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Using Task Codes in Law Firm Budgeting: What Works and What Doesn't

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In order to remain competitive in today's ever more challenging marketplace, law firms are being forced to predict and control legal costs better than ever before. This has led to a resurgence of interest in task codes, which were developed in the mid-1990s by a committee formed by the American Bar Association, the Association of Corporate Counsel and outside experts.

The goal of the original UTBMS (Uniform Task-Based Management System) task codes was to standardize the classification of the many sub-tasks in complex legal matters for e-billing. This would enable clients to collect data on exactly how much they were being charged for each legal sub-task, and ultimately to manage those costs. At first, there were only four sets of codes: litigation, bankruptcy, counseling, and "project codes" for transactional work.

The initial response of law firms to UTBMS was lukewarm at best. Until recently, UTBMS codes were used almost exclusively by large clients who required law firms to submit electronic bills, especially in insurance and banking. But many clients seemed to think that the U in UTBMS stood for "unique" instead of "uniform," and fine-tuned the codes to fit their special needs. Most law firms saw UTBMS codes as just another hurdle they had to jump to get paid, and put little or no effort into assuring consistent coding or analyzing the data for their own purposes.

All this began to change with the economic downturn of 2008, when clients in a wide range of industries began demanding lower costs and more accurate initial budgets. Some law firms considered requiring the internal use of task codes whether clients demanded them or not so that they could better predict and track legal costs. In addition to the original four sets of codes, the UTBMS web page now includes

standards for eDiscovery, governance risk and compliance, intellectual property, workers' compensation, and mergers and acquisitions. However, firms that wanted to track the cost of work in other areas had to develop their own code sets, or use non-UTBMS codes that they developed themselves or purchased from vendors.

In the last few years, the question of how—or even whether—to use task codes has become one of the biggest issues in the emerging field of legal project management (LPM), which aims to increase client satisfaction and profitability by improving efficiency. It can require a significant amount of effort to get lawyers to agree on a set of task codes for their practice, and then to use them properly. Therefore, firms that aim to improve LPM must decide whether task codes are their highest priority, or whether short-term efforts should focus first on other issues such as improved definitions of scope, client communication, and budget risk analysis.

To assess the state of the art for task codes, we recently interviewed experts from 11 large law firms that are leaders in this area (Akin Gump, Bilzin Sumberg, DLA Piper, Fasken Martineau, Loeb & Loeb, McCarthy Tétrault, Mintz Levin, Nixon Peabody, Quarles & Brady, Reed Smith, and Thompson Hine). To maximize the frankness of their responses, we promised that while their firms would be listed in our summary, no quote would be attributed to a particular person or firm.

This article summarizes the six major task code recommendations that emerged from this research. For firms that are just getting

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started with LPM, the article concludes with a discussion of how to decide how much effort should be devoted to task codes. When the fourth edition of our *Legal Project Management Quick Reference Guide* is published in fall 2016, it will include a full analysis of these interviews, as well as conclusions from published articles by other experts, and from our own experience in coaching hundreds of lawyers in LPM.

1. Use standard UTBMS codes whenever possible.

As noted above, expert committees have developed standard codes in a few key areas. However, clients in these areas often modified these codes to better fit their situation, and when law firms started using them internally, many succumbed to the same temptation and customized the codes to better fit their needs. The experts we interviewed agreed that while the UTBMS codes may not be perfect, they have the great benefit of standardization, and it's best to stick with them.

"If we had it to do over, the firm would have turned more quickly to existing task codes like those of the ABA, rather than starting from scratch," one interviewee said. Said another, "Originally, the firm developed its own set of task codes from scratch, but at a certain point, we realized that the ABA codes were similar to the firm's own codes and were required by some clients. So we transitioned to the use of the ABA codes."

2. Avoid excessive detail; focus on phases, not tasks.

In UTBMS, each time entry has both a high level phase code and a more detailed task code. For example, litigation was divided into five phases: case assessment, development and administration; pre-trial pleadings and motions; discovery; trial preparation and trial; and appeal. Each of these phases was further broken down into three to seven tasks.

Many lawyers are detail-oriented by nature, so it is not surprising that when they modify existing codes or create new sets, they often increase granularity by adding more and more new task codes. Most of the experts we interviewed believe, however, that in this case "less is more." Some have entirely given up on task codes and simply look at phases.

"We've learned that we get better data with more general codes that are not too granular, because this makes it easier for lawyers to code their time," said one respondent. "In the last 12 to 18 months, we have undertaken an effort to customize the task codes for our own purposes and to make them less granular and broader, so that they can be used more easily," said another.

