

## Different Firms Take Different Approaches

According to a recent survey of 240 managing partners of large and mid-sized law firms, the two current trends that are most likely to permanently change the legal profession are “focus on improved practice efficiency” and “more price competition.” Ninety-four percent said the former was a permanent change and 90 percent thought the latter was permanent too. (*See Altman Weil, “2011 Law Firms in Transition,” <http://www.altmanweil.com/LFiT2011/>.*)

In order to succeed in today’s competitive world, law firms need to be able to better estimate their costs before a matter begins. Bid too high, and they will not get the work. Bid too low and they may land a fixed-price job at a price that causes them to lose money.

But it is very difficult for law firms to know what the cost will be for a particular matter or a group of cases. Part of the problem lies in the unpredictable and adversarial nature of many legal matters. It also lies in the way legal matters have traditionally been managed, with more focus on quality and on eliminating risk than on cost.

In the past, law firms generally made money simply by billing more hours. When firms work on a fixed-price basis, however, putting in more hours can be the worst thing to do.

Future cost predictability starts with understanding the past. With the rise of alternative fee arrangements (AFAs), decreasing realization, and client pressures to cut costs, many law firms have become motivated to track legal costs in ways they never have before.

One obvious place to start is by tracking spending with UTBMS, the Uniform Task-Based Management System. The next section reviews what UTBMS codes are and where

they came from. If you’d prefer to focus on how they are being used today, you can skip ahead to the following section, “Three Key Questions About Task Codes.”

### A Brief History of UTBMS

According to the UTBMS web page ([www.utbms.com](http://www.utbms.com)), “In the mid-1990s major US law departments and insurers wanted to better understand the services provided by outside counsel...[Therefore], a joint group from The American Bar Association, the Association of Corporate Counsel, and PricewaterhouseCoopers was formed to create a unified electronic billing standard.”

The idea was to create electronic time entries that tracked the time spent by phases and tasks using a system of standard codes. The committee originally developed four sets of codes: litigation, bankruptcy, counseling, and “project codes” for transactional work. Later, succeeding committees approved code sets for patents, trademarks, and e-discovery, and also issued a revised set of the project codes. (To this day, there are no approved UTBMS code sets for labor and employment, real estate, and many other areas of law. And, if you ask experienced lawyers about the “project” code set, most will tell you that it does a woefully inadequate job of codifying most transactions, whether they are simple or complex.)

In UTBMS, each time entry has three components: a phase code, a task code, and an activity code. For example, litigation was divided into five phases: case assessment, development and administration (coded L100), pre-trial pleadings and motions (L200), discovery (L300), trial preparation and trial (L400), and appeal (L500).

Each of these phases was further broken down into tasks. For example, the discovery phase included tasks for written discovery (L310), document production (L320), depositions (L330), and more.

Phase and task codes were designed to be independent of activity codes, which seek to further define the nature of the work that an attorney performed on each task. There are eleven activity codes, and they apply across the board to all code sets, starting with A101 for plan and prepare, A102 for research, and A103 for draft and revise. So, for example, a lawyer would use two codes on a timesheet when preparing for a deposition: the activity code A101 for preparing, and the task code L330 for a deposition.

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Among other things, the system was intended to allow for comparison of costs and services across providers and better forecasting of costs for similar matters. The usefulness of the data to the client and the law firm would depend on consistency in coding both within and across law firms.

Initial reaction to the system was lukewarm at best. Some clients, mostly bigger clients with large legal spend, were early adopters and mandated use of the system by their outside counsel for designated engagements, mostly relating to litigation. Law firms tended to only employ the UTBMS when required to do so by the client, foreseeing little use for such data in the good old days prior to 2007.

Few law firms embraced the system across their practices or invested the training time to assure consistency of coding among their lawyers and other timekeepers. Even fewer

clients used the data to measure law firm performance or insisted on strict adherence. Bills got paid regardless of whether the time was coded to the technically correct phase, task, or activity.

When clients required the use of these codes for e-billing, many seemed to think that the U in UTBMS stood for “unique” instead of “uniform.” Each thought that their particular situation was so special that they needed to make adjustments to the code sets for their organization.

Are you confused yet? Imagine the poor junior associate who devoted months of work to a complex legal matter and had to classify the time according to multiple codes, in six-minute increments. Now imagine that the exact same activity might be coded differently if the associate worked for two different clients who had slightly different versions of UTBMS.

