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## COMMENT

# THE BILLABLE HOUR: CRITIQUES OF THE SYSTEM AND TWO POTENTIAL SOLUTIONS

AMANDA PILON

### I. INTRODUCTION

In recent years, members of the legal profession have increasingly criticized the billable hour. First, this paper will examine the origin of the billable hour and analyze how it has evolved to its current use in practice. Next, this paper will examine why the billable hour as it is used today is no longer the ideal fee structure for both attorneys and their clients. Increasing mental health concerns and job dissatisfaction among attorneys, as well as clients' abounding complaints about the legal profession, are at least partially attributable to the billable hour. While there are currently recommended solutions to this billable hour problem, the ways they have been adopted largely focus only on the client's perspective. This paper will argue that to resolve the billable hour problem, the solution must consider both attorney and client perspectives. Specifically, it will propose two possible solutions that law firms could choose between. First, it will propose that law firms may continue to utilize the billable hour but should substantially reform their policies and procedures that accompany its use. Alternatively, it will propose that law firms should commit to exclusively using alternative fee arrangements, abandoning the billable hour in its entirety.

### II. HISTORY AND EVOLUTION OF THE BILLABLE HOUR

Because the billable hour is so entrenched in the legal industry, it may come as a shock that the billable hour was not always the predominate method of law firm operation. In fact, it was nonexistent. The method in which clients were billed for legal services looked wildly different in the early history of the United States. To start, state law provided a maximum fee which strictly limited how much attorneys could charge for their services.<sup>1</sup> Following what was common practice in England, the losing party

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<sup>1</sup> SUSAN RARIDON LAMBRETH & DAVID A. RUEFF JR., THE POWER OF LEGAL PROJECT MANAGEMENT 21 (2014).

in a dispute would pay the attorney's fees of the winning party.<sup>2</sup> Additionally, satisfied clients paid their attorneys bonuses, similar to tipping practices in service industries today, or they paid their attorneys annual retainers to ensure they had access to their preferred attorney.<sup>3</sup>

These billing methods shifted in the early nineteenth and twentieth centuries. In the nineteenth century, economic regulation was not favored, and the state laws providing maximum fees were repealed.<sup>4</sup> In the twentieth century, there was an evolution to a combination of different billing methods, including set fee schedules for certain services, annual retainers, and the contingent fee.<sup>5</sup> Then, by the 1930s and 40s, state bar associations published minimum fee schedules that set standard prices for certain legal services.<sup>6</sup> These minimum fee schedules provided a suggested price for legal services dependent on the task.<sup>7</sup> An attorney could actually be disciplined for charging an amount lower than the set minimum as that undervalued their services and was considered an ethical violation by the American Bar Association.<sup>8</sup> In sum, the billable hour was nowhere to be seen.

During this period of evolving fee structures, Reginald Heber Smith was also working on a revolutionary method for how law firms charge their clients. Reginald Heber Smith, a Harvard Law graduate and eventual managing partner at Hale and Dorr from 1919 to 1956, became the father of the billable hour.<sup>9</sup> After graduating from Harvard Law in 1913, Smith worked for the Boston Legal Aid Society.<sup>10</sup> On a minimal budget, Smith managed approximately 2,000 legal aid cases per year with little help.<sup>11</sup> He took this management issue back to a Harvard Law professor and they worked on a method for tracking statistical information about cases.<sup>12</sup> This method greatly increased Smith's efficiency at the Legal Aid Society, allowing it to clear

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> SUSAN RARIDON LAMBRETH & DAVID A. RUEFF JR., *THE POWER OF LEGAL PROJECT MANAGEMENT* 21 (2014).

<sup>8</sup> *Id.* at 21-22.

<sup>9</sup> *Slice of History: Reginald Heber Smith and the Birth of the Billable Hour*, WILMERHALE (Aug. 9, 2010), <https://www.wilmerhale.com/en/insights/publications/slice-of-history-reginald-heber-smith-and-the-birth-of-the-billable-hour-august-9-2010>.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

65% more cases than it did the previous year, and decreasing the average cost by about 40%.<sup>13</sup>

When Smith moved to Hale and Dorr in 1919, he knew this newfound statistical tracking method could be useful in other areas of law firm management.<sup>14</sup> He convinced the firm to let him establish time tracking records.<sup>15</sup> While brainstorming, Smith realized that attorneys tracking time spent on cases in one-tenth of an hour increments was simple to understand, could easily become habitual for attorneys, and would provide value to clients.<sup>16</sup> A client could easily look at an attorney's time sheet and see a description of work that was done and how much time it took, which provided evidence to support the client's monthly bill.<sup>17</sup> In Smith's mind, the purpose of tracking time was to ensure fair, logical, transparent, and indisputable bills.<sup>18</sup> It was an internal metric for organization planning, budgeting, and increasing efficiency.<sup>19</sup> Contrary to the billable hour's use today, the purpose was not to increase profit.<sup>20</sup>

It did not take long, however, for law firms and the American Bar Association to realize the billable hour was the perfect tool to achieve higher profits in law firms.<sup>21</sup> In the late 1950s, attorneys couldn't keep up with other professionals, most notably, doctors and dentists.<sup>22</sup> The American Bar Association used the billable hour to fuel the economic growth of attorneys, encouraging attorneys to keep more time records so they would make more money.<sup>23</sup> At first, hourly fees were the floor, and attorney's fees were then adjusted based on outcome of the case.<sup>24</sup> However, by the 1970s, the billable

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Slice of History: Reginald Heber Smith and the Birth of the Billable Hour*, WILMERHALE (Aug. 9, 2010), <https://www.wilmerhale.com/en/insights/publications/slice-of-history-reginald-heber-smith-and-the-birth-of-the-billable-hour-august-9-2010>.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Slice of History: Reginald Heber Smith and the Birth of the Billable Hour*, WILMERHALE (Aug. 9, 2010), <https://www.wilmerhale.com/en/insights/publications/slice-of-history-reginald-heber-smith-and-the-birth-of-the-billable-hour-august-9-2010>.

<sup>22</sup> LAMBRETH & RUEFF, *supra* note 1, at 23.

<sup>23</sup> *Id.* at 23.

