

You have alternatives

How to utilize alternative billing methods for your legal needs **Interviewed by Troy Simpson**

The billable hour is the most common way attorneys are paid, particularly on the defense side. Often on the plaintiff side, there's a contingency relationship where the attorney fees aren't paid until there is a recovery, at which point the attorney gets a percentage of the recovery.

While the billable hour is the most common aspect of the attorney/client relationship, it's not the only option, and many times it's not the best option. If your attorney isn't offering you alternative billing methods, you need to ask him or her about them, as they can be huge savers of time, money and hassle.

"In this economy and as the business world continues to evolve, law firms and clients are looking at different relationships," says Peter B. Maretz, a shareholder with Shea Stokes Roberts & Wagner. "Alternative billing methods are great ways to both save money and enhance the relationships you have with your attorneys."

Smart Business spoke with Maretz about different billing methods and how to choose which method is right for you.

What are some alternative billing methods?

The most common alternative billing method is the flat fee retainer, where you would pay a monthly fee to have the ability to pick up the phone and call your lawyer at any time without having the meter running.

The retainer works great in some contexts, but not as well in others. For example, if you often deal with labor and employment issues — which many companies do on a day-to-day basis — you'll want to be able to get legal advice on a moment's notice. You never want to be afraid to call your attorney when difficult HR decisions come up, so a retainer is effective to combat that. Consider also a modified retainer with a lower flat fee for a set number of hours, and a special rate for time in excess of the set amount. Other alternative billing methods include:

- **Task-based billing.** This is where you pay a certain amount for certain services, e.g., for this motion you pay this much or you pay this amount for these depositions.



Peter B. Maretz
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- **Phase-based billing.** This is where you pay for legal services as you go along. You'll pay a set fee to get through discovery, then another set fee to get thorough trial, and so on.

- **Flat fee billing.** You simply pay one fee to have the attorney defend your case.

- **Hybrid billing.** This is a combination of the billable hour plus a bonus based on success and/or early resolution.

What makes one alternative method better than another?

Choosing which billing method to use really depends on the context of the case, what your needs are and how much risk you and your attorneys are willing to take on.

Any of these relationships can be successful if they're properly executed. The key is having an attorney that will thoroughly investigate your claim and devise strategic tactics to get you the result you desire. You have to have a plan and you need to start planning from the get-go. You and your attorney need to work together closely at the outset to determine, with as much precision as

possible, what the demands of the case are given the claims made, the laws sued under, the court in which the case is filed, the tendencies of your judge, the practices of the plaintiff's attorneys and so on, so you both know what is expected and what will be required to win the case. It's like constructing a building. If you want to build an apartment complex, you don't just hire a contractor, then tell him to build the building and call you when it's done. That's an absurd example, but it's often how lawsuits are run.

Regardless of how you're billed, early and aggressive planning of the strategies and tactics is critical to the success of the relationship with your lawyer. If you have a legal team (of which you, the client, are a vital member) that does its homework and takes the time to investigate and plan the case — from start to finish — the better your relationship will be and the more success you'll have with your case.

Is the billable hour ever the way to go?

The downside of the billable hour is that the attorney is theoretically encouraged to bill you for as many hours as possible. And, of course, you want to be billed for as few hours as possible. Obviously, there are controls for that, including detailed, descriptive billing, but there is always that concern that the billable hour leads to cost overruns. But, the flip side of that is other abuses. For instance, say you're in a flat fee relationship and the attorney lowballs you from the start just to secure your business. If the legal fees begin to add up and the attorneys see that they're in over their heads, they may not do all that's necessary to win the case.

Bottom line, the billable hour is not the villain, but more the symptom of improper planning. Proper planning can make any billing method viable. <<

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