Some clients felt they were unique, so they developed entirely new task code sets not based on UTBMS at all. One lawyer we talked to recently described an IP client who had created a coding system “with hundreds of categories” and “tried to impose this on all their outside law firms. This turned out to be a complete waste of time.”

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The result of all this complexity has been that UTBMS codes never caught on the way the original committee had hoped.

In 2009, an article in *ACC Docket* noted that, “Much of the initial enthusiasm has faded, as law firms found that lawyers often

cannot be relied upon to accurately enter two codes for each time entry, and clients found the data untrustworthy, difficult to analyze and/or inconclusive.” (Chris Marlin, Stuart Roth, and Rob Thomas, “Ebiling 2.0: A Novelty Becomes an Essential Management Tool,” *ACC Docket* (May 2009): 47)

In most law firms, tracking time by phase and task codes became the exception, not the rule. The vast majority of clients currently do not use e-billing and do not require task codes at all.

These days, however, a new pressure to use task codes is coming from the law firm side as firms see the value of tracking time better in order to respond to client demands for more predictable costs. There is also renewed interest on the client side as e-billing software has evolved, allowing for integration of billing and other functions such as case and matter management. Today’s systems generally conform to the LEDES (Legal Electronic Data Exchange Standard) file format standards. Many LEDES clients use UTBMS, although some don’t.

Increased interest in project management also has advanced the cause as has pressure on general counsel to more actively manage and reduce legal spend. Many law firms are seeing increased client interest in the real-time communication of budget to actual costs on legal projects.

### Three Key Questions About Task Codes

Increased client interest in budgets and alternative fee agreements has large law firms analyzing past, present, and future work to get a handle on what it costs to complete certain transactions, or conduct due diligence, or prosecute or defend a lawsuit. As firms break down large complex legal matters into smaller sub-tasks, they must answer three key questions:

1) Should they use UTBMS or another system?

- 2) How granular and detailed should the codes be?
- 3) When estimating future costs, how much weight should firms put on past experience?

Different firms have different answers to each of these questions.

### UTBMS or an Alternative?

Michael Tuteur, the head of litigation at Foley & Lardner, says that at his firm the UTBMS codes “are what’s principally being used” to understand past costs and to help clients estimate future legal costs. “Most of the time, the basic task codes are used, not the sub-codes.”(In the interests of full disclosure, we have consulted with Foley & Lardner on both legal project management and on their use of task codes.)

UTBMS codes “are not perfect,” Tuteur says, “but they can help you slice and dice so you can tell clients what a summary judgment or a deposition will cost. The challenge is that you need to be systematic, you need to learn how to code everything in a uniform way.”

He cites the example of how doctors use CPT (Current Procedural Terminology) codes to classify medical, surgical, and diagnostic services. CPT coders are trained to use the medical system, and Tuteur has been training his assistant to review UTBMS coding for one large client before bills are sent, so that the reports from all lawyers on his team are consistent.

Tuteur says this system is not the “pure answer, perhaps,” but that it does provide reliable data for his clients without imposing too great an administrative burden on busy lawyers.

At Nixon Peabody, litigation partner Sam Goldblatt has been using the UTBMS task codes ever since they were adopted in the mid-1990s. He is an enthusiastic supporter of

the system and of the use of past phase and task data to forecast future fees and expenses.

Recognizing that consistency in execution is key, he says that “everyone working on matters with me charges time to the litigation phase and, within that phase, to task codes. All clients receive bills coded to the UTBMS, regardless of whether bills are sent electronically or on paper.” He adds that clients readily accept bills in this format, even if they don’t request them initially, once he explains the value it adds in budgeting, tracking, and forecasting.

“There is no doubt that phase and task billing dovetails nicely with detailed phase and task planning, resulting in a more effective and systematic approach to litigation,” he says. Properly implemented, the UTBMS system could allow clients to compare cost-effectiveness among law firms, at least at a high level. “I welcome the idea of my clients comparing our firm to others using comparable phase and task code sets,” says Goldblatt.

At Fenwick & West, a task force is spearheading efforts to develop a “rational process” for the use of new business models such as alternative fee arrangements, according to partner Mark Stevens, an executive committee member and chair of the firm’s pricing and business initiatives committee. The firm decided to start with the UTBMS codes and then develop an overlay of additional task codes in areas such as corporate transactions, where it found the UTBMS codes not specific enough.