<sup>24</sup> *Id.* at 24.

hour was officially a commodity used in nearly every legal practice area.<sup>25</sup> Interestingly, while several other industries utilize the billable hour, not all of them do it in a way that makes time spent the selling point. Painters, repairmen, house cleaners, and other laborers of this type offer pricing models based on hourly billing or based on total cost for the job.<sup>26</sup> Even contractors and architects who handle complex construction matters bill based on a projected price even though they also track their time spent on a project.<sup>27</sup> Accountants, however, do bill their time in a similar manner to attorneys, and all of the themes prevalent in the call to reform hourly billing in accounting are in line with the call to reform hourly billing in the legal profession.<sup>28</sup> This is because the billable hour is now a commodity in both of these professions.

This commoditization of the billable hour led it to become the highly critiqued beast it is today. Law firms started using it as an internal management tool to assess both firm and individual attorney performance.<sup>29</sup> Also, it became a tool for comparison with competing law firms, and firms started demanding increased productivity of their attorneys.<sup>30</sup> Firms created policies that required attorneys to bill a set minimum number of hours each year, a number that has steadily increased over time. This wasn't such a concern at first, as the minimum was an average of 1,500 billable hours per year.<sup>31</sup> However, by 2001, most large prominent firms were demanding 2,000 billable hours per year, and this is still true in 2021.<sup>32</sup>

The requirement to bill 2,000 hours may not initially sound troublesome, but it is. Doing the math, one can see that 2,000 billable hours can be achieved by billing eight hours per day.<sup>33</sup> However, studies show that for every two hours an attorney bills, they actually spend three hours in the

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 20.

<sup>27</sup> *Id.*

<sup>28</sup> Richard Goldstein, *From Billable Hours to Value Pricing*, INSIDE PUB. ACCT. (Feb. 26, 2016), <https://insidepublicaccounting.com/2016/02/from-billable-hours-to-value-pricing/>.

<sup>29</sup> LAMBRETH & RUEFF, *supra* note 1, at 25.

<sup>30</sup> *Slice of History: Reginald Heber Smith and the Birth of the Billable Hour*, *supra* note 9.

<sup>31</sup> Stephen L. Rispoli, *The Walking Dead: Psychological Biases That Keep the Billable Hour Alive*, 43 J. LEGAL PROF. 187, 194 (2019).

<sup>32</sup> LAMBRETH & RUEFF, *supra* note 1, at 25-26.

<sup>33</sup> *Id.* at 26.

office.<sup>34</sup> This is because an attorney has other job requirements aside from serving their clients. They are also required to spend time marketing, responding to internal communications, attending firm meetings, and socializing with colleagues.<sup>35</sup> Therefore, an attorney with a 2,000-hour billing requirement actually spends 3,000 hours in the office – or, twelve hours per day.<sup>36</sup>

These numbers prove that attorneys are often required to give their lives to a firm. Not only is it the goal of the firm to make more money, but it is also used to measure attorney job performance. An attorney who does not meet, if not exceed, their billable hour requirement, will not get the coveted promotion to partner.<sup>37</sup> Additionally, to encourage attorneys to work (and bill) even *more* hours, firms use bonus incentives for time billed that exceeds the minimum requirement.<sup>38</sup> This leads to the notion that work *quantity* is more important than work *quality*.<sup>39</sup> The only way an attorney will earn a bonus or receive a promotion and the only way a firm can achieve higher profits is through attorneys working more, not better. However, “more” certainly does not always equal “better.”

These reasons just outlined are why the billable hour has come under fire by recent researchers and commentators. Despite these legitimate downsides, which will be outlined further in the next section of this paper, the billable hour is still the primary billing method used among law firms.<sup>40</sup> There are two key reasons for this. First, despite the critiques, the billable hour has good and useful purposes. Second, attorneys love tradition.

The value in the billable hour can be traced back to why Reginald Heber Smith established it in the first place. First, it is a valuable internal management tool.<sup>41</sup> It is a legitimate way to assess how a firm is performing internally, allowing it to more easily account for organizational planning and budgeting.<sup>42</sup> It also tells a firm how efficiently it is clearing cases and how efficiently attorneys are spending their time.<sup>43</sup> It allows firms to increase their

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<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 27.

<sup>38</sup> LAMBRETH & RUEFF, *supra* note 1, at 27.

<sup>39</sup> *Id.*

<sup>40</sup> Rispoli, *supra* note 31, at 188.

<sup>41</sup> *Slice of History: Reginald Heber Smith and the Birth of the Billable Hour*, *supra* note 9.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

profitability – because they can increase hourly rates and increase the minimum hour requirement for their attorneys to make more money.<sup>44</sup> Further, it is a way to assess performance externally because it provides an easy metric for a firm to compare itself to other competing law firms.<sup>45</sup> This is because it provides a standardized way of calculating time that is used throughout the legal industry, not just by a few firms.<sup>46</sup> Nearly every attorney in the country is asked to account for their time in six-minute increments. Thus, firms can know where they stand in their legal market and make necessary changes to attract more clients.

However, the fact that everyone is using the billable hour is precisely part of the reason why it has not been reformed or abolished. It is tradition, and managing partners are notoriously slow to change.<sup>47</sup> Especially when a “collective action problem” has been established, as Stephen Rispoli claims.<sup>48</sup> Stephen Rispoli, current Associate Dean of Student Affairs at Baylor University School of Law, wrote a law review article for the *Journal of Legal Affairs* which evaluates this problem well.<sup>49</sup> The premise starts with recognizing that people (and law firms) act based on self-interest.<sup>50</sup> He states that a collective action problem exists when “even if all of the individuals in a large group are rational and self-interested, and would gain if, as a group, they acted to achieve their common interest or objective, they will still not voluntarily act to achieve that common or group interest.”<sup>51</sup>

He moves on to outline how this “collective action problem” applies to law firms moving away from the billable hour and adopting more alternative fee arrangements (“AFAs,” which this paper discusses more in depth later).<sup>52</sup> Attorneys and law firms are aware of these downsides to the billable hour and acknowledge that switching to AFAs would constitute a “public good” for the legal profession.<sup>53</sup> Attorneys who do use AFAs instead of the billable hour actually claim that the fee arrangements are at least as

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<sup>44</sup> Rispoli, *supra* note 31, at 191.