3. Train lawyers and staff to use the codes properly.

No matter what system is used, some experts have estimated that as many as 60 to 80 percent of past time entries have been coded inaccurately at the task level. Several of the people we interviewed, however, reported that accuracy can be increased if time is taken to train lawyers to use task or phase codes properly. One interviewee said, "When we first started using task codes, we had problems with consistency. Five lawyers who attended the same meeting sometimes coded their time five different ways. That is not happening anymore, because now at the beginning of every project everyone involved discusses all the possible codes, to put everyone on the same page."

The role of staff should not be ignored. We have worked with several clients who have trained administrative staff to save lawyers time by entering the codes and have had great success in doing so.

4. Use task codes selectively rather than on every matter.

While some of the experts we interviewed feel strongly that task codes should be used for every matter, they were in the minority. Said one expert, "Probably about 30 percent of our firm's cases are phase coded at this time. The firm requires phase coding for all new matters involving two of its largest clients, because these clients require budgets by phase for all their matters." Said another, "Only about 10 percent of our matters are coded, but they represent 35 percent or so of the dollar value, mostly in litigation. And as many as three-quarters of the cases that are task coded are done at the direction of the client, while the other one-quarter are done at our direction."

5. Limit retrospective analysis of past matters.

While some firms begin by creating a database of the costs of past matters, most of the people we talked to felt it was not worth the effort. "Our firm does not go back into old closed files and try to assign task codes in retrospect. That just isn't possible on any realistic basis. Not enough value will be added," said a typical interviewee.

Aside from the amount of time that it would take to code past matters, there is a second reason not to invest in this: The whole idea of legal project management is to find ways to reduce costs by working more efficiently. Why devote resources to studying what things cost the old way when the same time and energy could be invested in finding new and better ways of doing things?

6. Create an internal code for work that is out of scope.

Some law firms have created a special code to internally track work that fell outside the scope defined by each engagement letter. That makes sense because at the beginning of every matter, lawyers should be asking clients about their goals and expectations, so that the legal team delivers what the client needs and is willing to pay for. A failure to get a clear understanding at the beginning of a matter can lead to unnecessary work, strained client relations, and ultimately to reduced realization and profitability if clients refuse to pay their bills.

Any system that requires lawyers to classify some hours as out of scope starts with a huge benefit, if for no other reason than it requires lawyers to be clear about the distinction.

For firms that are just getting started

While some firms have made significant progress with task codes in the last few years, many others are just starting to make decisions about their general approach to LPM. What should they do?

Clearly, task codes are an important part of the LPM toolbox. For lawyers who work in areas in which UTBMS codes have been developed, the single most important benefit of task codes may be the fact that they provide a ready-made detailed work plan (what LPM professionals call a work breakdown structure). Lawyers

can immediately start using them to plan a new matter without reinventing the wheel.

Still, many questions remain in the details of when and how to use task codes, especially in practice areas where there is no standard set of UTBMS codes. Perhaps the most critical question is whether every lawyer in a practice group or a firm should be required to use the same codes in the same way or whether individual lawyers should be permitted or even encouraged to use their own systems.

The benefits of a single universal system are obvious to anyone who wants to analyze and compare costs. However, many lawyers resist using a pre-existing set that is not to their lik-

ing, or fail to use it properly. The result can be a huge amount of effort to create a system that produces “garbage in, garbage out.”

New task code systems will certainly require a significant amount of time and effort which could be directed toward other LPM areas instead.

In the recent study we described in the book *Client Value and Law Firm Profitability*, AmLaw 200 managing partners and law firm leaders said that the two most important LPM issues they faced were defining the scope of matters better at the outset and communicating better with clients. Investing time and energy into firm-wide task codes could easily distract from those two key issues. Not

to mention the many other issues that arise frequently in LPM, such as improved delegation, personal time management, internal team management, budget risk analysis, negotiating changes in scope, and much more.

Different lawyers will inevitably reach different conclusions about task codes because they are in different situations. While many firms are looking for a single LPM solution in which one size fits all, the inconvenient reality is that in order to improve their competitive position, each firm, each practice group, and sometimes each lawyer must decide for themselves where to best invest their LPM time and energy.

For more details about this research, contact Elisabeth Westner (ewestner@legalbizdev.com, 617-217-2578) for a complimentary 18 page excerpt from the fourth edition of the *Legal Project Management Quick Reference Guide*.