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Anti-Hourly Apostle

Shepherd continues crusade against a legal billing tradition with new consultancy

Premium content from Boston Business Journal - by Lisa van der Pool

Date: Friday, February 18, 2011, 6:00am EST

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Attorney **Jay Shepherd** is hoping his new business will kill the practice of billing by the hour — or at least put it on life support — many law firms and their clients.

Through his new consultancy, [Prefix LLC](#), Shepherd will teach firms and clients how to price legal services — without setting the clock. Shepherd says the legal community is primed for the shake-up.

Law firms have been charging clients by the hour for decades. But recently the practice has, for many clients, become synonymous with everything that's wrong with how big law firms do business, with client complaints about unpredictable, inflated charges reaching a fevered pitch.

Since 2006, Shepherd has been using his own employment law firm, Shepherd Law Group, as a laboratory for alternative billing practices. That was the year he stopped charging by the hour. Since then Shepherd has been spreading the gospel that law firms can indeed be profitable without charging hourly rates.

"One of the biggest problems that lawyers have is they think that they sell time or that they sell work... they don't. They sell knowledge," said Shepherd, who will continue to run his law firm. "But knowledge is a hard thing to price."

It's too early to say how Prefix will be received. There is a strong appetite, however, among in-house counsel and law firms to explore hourly billing alternatives, according to local attorneys.

Glenn Leger, general counsel at [Tedeschi Food Shops](#), joined the company from the law firm [Proskauer Rose LLP](#) last year. Leger now that he's on the client side, he's exploring firms that offer fixed fee arrangements, like Shepherd's firm, which he worked with recently. One of the reasons for that is the built-in conflict of interest of hourly billing, said Leger: Lawyers have no incentive to shorten their hours, because their compensation is tied to maximizing their time.

Leger predicts clients will be interested in tapping Shepherd's knowledge, but law firms may be less curious.

Leger says that he felt Shepherd's firm charged him a fair price when they worked together, and that the trick to setting a price is for the client to think they're getting a good deal, and the law firm has to take care not to undersell their services. A fixed price can make for smoother relationships between lawyer and client, said Leger.

"When you call your lawyer as an in-house counsel ... you're visualizing he is popping the clock," said Leger. "I was surprised that (Jay) that dynamic is gone."

Shepherd says that starting Prefix was a natural offshoot of his firm, as well as his two blogs, Gruntled Employees and the Client Revolution. One recent blog post for the latter is titled, "Hourly billing is dead. Ish." Shepherd also frequently speaks about how to price legal services to various legal groups.

Shepherd doesn't use a formula to price legal matters. When setting a price, he counsels firms to consider who the client is; how complex the legal issue is; whether the firm hopes to have a long relationship with the client and how rare the lawyer's expertise is, among other factors.

Not billing by the hour has worked for Shepherd's three-lawyer firm, which has had 20, billion-dollar clients tap the law firm for work on a fixed-price basis.

Still, whether a critical mass of law firms will abandon the hourly model is tough to predict.

"The last two or three years you've really seen a movement away from hourly billing," said **Martin Fantozzi**, co-managing director of Boston-based law firm [Goulston & Storrs](#). "That having been said, hourly billing is still the norm."

Robert Crowe, a partner of [Nelson Mullins Riley & Scarborough](#) in its Boston and DC offices, and co-chair of the firm's government relations practice, has been charging his clients a monthly retainer — as opposed to an hourly rate — for two decades. He thinks it's a good idea.

"If he's figured out a way to know what's fair for the client and what's fair for him ... I'm sure clients will be happy," said Crowe.