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Time Is Money: Technology Can Help You Create More of Both

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TIME IS MONEY

**Technology Can Help You
Create More of Both**

By Benjamin H. Barton

"The future ain't what it used to be."

—Yogi Berra

If you work as either a small firm or solo practitioner, you know that times are tight. In my 2015 book *Glass Half Full: The Decline and Rebirth of the Legal Profession*, I use IRS data going back to 1967 to show that over the last 50 years, solo practitioners have lost about a third of their earning power. The book then describes some of the trends that have caused the decline: too many law schools and too many law grads; the rise of online competitors like LegalZoom and Rocket Lawyer; and various "tort reform" and pleading reform efforts that have made litigation less lucrative.

I generally get two responses to these data: First, how can lawyers be struggling to earn a middle-class living when they charge hundreds of dollars an hour for work? And second, what can lawyers do to stem the decline and earn more money?

What's Going On?

"You can observe a lot by just watching."

—Yogi Berra

Two recent Legal Trends Reports by the software company Clio help answer both questions. But first, I want to clarify that I have no commercial or other interests in Clio and have not even used its software. I just love its two reports.

Clio is a legal practice management software company. Clio helps lawyers, mostly small firms and solo practitioners, to track their time, send out bills and collect payments, among other things. When lawyers use the software, Clio asks if they are willing to share an anonymized version of their data, covering issues like how many hours an individual lawyer has worked, or billed, on what types of work, and whether the client eventually paid for the work. No individualized client information or data is shared.

Clio then gathered this data and aggregated it into two fascinating reports. If you run a small business, you know that one of the challenges is to fight off larger competitors that have more access to data simply because they are larger. For example, Amazon knows more about what books sell to which people than any individual bookstore could ever know. Likewise, a large law firm has more information on the business of law than any small firm, simply because it has more lawyers doing more work for more clients to analyze. The Clio report is a first chance for small firm and solo practitioners to see what one can learn from a big-data look at their business. The results are both upsetting and enormously helpful.

In 2016, Clio presented its first Legal Trends Report. It aggregated and anonymized data from approximately 40,000 users and found good news and bad news. Average billing rates are the good news. Nationwide, the average hourly rate for solo practitioners/small firm lawyers was \$232 an hour. These rates run from a high of an average of \$281 an hour in Washington, D.C., to a low of \$129 an hour in Iowa. Tennessee's average rate was \$173 an hour, 42nd in the country, while Oregon's average rate was \$190 an hour, making it 32nd. Nationwide, bankruptcy lawyers averaged the highest rates at \$275 an hour, and criminal defense lawyers were the lowest at \$148. If you are interested in the market for

legal services in the United States, I strongly suggest downloading the Clio report and poring over the various graphs laying out this data; they are fascinating.

Some simple math suggests that small firm and solo lawyers charging these rates and working reasonably hard should do pretty well. Assuming that a lawyer works 40 hours a week, 48 weeks a year, or 1,920 hours a year, which most estimates suggest is on the low side — surveys of lawyers show they tend to take fewer vacations and work more weekends than most other workers — if a lawyer billed half of those hours (20) at an average rate of \$232, she would make \$222,720 a year in gross earnings. Even if she charged a bargain rate of \$100 an hour, she would still gross \$96,000 for that amount of billed work.

Regrettably, the Clio report suggests that Main Street lawyers do not bill 20 hours a week. The report separates out the "utilization rate," which is the number of hours the lawyers billed internally; the "realization rate," which is the amount of that billed time the lawyers actually sent out to clients; and the "collection rate," which is the amount the lawyers were actually paid (the amount that they collected from clients).

Every lawyer experiences some slippage between their utilization rate and their collection rate. That slippage is just a cost of doing business. What is startling about the Clio data is just how little time small firm and solo practitioners spend on billable matters:

- Utilization rate: Lawyers logged 2.2 hours of billable time per day (28 percent of an eight-hour day).
- Realization rate: Lawyers billed 1.8 hours per day (81 percent of actual hours worked).
- Collection rate: Lawyers collected payment on 1.5 hours per day (86 percent of actual hours billed).

This helps explain why solo practitioner and small firm lawyers have had such a hard time making a decent living. They are spending too little of their time practicing law and too much of it doing everything else.

Clio published a 2017 report updating the figures and including a survey aimed at finding out how these lawyers are actually spending their time. If you are, or even know, a solo practitioner, you know they have very, very hard jobs and work long hours. Small firm and solo practitioners are the last of the generalists, so they have to keep abreast of multiple areas of the law. Their clients also tend to be less wealthy, so they have to handle cases quickly and efficiently, regardless of the legal or factual complexity involved. And they are more likely to have to run their own shop. Ask a solo practitioner about tech support or hiring a full-time employee and watch their eyes glaze over.

So, you will not be surprised to hear that while these lawyers are spending a small percentage of their time doing billable legal work, they are not spending the rest of their days eating bon bons. To the contrary, 68 percent of these lawyers agree "there are not enough hours in the day."

Here are the survey results on how they spend their remaining working hours: These lawyers spend a third of their time on business development (finding clients). They spend about half of their time on administrative matters: keeping their license

current (16 percent); managing an office (16 percent); generating and collecting on bills (21 percent); and related tasks. That leaves roughly 28 percent of their time for substantive legal work — closer to 20 percent if you count just the billable hours that translate into client payments.

These numbers do matter by firm size, suggesting efficiencies of scale. Solo practitioners suffer the lowest utilization rates. By contrast, 10-lawyer firms are more than twice as efficient as one-lawyer firms.