“We realized that we as a firm and as an industry will be pushed by clients to be much more sophisticated,” Stevens says. “Breaking up our work into discrete units and into functional descriptions is the only way we can do that. So now we know that a complaint is, historically, X number of dollars, and a Markman hearing is Y number of dollars. We have developed a very large data set of hundreds of matters, including but not limited to different types of litigation, initial public offerings and other securities

offerings, venture financings, merger transactions, and transactional IP such as patent, trademark, and licensing.”

Stevens says this work “is never done” because “it’s not a project, but a shift in how we do business. This is integral to legal project management, integral to process improvement, and it drives efficiency at the firm.”

However, Stevens adds, although the process started with the UTBMS codes, “we began to see blank spots” that were not covered adequately by the codes. “So we added our own set of proprietary task-based codes that are standard within the firm.” For example, UTBMS has a category for “document review,” but that can cover a great many types of work, from very basic paralegal work to highly sophisticated determinations about documents. The process, Stevens says, is so specific that each practice group at Fenwick & West uses its own proprietary task-based codes when needed.

While some firms use UTBMS in its pure form, and others add overlays, a third category of firms are developing their own task code systems for internal use.

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At Miami-based Bilzin Sumberg, partner Al Dotson, head of the land use and government relations practices, notes that his firm decided, on a practice-group-by-practice-group basis, not to use UTBMS, but rather to develop its own proprietary in-house method of coding. (In the interests of full disclosure, Bilzin Sumberg is also one of our legal project management clients.)

“We looked at other methods, but we felt it was important for us to tailor our task

codes to reflect what we need to measure and what we need to report to our clients,” Dotson says. “Each practice group has its own set of codes, with some commonalities.”

Similarly, at DLA Piper, Baltimore-based Mike Barnes, Senior Director of Business and Program Services, says some type of coding is crucial because, “there’s no other way to capture the tasks that attorneys perform.” But if lawyers are given 600 possibilities for coding their time, they will throw up their hands and not use the system at all. So Barnes and Stacey Snowman, a partner in the firm’s Palo Alto office, went to the heads of each practice group and had them come up with 12 to 15 codes that are unique to each practice group’s work.

“For the most part, our attorneys come up with the proposed pricing for each matter,” Barnes says. “Other folks are brought in when the topic is more complex. Eventually, we will have a group of non-attorney staff who will focus on pricing. After all, project management is not a core skill for many attorneys and providing strong administrative support in this area can help them focus on delivering excellent legal work. You can be more profitable working that way.”

## Detail and Granularity

Whether firms start from UTBMS or another system, they ultimately must decide on exactly how detailed the tracking needs to be.

At Baker Donelson, partner David Rueff, the firm’s legal project management officer, is one of a very small number of lawyers who has been certified as a Project Management Professional by the Project Management Institute. (Since PMI certification requires 35 hours of education, passing a demanding multiple choice exam, and 4,500 hours of experience leading and directing projects, it’s unlikely that large numbers of lawyers will obtain this particular certification.) He is responsible for the

implementation of BakerManage, a proprietary legal project management process that has been constructed in the Microsoft SharePoint environment to make it accessible to all attorneys across the firm. The system is currently being implemented in both litigation and transactional matters.

An important part of the BakerManage process involves budgeting, tracking time to budget, and identifying best practices. In developing BakerManage, Baker Donelson started with the UTBMS codes and then developed many further breakdowns and refinements.

Level 1 within BakerManage includes the UTBMS phase and task codes such as L300 Discovery (a phase code) and L350 Discovery Motions (a task code). Then the system breaks the specific attorney assignment out much further into a unique firm phase and task code, such as HA11.830 Protective Order. That is considered Level 2.

Finally, Level 3, which is also used as a to-do list in any project, breaks the time down further into drafting the protective order, analyzing the response to a protective order motion, preparing a reply, and so on. Time is not coded at Level 3 but attorneys are encouraged to start budgeting at this level in order to make the budget more accurate.

“Within the ABA codes, a lot of descriptions can fit within the broad concept of ‘Discovery Motions,’” Rueff says. “So we had to mine that data, post-engagement, to see precisely how the time was spent.”

“Attorneys are asked to track their time at Level 2. We know that Level 2 is easy for attorneys to understand and categorize, and not too detailed,” says Rueff. “We believe that a more accurate budget can be arrived at by using Level 3, however, and we try to prepare our budgets at Level 3. When we are estimating a fee for an alternative fee matter, we look back at historical data and try to

develop a phased budget at Level 2 or, better, at Level 3.”

