

The Postman Only Knocks Once

By Patricia K. Gillette

Who ever thought the postal service would be a model for anything? Stereotyped as being an overstaffed, mindless, repetitive workplace, the post office has never been held up as a successful model for anything on the cutting edge.

And yet this monolith has managed to reinvent itself by literally thinking outside of the box: no longer will customers be billed by how many ounces something weighs. Rather, customers will be billed by what size box the customer uses. So, if you put three books or 3 feathers in a 8 x 10 box, the cost is the same.

The post office has done something that law firms have been trying to do for years: found a way to successfully implement alternative billing for their services. Thus, “going postal” takes on a whole new meaning.

Now obviously, lawyers don’t bill by the ounce, but is billing by a tenth of an hour all that different? The answer is no. In fact, like the old postal scale, the billable hour has outlived its utility. Spend even a minute thinking about this and it becomes clear why this is so. What worse incentive could there be for efficiency than rewarding people for the number of hours they spend on a project? How could you less align the interests of lawyer and client than by making the measurement of financial success for the law firm how many hours a lawyer bills to a client rather than the results the lawyer obtains? Who could anyone reasonably expect clients to continue to support a system that requires the rates for services to increase every single year – even in years like 2009 when rates in every other business go down?

So how has the billable hour has survived as long as it has? Simple answer: lawyers don’t do math. Because the billable hour has become so entrenched in our profession, lawyers have forgotten that there are other ways to bill for services, other ways to formulate budgets, other ways to make money than by billing by the hour. The retainer that used to dominate the profession is thought to be something only highly specialized firms can use successfully. The contingency fee has become a tool used only by plaintiffs’ lawyers. The flat fee is rejected as pedestrian and equating the high brow work lawyers do to the dreaded “commodity” work. And, lawyers can’t imagine how their fees for services could be bundled or aligned with the interests of clients. But these are not truths. They are myths that we take as true because, despite our high level of education, most lawyers are not very good at the actual business of law.

To deal with this lacuna in the skill set of lawyers, law firms need to consider hiring non-lawyers to help them figure a way out of the billable hour quagmire. Yearly fees, flat fees, collared fees, not to exceed fees are all examples of how we might get away from the billable hour. But the implementation of these kinds of billing arrangements require more than simply changing the format of the bills. They require project management of cases, rethinking how to pay associates and partners, pitching for

work differently, using new marketing tools, and imposing measurements of success that are based on quality not quantity. And the skill set needed to reinvent the practice of law does not come with a law degree.

Law firms should not be fooled into thinking that the traditional law firm consulting firms can help. They make their money peddling the same old tired ideas: reduce the number of partners, reduce the number of clients, focus on high level work, go global, merge. None of those ideas are the answer for the future of large law firms. Rather, firms need to broaden their focus and their ranks to include real business people. Why not try out the manager who previously worked for General Electric or IBM, the entrepreneur who took a company public, the sales manager of a Fortune 500 company? What if law firms reached outside of the small insular world of lawyers and law firms to figure out new ways to bill our services, structure our firms, measure success? That might just be the catalyst for the change that our industry needs.

Clients, associates and even some partners recognize that the safe, predictable world of billing for every minute of time spent for a client is dying a quick death. Large law firms do not have the luxury of waiting until they feel comfortable with this change. Nor can we wait to gather "data" so we can scrutinize proposed changes, taking them apart bit by bit, as we are trained so well do so. Large law firms need to start thinking out of the box now or they will be stuck in a box that is going nowhere, no matter how much the postage is.