Pause for a minute and let these statistics set in. The current business model for small firm and solo practitioners is so inefficient that they spend only one-fifth of their busy days doing work they are paid for, the work they presumably went to law school to perform. No wonder earnings are down and lawyer unhappiness is up!

Time to Take Some Measurements

“If you don’t know where you’re going, you’ll probably end up someplace else.”

—Yogi Berra

Whatever size law firm you work at, I bet you worry that you, too, spend too little of your time on billable work and too much on extraneous activities. I bet you are also busy enough overall that you’ve despaired of taking the time to figure out how you actually use your time. This is our first mistake. Technology makes it easier than ever before to measure how we spend our time and our money, and that measurement alone is a necessary first step to running a more profitable practice.

Start by utilizing one of the time-tracking apps available for your phone or computer. If you are already systematically gathering your time to bill by the hour, all you need to do is expand your purview for a week or two to include/code the rest of your time. Apps like Rescue Time can measure how you spend your time online automatically. Clio or other programs can measure every minute at work. Even an old-fashioned handwritten time journal works. If you want to read more, there is a great July 5, 2017, *New York Times* article called “Where Does the Time Go? You Can Find Out If You Dare,” that lays out the entire process.

I can report that my personal results were moderately upsetting. I apparently spend an inordinate amount of time online reading about Tennessee Volunteers football. If you have followed the team since 2008, you well know what a horrible waste of time that has been.

But you cannot effectively fix what you have not measured, so an accurate picture of how you spend your time at work is a necessary start. Then you need to attach the time spent to the results you seek. Are there certain business development efforts that are more fruitful than others? Are there types of work that are more lucrative or easy to collect? Nationally, Clio aggregates the average value of multiple different types of cases. On average, traffic cases are worth the least and personal injury cases the most, for example. What are the numbers for your own practice? This is where the “you can observe a lot just by watching” advice is so apt for lawyers.

Consider the finding that lawyers are spending a third of their time on business development, more than they actually

spend on billable legal work. Fifty-four percent of these lawyers report spending money on advertising. Business development is certainly the lifeblood of any legal practice, but no one should spend this much time and treasure blindly. Ninety-one percent of survey respondents could not calculate a return on their advertising investments, and 94 percent do not know what it costs them to get a new client. Imagine that you were meeting with a startup business that did not have an explicit business plan, did not have particular sales targets and was spending time and money on advertising/sales efforts without measuring how those efforts were paying off. I imagine you would be quite concerned about the long-term viability of that business. And yet, many law firms, including some large corporate law firms, operate on a similar model.

Measuring how you spend your time and money should also drive you to find ways to reduce your administrative load. Unless you are a special type of masochist, it is unlikely that you like running the business side of your practice: counting and billing your hours, then following up with the clients, let alone paying the rent and making payroll. All of these seemingly necessary tasks take time away from work that is more important emotionally, intellectually and most importantly, financially — billable legal work.

When I present this data to my law students, I am very direct and honest with them. My first piece of advice is that if they are going to go out on their own, they must avoid having an office or a staff or any overhead at all for as long as possible. If their practice grows to a point where more overhead is necessary, then they should always start with nonpermanent and tech-driven solutions. I even give the students who are going to join firms as associates the same advice. Law firms are just large solo practices, and the sooner they really bear down on the cost side of the ledger, the better off all of the lawyers will be.



More established lawyers cringe when I tell them that half of the key to a more profitable practice is to eliminate all unnecessary (and even some necessary) overhead. They hate this advice because they know a law office of any size is a very basic business. Profits/earnings are the difference between your costs and your gross revenues. There are only two ways to increase profits/earnings: Lower costs or increase revenues.

Both are hard, but technology can assist on both ends. Technology can help replace overhead and can make your business practices more efficient. Technology can also help you do more billable work in fewer hours. Working off of fillable forms in creating legal documents is a classic example.

The bottom line is that you should take a portion of your very precious time to consider how you are spending your time. Learning the scope of your time problem is the first step to a solution. Then look at the actual hours you spend and ask, "Which of these tasks are appropriate for a lawyer, and which could be more profitably handled by a nonlawyer or technology?" Do the same for your monthly outlays. Ask yourself, "Which of these line items are critical and/or enjoyable, and which can I cut or replace with technology or sharing expenses with others?"

This should free more time for billable work and for finding more billable work. Here you again investigate the data and react accordingly. Measure what business development efforts and expenses are successful and which are not, and do more of what works. Decide what practice areas are most profitable and look for ways to find more of that work. One obvious way is to use technology to do your work more efficiently, and then charge less to do more of it.

It is simple math. If you spend 50 percent of your time instead of 20 percent on billable work, you can charge less for that work and still make more money. And, weirdly, you should be happier too, since legal work is actually fun when shorn of all the other freight that comes with it.

The secret sauce to this process is that lawyers can improve their bottom lines at the same time that they improve their lives and America's access to justice crisis. How? Lawyers went to law school to practice law, not run a small office, so more time doing legal work is likely to improve happiness. Doing more work for less cost will also drive profitability and client satisfaction.

Lastly, it can allow lawyers to serve the many unmet legal needs of the middle class. Talk about a win-win proposition. All we need to do is measure our time and spend it more efficiently. ■

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Ben Barton is the Helen and Charles Lockett Distinguished Professor of Law at the University of Tennessee College of Law, and a national voice on the evolution of legal technology. He is the co-author of Rebooting Justice and the author of Glass Half Full: The Decline and Rebirth of the Legal Profession. Barton has worked as an associate at a large law firm, clerked for a federal judge, represented the indigent for 12 years as a clinical law professor and now teaches torts and advocacy evidence. He can be reached at bbarton@utk.edu.



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