<sup>45</sup> *Slice of History: Reginald Heber Smith and the Birth of the Billable Hour*, *supra* note 9.

<sup>46</sup> *Id.*

<sup>47</sup> Rispoli, *supra* note 31, at 187-88.

<sup>48</sup> *Id.* at 198.

<sup>49</sup> *Id.* at 187.

<sup>50</sup> *Id.* at 198.

<sup>51</sup> *Id.* (quoting MANCUR OLSON, *THE LOGIC OF COLLECTIVE ACTION: PUBLIC GOODS AND THE THEORY OF GROUPS* 2 (2d ed. 1971)).

<sup>52</sup> Rispoli, *supra* note 31, at 199.

<sup>53</sup> *Id.* at 199-200.

profitable, if not more so, than the traditional billable hour.<sup>54</sup> However, despite these recognized benefits of moving away from the billable hour, individual firms are unlikely to do so because they would be the first movers.<sup>55</sup> Even if they do move away from it, they would not have the support of the legal industry because there wouldn't be enough value proven if just one firm made the move.<sup>56</sup> Further, any first movers would have to bear the burden of initial costs, and other firms could "free-ride," making it unlikely for the first mover to move at all.<sup>57</sup> Certainly, switching to AFAs would present challenges, considering law firms currently have little experience working with them, which creates some ambiguity.<sup>58</sup> Therefore, remembering the premise of firm self-interest, "[i]f all firms are self-interested, all will refuse to contribute, leaving all law firms worse off than if each had contributed because the 'public good' of switching to AFA systems will not occur."<sup>59</sup> So, the status quo remains unchanged, because it is easier to remain with what is known.<sup>60</sup> This collective action problem explains how and why tradition keeps the billable hour so entrenched in the legal industry.<sup>61</sup> This begs the question, "Is that really such a bad thing?"

### III. CURRENTLY, THE BILLABLE HOUR NEGATIVELY IMPACTS BOTH ATTORNEYS AND CLIENTS

While the billable hour may have its positives, it also comes with many negatives. In fact, the negatives of the billable hour's use in practice today outweigh many positives that are associated with it. These negatives impact both attorneys and clients. For attorneys, the billable hour leads to decreased job satisfaction, increasing mental health concerns, and unethical billing practices. This paper does not argue that the billable hour is the sole reason for these plagues to the legal profession; rather, it argues the billable hour is a contributing factor. Additionally, the billable hour is not ideal for the client due to the unpredictable and often high price tag that comes with it.

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<sup>54</sup> *Id.* at 200.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 201.

<sup>59</sup> Rispoli, *supra* note 31, at 200.

<sup>60</sup> *Id.* at 214.

<sup>61</sup> *Id.* at 200.

### A. How the Billable Hour Negatively Impacts Attorneys

In recent years there has been growing concern for the wellbeing of attorneys. Studies have been performed to measure job satisfaction and to examine increasing mental health concerns in attorneys. The studies done on attorney job satisfaction are interestingly conflicting. One study done in 2002 suggests that a strong majority of attorneys indicate they are either “satisfied” or “somewhat satisfied” with their jobs, but those attorneys simultaneously reported feeling pressures to hit their billable targets or feeling stressed in general at work.<sup>62</sup> This raises the question of whether or not those attorneys are in fact satisfied with their jobs. A 2010 study reported on by the American Bar Association indicated that attorney job satisfaction corresponds to what environment they practice in, with 68% of government attorneys being satisfied, but only 44% of big firm attorneys being satisfied.<sup>63</sup> These studies make it clear that job satisfaction for attorneys could be improved. Part of the reason it hasn’t improved is the current use of the billable hour. High billable hour expectations can have a negative effect on attorneys’ personal lives, professional development, and capacity to engage in pro bono work, all of which are probable factors of job satisfaction for individual attorneys.<sup>64</sup>

For attorneys required to bill a minimum number of hours, true work-life balance is scarce. As previously mentioned, a typical billable hour requirement is 2,000 hours, meaning an attorney has to spend about 3,000 hours total in the office, or 12 hours per day.<sup>65</sup> In 1958, the ABA published a statement that 1,300 billable hours was the maximum that could be billed in a year unless the attorney worked overtime.<sup>66</sup> To compare, that is the equivalent of a 3-day part-time work week for an attorney today.<sup>67</sup> Studies confirm this is an issue for work-life balance as 66% of attorneys reported feeling that billable hour pressure took a toll on their personal lives, 95% said they had less time for friends and family, and 71% felt they had to sacrifice

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<sup>62</sup> Jerome M. Organ, *What Do We Know About the Satisfaction/Dissatisfaction of Lawyers? A Meta-Analysis of Research on Lawyer Satisfaction and Well-Being*, 8 U. ST. THOMAS L.J. 225, 244-45 (2011).

<sup>63</sup> Jill Schachner Chanen, *Are You Happy Now?*, A.B.A. J. (Nov. 1, 2010, 9:34 AM), [https://www.abajournal.com/magazine/article/are\\_you\\_happy\\_now](https://www.abajournal.com/magazine/article/are_you_happy_now).

<sup>64</sup> Christine Parker & David Ruschena, *The Pressures of Billable Hours: Lessons from a Survey of Billing Practices Inside Law Firms*, 9 U. ST. THOMAS. L.J. 619, 620-21 (2012).

<sup>65</sup> LAMBRETH & RUEFF, *supra* note 1, at 26.

<sup>66</sup> *Id.* at 28.

<sup>67</sup> *Id.*

fulfillment outside of work to get a promotion to partner.<sup>68</sup> Attorneys often have to choose between seeing their kids in the evening or participating in an activity that would boost their legal skills because their daytime priority must be billing enough hours.<sup>69</sup> Or, they return home and continue working in efforts to meet their billable hour requirement.<sup>70</sup> It is easy to see how the billable hour can simultaneously decrease work-life balance and job satisfaction.

