer gives you."

Reach has faith in law and in lawyers. But when the world expects things faster and lawyers charge by the hour, she sees a conflict the billable hour won't win.

“It’s a new day for a lot of people in a lot of industries,” said Reach. “Luckily, lawyers are smart enough to change. A lot of industries just fold.”

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