This very granular system reflects one end of the continuum of how detailed the coding can get. At the other end of the continuum is DLA’s system. As Mike Barnes summarizes this philosophy, “I don’t need it to be perfect. I just need a simple tool that captures a large percentage of the attorney time.” For pricing, DLA uses “a simple, straightforward budget tool, starting with certain assumptions based on past work and then changing certain variables.”

### Using Past Costs to Predict the Future

Large law firms have data from thousands of legal matters and millions of attorney hours. When they first get serious about estimating future costs, it seems obvious that it would be useful to mine this data to determine what typical matters have cost in the past.

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But, like many things, what sounds easy in theory can be very difficult in practice. Foley’s Michael Tuteur offers an example. “Clients want to know what a summary judgment costs. That sounds so reasonable. But when you try to go back into the data you have, you find that lots of data is very hard to interpret.”

If a firm has handled hundreds of mergers, how do you categorize the differences between them? More importantly, when the bills were sent, no one was thinking about documenting reproducible tasks. It can be extremely challenging to figure out exactly what was done and when.

For these reasons and others, Dotson says that at Bilzin Sumberg they decided that “an effort to go back wouldn’t be helpful. The time entered wasn’t described with task codes in mind and we’d rather not expend the resources guessing. We’re starting to secure enough data on matters in progress so that we can provide better estimates in the future.”

A bigger argument against investing a lot of time and money in data mining is that the way legal work was performed in the past is different from the way it will be performed in the future. In today’s competitive marketplace, many firms are looking for altogether new ways to increase efficiency and improve business processes.

As Lisa Damon, the partner who headed the development of Seyfarth Shaw’s widely publicized SeyfarthLean program, has said, “If you get a group of lawyers and staff into a room to discuss how to make things more efficient, it’s very easy to find savings.”

When our firm, LegalBizDev, offers legal project management coaching, we sometimes include an exercise in which lawyers select a significant past matter, and assume that the same client comes back to retain the firm for a nearly identical new matter—but only if the firm is willing to perform the work for a fixed price that is 10 percent or more less than last year’s cost.

The question is, what could they do differently to deliver the same quality in fewer hours?

In our experience, this exercise is always an eye opener, and it is often not difficult to perform. The answer to more predictable and lower costs usually starts with defining scope more clearly in the engagement letter, and goes on to include a better definition of assignments, better management of the team, monitoring the budget, and quickly communicating with the client when significant issues arise. In our exercise, simply doing those things can often

lower cost estimates by 10 percent, 20 percent, or more.

Clearly, some knowledge of the cost of past matters is absolutely necessary if you want to predict future costs. But it is easy for firms to waste a lot of time and money mining data about outdated inefficient ways of doing business, when they could get far better predictions by focusing on the task breakdowns and budgets that they should be planning for the future.

### The Benefits of Tracking with Task Codes

When we interviewed experts for this article regarding the best way to use task codes, it quickly became clear that the details varied from firm to firm and even from practice group to practice group.

If in doubt, we recommend a “less is more” approach. If a coding system gets too complex for lawyers to provide consistent data, it will not provide reliable information for planning the future. As programmers like to say, “garbage in, garbage out.”

But when a group implements a coding system that they can use consistently, the payoff will be enormous in terms of their being able to improve predictions of what legal matters will cost. Tracking expenditures in real time by task codes will also make a huge difference helping them live within the original budget.

Consider the example of Nixon Peabody litigator Sam Goldblatt. “As lead relationship partner for several clients over a long period of time, I was an early adopter of UTBMS and have used these codes religiously. As a result, we have detailed cost information for cases in my areas of product liability, toxic and commercial torts, broken down by phase and task and a solid

database upon which to construct budgets, forecasts, plans, and price alternative fee arrangements. The best proof is experience, and clients know it.”

A solid database of task-coded data also provides an enormous potential marketing benefit. Every legal client wants more predictable costs these days, and many are looking for lower costs. Task codes are an important part of the legal project management process that enables firms to meet both goals. They also provide the transparency that so many clients are looking for.

Rob Kahn, chief marketing officer at Fenwick & West, says that, as a result of the consistent, detailed use of budget tracking, clients are pleased “that we are now able to better explain how our pricing system works.”

As Al Dotson at Bilzin Sumberg sums it up, “It is unfortunately common practice to provide a client with only an hourly rate, which provides little to no information about what the client cares about: the value of the services he or she is seeking. A comprehensive roadmap, on the other hand, provides the client with information based, not on guesstimates, but on solid data, regarding what is likely to occur—at what time, and at what cost.” ■

—Jim Hassett and Jonathan Groner

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