Not only do billable hours take a toll on attorneys' personal lives, but they also take a toll on attorneys' at-work experiences. When an attorney is mostly expected to increase the time they bill, there is less of a focus on firm culture or the intangible aspects of client relationships. For example, associates may wish to go out for lunch with potential clients, spend time writing blog posts their clients could benefit from reading, or do legal research to be published, but will choose to skip out on these because they cannot bill for it.<sup>71</sup> Further, firms often place more value on number of hours billed than outcomes like giving a client good advice, obtaining a good settlement agreement, reducing a client's time in prison, or facilitating a successful negotiation.<sup>72</sup> All of these things would undoubtedly help attorneys establish good business relationships with their clients. But, unfortunately, the number of hours billed carries more weight in the eyes of the firm when assessing job performance. Attorneys aren't rewarded for dealing with matters more efficiently or for bringing special skills.<sup>73</sup> Repetition is valued over creativity.<sup>74</sup> Because attorneys aren't able to focus on those intangible things, their job satisfaction likely decreases.

This emphasis on the billable hour also affects law firm culture. Firms that are too focused on increasing profits and making their associates bill more time essentially treat their associates like machines, constantly expected to do more.<sup>75</sup> Within a law firm, this can lead to lack of associate training, because such internal tasks aren't billable. In turn, this leads to increased attorney incompetence to handle larger tasks like representing a

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<sup>68</sup> Rispoli, *supra* note 31, at 195.

<sup>69</sup> LAMBRETH & RUEFF, *supra* note 1, at 28.

<sup>70</sup> *Id.* at 26.

<sup>71</sup> *Id.* at 28.

<sup>72</sup> *Id.* at 30.

<sup>73</sup> Parker & Ruschena, *supra* note 64, at 621.

<sup>74</sup> LAMBRETH & RUEFF, *supra* note 1, at 27.

<sup>75</sup> *Id.* at 24.

client in a trial.<sup>76</sup> This is because associates are often given mundane tasks, such as doing legal research, that don't show them the big picture of what is happening in a case.<sup>77</sup> On top of billable hour requirements providing fewer training incentives, they also foster internal competition. Compensation levels and billing rates often denote an attorney's status within a law firm.<sup>78</sup> The constant pressure to bill as many hours as other associates promotes internal competition while decreasing collegiality among colleagues.<sup>79</sup> While friendly internal competition isn't inherently a bad thing, it can be when it is a constant, especially when it affects an associate's livelihood. Specifically, it can lead to increased departures of associate attorneys.<sup>80</sup> This most certainly points to job dissatisfaction.

Finally, billable hour requirements can lead to job dissatisfaction because pro bono work gets cast aside.<sup>81</sup> For some attorneys, pro bono cases may be the most satisfying part of their work. Unfortunately, one study suggests that attorneys don't get to do it as much as they'd like. It showed that 80% believed pro bono work is important, but only 50% of the respondents completed any due to lack of time.<sup>82</sup> This lack of time is attributable to billable hour requirements, and certainly plays a role in attorney job dissatisfaction.<sup>83</sup>

While studies only point to and do not concretely confirm that attorneys are generally dissatisfied with their work, there are several studies that do confirm attorneys have increasing concerns surrounding their mental health. These concerns include anxiety and depression, substance abuse, and suicide. Billable hours currently demand attorneys to work overtime, which is a contributing factor to these mental health concerns. Working long hours may not be the sole cause for increasing mental health concerns in the legal profession, but the long hours can lead to burnout. Notably, anxiety, depression, substance abuse, and suicide are all symptoms of burnout.<sup>84</sup>

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<sup>76</sup> Cheryl Ann Krause & Jane Chong, *Lawyer Wellbeing as a Crisis of the Profession*, 71 S.C. L. REV. 203, 221 (2019).

<sup>77</sup> *Id.* at 224.

<sup>78</sup> Rispoli, *supra* note 31, at 197.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> LAMBRETH & RUEFF, *supra* note 1, at 28.

<sup>82</sup> Krause & Chong, *supra* note 76, at 227-28.

<sup>83</sup> *Id.*

<sup>84</sup> Denise Albieri Jodas Salvagioni et. al., *Physical, Psychological, and Occupational Consequences of Job Burnout: A Systematic Review of Prospective*

Anxiety and depression are some of the most common results of experiencing burnout.<sup>85</sup> Also, burnout leads to sleep disorders and can cause constant exhaustion.<sup>86</sup> A recent study conducted by the Hazelden Betty Ford Foundation and the American Bar Association (“The Hazelden Study”) examined 11,516 attorneys to see how these mental health concerns affect those in the profession.<sup>87</sup> The results were striking. The study relied on the Depression Anxiety Stress Scale, which is a self-reporting-based scale that assesses symptoms of depression, anxiety, and stress.<sup>88</sup> It found that 61.6% of the surveyed attorneys have experienced anxiety and that 45.7% have experienced depression at some point during their career.<sup>89</sup> Additionally, 28% of attorneys are currently experiencing depression, 19% are experiencing anxiety, and 23% are experiencing stress.<sup>90</sup> This is about three times the rate of the general population.<sup>91</sup> Given that 66% of attorneys have felt that pressures to bill hours have taken a toll on their personal lives,<sup>92</sup> it is a logical connection that this pressure could also be contributing to attorney burnout, and therefore also contributing to these alarming rates of depression and anxiety.

The Hazelden study also conducted research on attorney substance abuse. The results regarding substance abuse are equally if not more shocking. These surveys also relied on self-reported questionnaires – the Alcohol Use Disorders Identification Test for alcohol use and the Drug Abuse Screening Test for drug use.<sup>93</sup> Of the 11,278 participants who filled out the alcohol survey, 20.6% had a score indicating problematic drinking.<sup>94</sup> This is three to five times higher than the general population.<sup>95</sup> The study

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*Studies*, PLOS ONE (Oct. 4, 2017), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0185781> (studying effects of burnout in dentists, nurses, teachers, and human service workers; however, the findings can still be useful to inform how working such long hours can impact attorneys).

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> Patrick R. Krill et. al., *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 AM. SOC'Y ADDICTION MED. 46, 49 (2016).

<sup>88</sup> *Id.* at 48.

<sup>89</sup> *Id.* at 50.

