

Peer to Peer

ILTA'S QUARTERLY MAGAZINE



Until the AI Revolution Disrupts Timekeeping, Make the Most of Phase Codes

BY AILEEN LEVENTON AND JENNY ANNE HORST-MARTZ

It seems as if useful artificial intelligence (AI) that would improve the business of law has been just around the corner forever. Great strides have been made, particularly with regard to consistent categorization of similar documents in e-discovery, due diligence, contract management and (cue Big Brother) logging of phone calls and websites visited. Still, much remains to be done before we can expect machines to interpret what lawyers do in real time and transform this data into an invoice for the client - or reveal the cost of the average deposition.

Meanwhile, there is a fairly straightforward way to capture what a lawyer does and categorize it as you go - phase codes. The critical trick is to set up codes sensibly at the start of a matter and use them well.

Codes are fundamentally about communication. And only with effective communication can we get everyone on the same page: clients have visibility into the work that is performed, lawyers have insight into what they are doing in the context of the matter, and both law firms and their clients are better able to manage the business of law.

This article will explore some best practices to make the most of phase codes. We predict that these practices will still be needed after AI takes hold in timekeeping.

Data, Timekeeping, and Efficiency

Any serious attempt to ensure efficiency in legal services requires analysis of reliable data.

A fundamental unit of measurement may be derived from timekeeping data, but there is a catch. Anyone who has attempted to review an invoice for legal services with each lawyer's time narratives will understand that it can be an exercise in mind-reading. The client and matter are clear, and perhaps it is evident that the timekeeper was doing something to reach a goal. Beyond that, however, the narrative will either be too specific or too vague to be illuminating ("Work on Smith documents; analyze

options for resolution; meet with opposing counsel—6.4 hours”). Timekeepers typically do not link their entries to why or how they are doing particular work, nor demonstrate how the work adds value to the client’s objectives. The entries often are not linked to the larger story of the legal matter.

Phase codes used consistently provide key information about that story. By looking at the overall timeline of a matter and organizing timekeeping by phases, timekeeper data provides context for individual time entry narratives. When codes are used both to construct a matter budget and to analyze the team’s progress, it becomes much easier to determine if the matter is on track, if the scope of the matter is changing, or if assumptions that were made at the outset continue to be valid. Scope changes may arise from inefficiencies or changes in the client’s business objectives. Negative variances between budget and actual may indicate issues in staffing and turnover or internal management issues; it also may signal the need to raise questions with the client. The sooner the

lawyer in charge of the matter receives this information, the greater the opportunity to manage the matter efficiently in real time, and to report status with confidence to the client. With accurate data on the work completed and outstanding items, the matter team can make adjustments to better manage the matter to meet deadlines, manage work to budget constraints, and minimize surprises.

Codes can also be used to develop information about how to price or evaluate

the cost of future similar matters, by comparing the time, billing value, and total cost for specific phases in other matters, and then adjusting for likely variances in the current one. In other words, by maintaining a database using codes, it is possible to build a base case for a matter type and then evaluate drivers of costs and opportunities to improve efficiency.

Many code sets have been created, and they all describe the work involved in handling a matter from a process perspective with the progression of work divided into

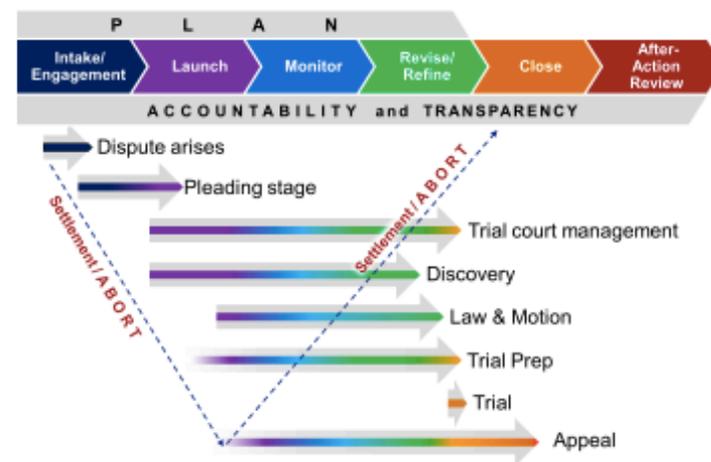
work. Over time need for more detail at the task level may emerge; additional task codes will be useful only if they are well-defined. For example, in a transaction, it may be useful to understand how allocating tasks among different service providers (law firm, law department, accountants) might reduce the cost/ improve the quality of due diligence. Data collection for its own sake, however, because “we might need it” is a recipe for a high error rate and noncompliance.

