

The Legal Intelligencer

Bar Panel: Alternative Fee Arrangements, Flex Time Here to Stay

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Goodbye, billable hours. Hello, alternative fee arrangements.

The legal industry has not fully ended its relationship with the billable hour just yet. But a Philadelphia Bar Association panel — made up of a law firm leader, an in-house counsel executive, a law school dean, and an author on flex time in legal jobs — said this week that buyers of legal services officially want a divorce from the billable hour.

Carol Ann Petren, executive vice president, general counsel and corporate secretary of CIGNA Corp., said billable hours "will continue to decelerate" because they do not properly line up the incentives of both clients and outside law firms.

Therefore, the legal industry is also going to have to become more flexible on how work is conducted as long as the flexible work arrangements do not interfere with the work product generated for clients and as long as they do not destroy the collegiality of legal teams, Petren said.

Petren; JoAnne A. Epps, dean of Temple University's James E. Beasley School of Law; Abraham C. Reich, co-chairman of Fox Rothschild; and Deborah Epstein Henry, president of Flex-Time Lawyers, convened Monday to discuss the state of the legal industry in light of the publication last fall of Henry's book, *Law & Reorder: Legal Industry Solutions for Restructure, Retention, Promotion & Work/Life Balance*.

Reich asked Petren if she shared the point of view of other in-house counsel that they should not have to pay for the training of junior lawyers billing on client matters. He said the point of view is: "You're paying your first-year associates \$100,000 plus, why should we be paying for them to be trained?"

"Frankly, I think it's the biggest disservice to young lawyers ... I don't think it's a fair comment," Reich said.

Petren said that as CIGNA shifts away from billable hours to "value-based billing" she doesn't care who is working on the matter and she supports senior lawyers bringing junior lawyers to depositions and to hearings in order to learn while working on cases.

In contrast to the grim news of the past three years of law firm layoffs and the struggle of some law school graduates to find employment, the panel sometimes struck an optimistic tone.

Work-life issues have become more gender-neutral and the reasons for wanting flexibility have expanded beyond raising a family, Henry said.

With baby boomers dominating partnership ranks and often seeking to phase in retirement rather than drop full-time employment cold turkey, working flexible and reduced hours may become more palatable with "these revered senior leaders looking to work differently," Henry said.

Henry said the theme of the part of her book addressed to legal employers was to make the exceptions of alternative legal billing models and alternative work arrangements the new mainstream.

"The young lawyers don't want to come in because they can work remotely, do what they have to do and that's OK," Reich said.

Reich, Henry and Petren said that there is a recognition that lawyers will do better work if they are happy at their jobs. Reich suggested that some lawyers need to get out of the law firm sector if that's not what they want to do, while Henry said that there may be inherent problems in the way the billable hour model functions.

Epps, addressing the criticism that law schools are graduating too many students, said that she expects some law schools will go out of business in the country, but she wouldn't expect any of the Philadelphia-area schools to close their doors. But Epps said law schools are not likely to get much smaller because it's not in the history of educational institutions to reduce their student bodies.

Reich said when he started practicing law almost 40 years ago, he was told to not worry about a book of business and just to work hard.

Now "being a talented lawyer is no longer enough. You have to think about how you're going to make our organization a value proposition," Reich said.

As the fee structures in the law firm world change, Epps said, "I'm trying to not move from worried to sad" when hearing the mantra expressed by Reich and Henry that talent is not enough to find career success in the legal industry.

The industry has developed good mechanisms to diversify the profession, but Epps said she is worried that those mechanisms are under threat with the new focus on developing books of business.

On another dour note, Henry noted that women have made up 40 to 50 percent of law school classes for 25 years, but 30 percent of women lawyers leave the profession.

"If the profession is underutilizing half of its talent pool that's an inefficient model," Henry said.

Reich said that law firm leaders want to do the right thing, but it's important to have research and events like Tuesday's event keeping the issue of diversity at the forefront. Such agenda-setting initiatives "smack you in your face and say, 'Yo, you're losing a third of your women,'" Reich said. •