<sup>90</sup> *Id.* at 51.

<sup>91</sup> Krause & Chong, *supra* note 76, at 208.

<sup>92</sup> Rispoli, *supra* note 31, at 195.

<sup>93</sup> Krill et. al., *supra* note 87, at 47-48.

<sup>94</sup> *Id.* 48.

<sup>95</sup> Krause & Chong, *supra* note 76, at 208-09.

found that there was a higher percentage of problematic drinking levels at the associate rank than in attorneys farther along in their career.<sup>96</sup> Also, there were higher levels of problematic drinking at private law firms than in other practice environments.<sup>97</sup> 12,925 attorneys completed the substance abuse survey, and the results showed that alcohol is the most widely used substance among attorneys at 84%, but 15.7% reported using sedatives, 10.2% reported using marijuana, and 5.6% reported using opioids.<sup>98</sup> The constant pressure to collect more billable time, resulting in attorneys taking less time for vacations and spending time with their families, leads to burnout and consequently, substance abuse.<sup>99</sup>

Finally, suicide is a major mental health concern for the legal profession. According to the Hazelden study, 11.5% of the participants indicated that they had suicidal thoughts at some point during their career.<sup>100</sup> 2.9% of the attorneys indicated self-injurious behaviors, and 0.7% indicated they had at least one prior suicide attempt. Suicide is the third leading cause of death among attorneys, while it is the tenth leading cause of death in the United States.<sup>101</sup> Compared with other professions, attorneys are 54% more likely to commit suicide.<sup>102</sup> This should be a wakeup call to the legal profession. As the billable hour is currently used, it is a strong contributing factor to all of these mental health concerns. It is bad for the attorney as an individual, and it is bad for the profession.

In addition to mental health concerns, the billable hour also raises ethical concerns because it invites attorneys to engage in billing fraud when charging their clients, which can lead to liability. There are several ways that attorneys can fraudulently bill, and it is challenging for a client to detect, which makes it particularly troubling. Attorneys can exaggerate the time that they did work on a particular task, or they can write down hours that they never worked at all.<sup>103</sup> They can credit themselves for work that was actually done by a paralegal, or they can bill one client for work that was already done for another client.<sup>104</sup> Also, attorneys can intentionally spend time doing

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<sup>96</sup> Krill et. al., *supra* note 87, at 48.

<sup>97</sup> *Id.* at 49.

<sup>98</sup> *Id.* at 47.

<sup>99</sup> Rispoli, *supra* note 31, at 196-97.

<sup>100</sup> Krill et. al., *supra* note 87, at 50.

<sup>101</sup> Krause & Chong, *supra* note 76, at 207.

<sup>102</sup> *Id.*

<sup>103</sup> LAMBRETH & RUEFF, *supra* note 1, at 29.

<sup>104</sup> *Id.*

unnecessary tasks; for example, they may intentionally spend more time than needed doing legal research for a client's case.<sup>105</sup> It is unfortunate that some attorneys have noted hour padding as "commonplace."<sup>106</sup> In a way, firms that pressure attorneys to increase their hours billed invite these types of billing fraud.<sup>107</sup> A lot of firms have compensation incentives (bonuses or promotions to partner) that kick in once an attorney bills at or above their billable hour requirements. Because this also increases a firm's profits and is largely undetectable, billing fraud often ends up being *rewarded*, and so this unethical behavior continues.<sup>108</sup> Such ethical violations have the possibility to put an attorney in a really bad position; some particularly grand fraud schemes have even caused attorneys to spend time in prison.<sup>109</sup> While concrete statistics on the frequency and reasons for ethical complaints against attorneys aren't readily available, the American Bar Association Journal has published that billing fraud is indeed a common ethical pitfall for attorneys.<sup>110</sup> Importantly, this paper does not claim that every attorney who tracks their time is committing billing fraud; it merely claims that the billable hour minimum requirements *invite* billing fraud. This puts both attorney and client trust in the legal profession at risk.

### B. How the Billable Hour Negatively Impacts Clients

Attorneys are not the only stakeholders in the legal profession with legitimate gripes about the billable hour; clients have grievances too. Client satisfaction is no longer the main motivating factor in attorney's work; it is mostly dedicated to billing more time.<sup>111</sup> This is directly contrary to the client's interest in the casework being managed more efficiently, because the law firm's bottom line is only improved if the casework takes longer.<sup>112</sup> Attorneys have fewer incentives to spend time case planning and using

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<sup>105</sup> *Id.* at 30.

<sup>106</sup> Parker & Ruschena, *supra* note 64, at 625.

<sup>107</sup> LAMBRETH & RUEFF, *supra* note 1, at 30.

<sup>108</sup> Douglas R. Richmond, *For a Few Dollars More: The Perplexing Problems of Unethical Billing Practices by Lawyers*, 60 S.C. L. REV. 63, 91 (2008).

<sup>109</sup> Benjamin Weiser, *Prison Term for Lawyer Who Overcharged U.S.*, N.Y. TIMES (Dec. 11, 1997), <https://www.nytimes.com/1997/12/11/nyregion/prison-term-for-lawyer-who-overcharged-us.html>.

<sup>110</sup> David L. Hudson Jr., *How to Avoid 10 Common Ethics Pitfalls*, A.B.A. J. (June 1, 2020, 12:10 AM), <https://www.abajournal.com/magazine/article/how-to-avoid-10-common-ethics-pitfalls>.

<sup>111</sup> Rispoli, *supra* note 31, at 188.

<sup>112</sup> LAMBRETH & RUEFF, *supra* note 1, at 27.

strategies that facilitate more efficiency in handling their client's matters.<sup>113</sup> They are encouraged to be more defensive and provide over-servicing strategies, which in many cases may not truly help the client get what they are looking for in their representation.<sup>114</sup> This means that at the end of the month, clients receive bills that are unpredictable and overpriced. Clients are often paying for aggressive time recording, which is especially unfortunate because they have no ability to determine if the high monthly bills truly reflect the value of the services they received.<sup>115</sup>

Not only are clients paying for inefficient work, the rates charged for this work are increasing.<sup>116</sup> A 2011 study found that the cost for legal services increased by 70% from 2000 to 2008.<sup>117</sup> These increasingly high costs greatly contribute to the access to justice gap because would-be clients cannot afford legal services, despite needing them.<sup>118</sup> 80% of low-income individuals cannot afford to seek legal assistance, and even 40 to 60% of the middle class's legal needs go unmet due to high costs.<sup>119</sup> The billable hour often results in the clients paying a large sum of money for work that was inefficient or perhaps did not even give them what they wanted. Or, it results in potential clients not being able to receive legal help for matters that can be too complex to navigate on their own. For a service-based industry, the legal profession fails to provide services to those it should aim to serve the most. Many commentators discuss alternative fee arrangements as a potential solution to this problem.