Using only phases is a radical departure from the structure of many code sets that require granularity without regard to the utility of such information. Interesting information may emerge, but often with the sacrifice of data quality. Many report that in using various litigation code sets, 80% of the time is entered in any of three catch-all categories and often incorrectly. Quality data through accurate and simple time recording with fewer codes should offset the interest in collecting data for its own sake.

Consistency, Compliance, and Communication

Codes enable the client and legal service provider to embrace a common vocabulary for describing the work. Discussions may occur among others beyond the law firm and client: legal service providers include inside counsel and legal operations managers. They should have scoping and planning discussions with the business client to assure best use of corporate resources and appropriate allocation of roles and responsibilities. In addition, conversations should occur between inside counsel and

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phases (e.g., early case assessment; trial; due diligence, negotiations and documentation), tasks (e.g., issue litigation hold; review real estate leases), and activities (e.g., conference call with opposing counsel).

Fewer codes are better, and it is preferable to start by gathering data only at the phase level. At this stage the burden is on the timekeeper so it is critical to provide simple and explicit instructions that do not interfere with the way practitioners actually



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the law firm; and there may be discussions with all three perspectives. Inside counsel has a particular need to evaluate these issues even if timekeeping is not required, since the phase structure provides a communication framework about how a deal may unfold.

Using the common vocabulary provided by codes starts the process of ensuring that the client's goals are reached, that the fee reflects the client's perception of value, and that the matter is profitable for the legal service provider. Like any taxonomy or standard, codes only provide value if everyone uses them the same way. This requires the legal team (comprised of both the legal service provider and the client) to

confirm explicitly their understanding of how the codes should be applied, and to consider:

- Should we use the framework to assign roles and responsibilities?
- If we have experience using a code set, what adjustments should be made? Should more granular information be captured for some or all of the phases?

Efficiency is a big, abstract idea that can be made concrete by addressing the five core questions of legal project management: Why are we handling the matter? What is the legal strategy? When must the work be done? How will the work be done (phases, tasks, and sequencing)? Who will do the work? All of

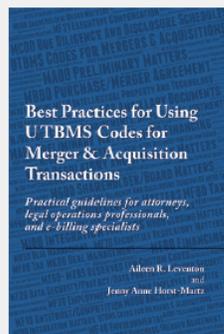
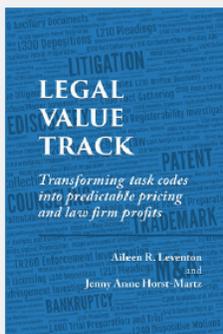
these questions are tackled in developing a work plan and a budget which is subsequently monitored, reviewed and managed during the course of the matter. Until AI truly revolutionizes timekeeping, make the most of phase codes. **ILTA**



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- What are the phases that are reflected in the code set?
- Which tasks are contemplated by each phase?
- What is the appropriate level of detail for capturing information about the work?



FURTHER READING

Leventon and Horst-Martz are the authors of two books on codes, *Legal Value Track: Transforming task codes into predictable pricing and law firm profits*, and *Best Practices for Using UTBMS Codes for Merger & Acquisition Transactions*, which are available for purchase on amazon.com. They both participated in the promulgation of the UTBMS/ABA M&A Codes.