#### IV. WHAT ARE ALTERNATIVE FEE ARRANGEMENTS, AND ARE THEY THE SOLUTION?

Alternative Fee Arrangements, or AFAs, are often recommended as a way to solve the billable hour problem and to realign the interests of the attorney-client relationship.<sup>120</sup> Essentially, AFAs are any billing method

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<sup>113</sup> Parker & Ruschena, *supra* note 64, at 621.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> Rispoli, *supra* note 31, at 194.

<sup>117</sup> *Id.*

<sup>118</sup> Leonard Wills, *Access to Justice: Mitigating the Justice Gap*, A.B.A. (Dec. 3, 2017), <https://www.americanbar.org/groups/litigation/committees/minority-trial-lawyer/practice/2017/access-to-justice-mitigating-justice-gap/>.

<sup>119</sup> *Id.*

<sup>120</sup> Andrea J. Paterson, *Fee Agreements: Structuring Alternative Fee Agreements to Enhance Recovery of Fees and Align Interests of Attorney and Clients*, 35 *ADVOC.* 10, 10 (2006).

aside from hourly billing that attorneys use to charge their clients.<sup>121</sup> The purpose of the AFA is to provide a realistic expectation for both the attorney and client in all matters of the representation, including costs, timing, casework performed, and value the attorney will provide.<sup>122</sup> It does not inherently mean that a client is guaranteed to be charged less money for the services; rather, its goal is to provide increased transparency and predictability so that the client feels the value of the representation.<sup>123</sup> Although, sometimes it would certainly result in lower costs. The biggest value add for clients in regard to AFAs is cost predictability.<sup>124</sup> Additionally, AFAs don't have to take away from a firm's bottom line. If they are implemented properly, they can be just as profitable or even more profitable than the traditional billable hour method.<sup>125</sup>

Unfortunately, despite knowledge that AFAs will better meet clients' cost needs, the billable hour is still the most prominent fee structure used by law firms.<sup>126</sup> Seventy-four percent of firms' websites advertise that they use AFAs, but only 28% of those firms offer them proactively.<sup>127</sup> Most will wait for a client to mention that they would prefer to use an AFA.<sup>128</sup> This is because switching to AFAs does not come without challenges, most of which come at the forefront of implementing them.<sup>129</sup> They are new, require more effort, and take more time to develop than just sticking to the billable hour status quo.<sup>130</sup> Additionally, there are several different types to choose from and the best one may depend on several different factors. Outlined below are a few of the most common types of AFAs: the flat fee, the contingent fee, and the subscription fee.

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<sup>121</sup> Jerome Crawford & Erika Davis, *Show Me the Bill: Alternatives to the Hourly Rate*, 96 MICH. B.J. 40, 41 (2017), <http://www.michbar.org/file/barjournal/article/documents/pdf4article3144.pdf>.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> Meg McEvoy, *ANALYSIS: Billable Hour Thrives Despite Alt. Legal Fees*, BLOOMBERG L. (June 18, 2019, 9:51 AM), <https://news.bloomberglaw.com/bloomberglaw-analysis/analysis-billable-hour-thrives-despite-alt-legal-fees>.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

Flat fees are a highly useful AFA. Flat fees charge one rate for a specific task.<sup>131</sup> For example, an attorney could charge \$500 to draft a will.<sup>132</sup> Flat fees are most often used in matters with a clearly defined outcome.<sup>133</sup> They can also be used to define fees for various phases of litigation.<sup>134</sup> For the client, the main benefit of the flat fee is its predictability.<sup>135</sup> For the attorney, it is very useful for charging the client for routine or one-time tasks.<sup>136</sup> An attorney must be careful in setting the fee, though, because from an ethical standpoint, the fee must be reasonable for the task being completed.<sup>137</sup> The attorney must come to an agreement with the client and outline the scope of representation at the outset.<sup>138</sup> Flat fees work best for routine matters; the more complicated the situation, the greater risk involved in working with a flat fee.<sup>139</sup>

Another common AFA is the contingent fee structure. A contingency fee pays the attorney an agreed upon percentage of the monetary award his or her client receives when their case is won or settled.<sup>140</sup> With this approach, the attorney only receives compensation for successfully representing their client.<sup>141</sup> The attorney must be careful to follow the Model Rules of Professional Conduct regarding contingent fees, as they are required to be in writing and signed by the client.<sup>142</sup> Once work for the matter is completed, the attorney must send the client a written document outlining the outcome.<sup>143</sup> There are several benefits to the contingent fee, including that they improve access to an attorney for those who could not otherwise afford one, they encourage the attorney to focus on client success instead of billing more time,

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<sup>131</sup> Richard B. Friedman & P. Michael Freed, *Ethical Issues and Alternative Fee Arrangements: What to Do and What Not to Do*, 84 N.Y. ST. B.J. 11, 11 (2012), [https://nysba.org/app/uploads/2020/04/NYSBAJournal\\_May2012.pdf](https://nysba.org/app/uploads/2020/04/NYSBAJournal_May2012.pdf).

<sup>132</sup> *Id.*

<sup>133</sup> Crawford & Davis, *supra* note 121, at 41.

<sup>134</sup> *Id.*

<sup>135</sup> Mark W. Gifford, *Ethical Considerations in Flat Fee Arrangements*, 39 WYO. LAW. 18, 18 (2016), <https://digitaleditions.walsworth.com/publication/?m=10085&i=289554&p=18>.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.* at 19.

<sup>138</sup> *Id.* at 21.

<sup>139</sup> *Id.* at 22.

<sup>140</sup> *Contingency Fee*, CORNELL L. SCH., [https://www.law.cornell.edu/wex/contingency\\_fee](https://www.law.cornell.edu/wex/contingency_fee) (last updated May 2020).

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

and clients no longer bear the risk of losing the case.<sup>144</sup> There are, however, negatives to this fee structure, including that the attorney does bear the risk if they lose the case, clients could pay more than a typical hourly fee depending on the size of the award and the agreed upon percentage, and attorneys are more likely to be selective about the cases they choose to take on.<sup>145</sup> This fee structure is best used in litigation matters and is most commonly used in personal injury litigation.<sup>146</sup>

Next, there is the subscription fee structure, more commonly known as the retainer. In this structure, clients pay attorneys monthly or yearly for access to an attorney.<sup>147</sup> Most firms that offer subscription services have various packages available for different prices based on clients' needs.<sup>148</sup> For example, Kimberly Bennett, an attorney who started her own firm, charges \$95 per month for basic legal services for entrepreneurs, which include unlimited consultations, document review, and a business assessment.<sup>149</sup> However, if the client's needs are more complex, she charges \$395 per month for everything in the basic plan, plus services relating to trademarks, strategy sessions, and contract creation.<sup>150</sup> Subscription services work especially well for clients who have ongoing needs for legal services.<sup>151</sup>

Subscription services are very beneficial for both the attorney and for the client. Clients have the freedom to contact attorneys as they need to.<sup>152</sup> Additionally, subscription services can be as low as \$20 to \$30 per month, which could move mountains in terms of the current access to justice problem previously mentioned.<sup>153</sup> It provides greater flexibility to clients because if they have an extra one-off project that they need help with, they could pay a

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<sup>144</sup> Ken LaMance, *Contingent Fee Basis: Negotiating Your Contingency Fee*, LEGALMATCH, <https://www.legalmatch.com/law-library/article/contingency-fee.html> (last modified Apr. 4, 2020).

<sup>145</sup> *Id.*

<sup>146</sup> *Contingency Fee*, *supra* note 140.

<sup>147</sup> Danielle Braff, *One Size Does Not Fit All: Law Firm Subscription Plans Come in All Shapes and Sizes*, A.B.A. J. (July 1, 2019, 9:08 AM), <https://www.abajournal.com/web/article/law-firm-subscriptions>.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> Danielle Braff, *One Size Does Not Fit All: Law Firm Subscription Plans Come in All Shapes and Sizes*, A.B.A. J. (July 1, 2019, 9:08 AM), <https://www.abajournal.com/web/article/law-firm-subscriptions>.

flat fee on top of their subscription fee to get that one service done.<sup>154</sup> Finally, the attorneys can dive deeper into a client's business so that they can give the best advice.<sup>155</sup> Attorneys can address even clients' minor issues so that they don't snowball into bigger legal problems.<sup>156</sup> It gives clients the fee predictability they are lacking in the billable hour.<sup>157</sup> Additionally, attorneys get their income up front, giving them more predictability as well.<sup>158</sup> Not only that, but attorneys could actually make more money because their income is no longer tied to hours in the day.<sup>159</sup>

Although the pros of the subscription service fee structure are significant, it is not without cons. Success of the subscription service depends on the attorney's ability to strike the right balance of utilization.<sup>160</sup> If it is overused, the attorney can become swamped sometimes, but may not be busy at all in other months depending on their client's use.<sup>161</sup> Attorneys have to make sure they have the proper support so that they don't become overcommitted due to how many subscribers they have to work for.<sup>162</sup> To combat this issue, some attorneys require clients to commit to a minimum number of months to sign up for the subscription.<sup>163</sup>

Advocates are correct that AFAs can help to solve clients' problems with the billable hour, as demonstrated above. However, a majority of firms are still relying on the billable hour as their primary fee structure and using the AFA as an alternate if the client asks for it.<sup>164</sup> Because the billable hour is still the most used structure, the benefits of AFAs aren't yet being truly realized by attorneys. This is because attorneys are still required to meticulously track time to hit a minimum billable hour target, even if AFAs are sometimes implemented.<sup>165</sup> Naturally, if firms only sporadically implement AFAs, attorneys will still have to log their time for their matters

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<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> Danielle Braff, *One Size Does Not Fit All: Law Firm Subscription Plans Come in All Shapes and Sizes*, A.B.A. J. (July 1, 2019, 9:08 AM), <https://www.abajournal.com/web/article/law-firm-subscriptions>.

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> McEvoy, *supra* note 125.

<sup>165</sup> *Id.*

that are still based on hourly rates. Additionally, even with their AFA matters, firms may still require attorneys to track their time so that the firms can demonstrate the value of their AFAs compared with the billable hour.<sup>166</sup> Tracking time despite AFAs prevents attorneys from enjoying the benefits of AFAs, and until both attorneys and clients can fully realize the benefits of the AFA, the billable hour problem has not been resolved.

#### V. TWO PROPOSED SOLUTIONS TO THE BILLABLE HOUR PROBLEM

Many have recognized that the billable hour presents problems to the legal profession for both clients and attorneys alike. These problems include attorney job dissatisfaction, increasing mental health concerns for attorneys, the invitation for billing fraud, and prices that are too unpredictable and high for clients to afford. Because the issues surrounding the billable hour include both attorneys and clients, the solution must address the concerns of both parties. The current solutions proposed have been to increase awareness of the increasing mental health concerns for attorneys or to start implementing AFAs more often. These are not enough on their own.

While the call to increase awareness of mental health issues plaguing the legal profession is good and should absolutely continue, it will not adequately address the problem of how the legal profession operates. This call to awareness does not address the cause of the mental health concerns; it merely addresses the symptoms. To get to the root of the increasing mental health concerns, one must examine the true cause: the norms of legal practice. The billable hour is one of those norms. Additionally, providing AFAs as an option to clients when clients request it is not sufficient because it does not adequately remedy billable hour concerns for the attorney. So, if the current solutions aren't working, are there any solutions? This paper proposes two alternatives: reform the way the billable hour is currently used in law firms or commit to exclusively using AFAs.

First, law firms who wish to avoid the nasty side effects of the billable hour may choose not to abolish the practice entirely, but reform it instead. Given the entrenchment of hourly billing practices, the billable hour is unlikely to disappear. However, this entrenchment does not mean that law firms are stuck with the status quo. The way firms use billable hours could be adapted to work for both the clients and the attorneys.

The main critiques of the billable hour come from how it is used; however, not all qualities of the billable hour are inherently bad. There are

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<sup>166</sup> *Id.*

good things about tracking and billing time by the hour, especially for the client. Part of the purpose of the billable hour is to show clients how an attorney's time is spent. At firms where AFAs are implemented, clients often ask to review "shadow bills," which means that the clients are being charged on an AFA structure, but still request to see the time an attorney spent on various tasks for their matter.<sup>167</sup> This concept of shadow billing demonstrates that an attorney's time and effort does provide value for the client, regardless of the fee structure used. Therefore, tracking and billing time on an hourly basis is not inherently a negative. It becomes a negative when law firms use it as a metric for attorney performance. Attorneys are constantly working to hit billable hour minimums or get a promotion, with some even resorting to bill padding. This is what drives client dissatisfaction with the practice; it results in a bill that is unpredictably high.

This could be avoided if firms reformed how they use the billable hour. Specifically, there should be a greater focus on attorney wellbeing in law firms. This would help resolve the billable hour problem based on attorney and client concerns simultaneously. First, firms should require more attainable levels of billable hour minimums, or simply abolish the minimum requirement entirely. Doing this would lower or entirely abandon the motivation for billing fraud, which protects attorneys from liability and prevents clients from having to investigate how their attorney actually spent their time because attorneys would no longer have an incentive to fraudulently bill. Additionally, this may help lower the cost of the final bill for clients, which would help close the gap of those who need legal services but aren't able to afford them. Next, firms should stop making hitting billable hour minimums the main consideration for which attorneys will get promoted to partner. Instead, firms should increase focus on more of the intangible factors. For example, firms could focus on new business an associate brings in, the associate's overall success in their matters, and how satisfied their clients are with the associate's work. This would address the current problem of valuing time spent over work done. Instead, it would reward efficient work and allow attorneys to focus more on intangibles like marketing and helping clients achieve the best outcome. Finally, in order to maintain profitability, firms should more generally increase their focus on building client relationships. This would likely lead to increased repeat business from existing clients, as well as encourage existing clients to refer business to the law firm. It would also give the legal profession a much-needed boost in trust

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<sup>167</sup> *Id.*

if the attorney-client relationship was seen as an ongoing relationship instead of a one-time event.

This potential solution to the billable hour problem does come with legitimate reasons for hesitation, though. This proposal is new, so there is no research on how to best implement this strategy. It would certainly require some work on the front end, especially because firms would have to rework their internal procedures for job promotion, create a process for clients to provide attorney feedback, and revamp their salary structures. However, if firms committed to focusing more on client relationship building and successful representation when considering salary and promotion, they could put themselves in a better place for their clients and for their employees. It is a choice that will require diligence and commitment, but the long-term benefits of client and employee satisfaction will likely outweigh the costs of implementation.

The second proposed solution is for firms to entirely abandon the billable hour and solely offer their clients alternative fee arrangements. Currently, the most common method of AFA implementation only offers them when clients request them. This is not enough because it still leaves firms largely relying on the billable hour, which furthers the concerns associated with it. Firms offering AFAs should commit to only using AFAs.

While the current method of AFA implementation needs some improvement, it does resolve some of the problems associated with the billable hour. In particular, it addresses the client's concerns. Use of AFAs in firms, even if it is only at a client's request, does provide increased predictability, which makes an attorney's bill seem more reasonable. However, because almost all firms still use the billable hour, the attorney's concerns with the billable hour are not being adequately addressed. This is because the attorney's livelihood is still largely tied to the billable hour. Until there is a commitment to completely abandon the billable hour for AFAs, promotions, bonuses, and work-life balance will be based on the quantity of hours an attorney works.

In order to make this billable hour solution work, firms must commit to exclusively using the AFA. In addition, they must foster a culture of attorney well-being within the firm. Similar to the methods suggested in the first approach, firms should focus more on client relationships, successful marketing, and case outcomes. When switching to AFAs, a firm cannot simply convert its promotion strategy to another strategy that values quantity over quality of work. This defeats an essential purpose of the method, which is to commit to both attorney and client well-being so that clients will have a

greater trust in the legal profession, and so that attorneys are more satisfied with their jobs and can make their mental and physical health a priority.

Again, this suggested approach does come with room for improvement. While there is more data on firms who have started to use AFAs, committing exclusively to AFAs is still a relatively new concept. Additionally, there is a lot of work required on the front end. Law firms will have to assess costs and determine what an appropriate flat fee or appropriate monthly subscription cost would be. While this paper outlined some of the most common AFAs, there are still several more options available. The correct one for any given firm may be determined by practice area. Or, a firm may have to implement more than one based on the scope of work it does for different clients. Adapting to an AFA model will look different for almost every firm and will likely require some adaptation along the way. Further, there may even be instances where implementing an AFA seems impossible, such as an extraordinarily complex litigation matter that may take an unpredictable amount of time. However, with law firm commitment and creativity, even the most complex matters could work under AFAs. Finally, while there is a plethora of technology available to help manage the billable hour, there is not currently a lot of technology available to help law firms implementing AFAs.<sup>168</sup> While this is still developing, firms may have to create their own systems to manage their clients and fees. However, if a firm commits to making AFA structures work and bearing the burden of the initial work, its attorneys and clients will be better for it in the long term.

## VI. CONCLUSION

Today's use of the billable hour is a threat to the legal profession and needs to be reevaluated. In order to effectively address these growing concerns in the legal profession, law firms need to focus on the wellbeing of their attorneys and their clients together. This can be done by reforming the way the billable hour is currently utilized or by law firms committing to exclusive use of AFAs. Regardless of which method a law firm chooses to combat the concerns associated with the billable hour, it is indisputable that changing the way firms operate is 100 percent necessary.

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<sup>168</sup> *Id.*