Ep #43: The Right Way to Incentivize Your Team

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With Your Host

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In today's episode, I'm taking a closer look at one of the biggest challenges firms face when moving away from hourly billing and towards incorporating flat fees. And that's motivating your team in a way that actually supports the new business model. I've said before that billable hours targets create the wrong incentives for flat fee billing because they work against efficiency rather than rewarding it.

But in this episode, I'll share why I think they're a bad idea even for firms that still bill by the hour. Instead, I cover strategies for tapping into intrinsic motivation, connecting your team members' goals to the firm's mission and shared values. Plus, I explain why meaningful feedback loops and clear mission driven performance metrics are far more powerful than any billable target could ever be. Ready to become a more agile attorney? Let's go.

Welcome to *The Agile Attorney* podcast powered by Agile Attorney Consulting. I'm John Grant and I've spent the last decade helping lawyers and legal teams harness the tools of modern entrepreneurship to build practices that are profitable, scalable, and sustainable for themselves and their communities. Each episode I offer principles, practices, and other ideas to help legal professionals of all kinds be more agile in your legal practice.

Hey there, welcome back to the podcast. So, this week I'm going to close the loop on a few things that I've been talking about around flat fees and the transition from hourly to flat fee. And as you've heard, I'm not a huge fan of hourly billing. I'm not inherently against it, but I just think it is suboptimal in a lot of ways. I think it leads to some weird behaviors inside of a law practice. I think that most people that I talk to, don't really enjoy the hourly billing model, whether they're on the client side or the attorney side.

I have a law practice self-assessment tool that anyone can go take, it's on my website. If you go to agileattorney.com/start, you'll find it under the resources tab. That's not necessarily to plug that, but one of the questions that's in that assessment is, what's your billing model? And then how do you feel about flat fee billing? And it kind of rates it on a scale of one to five from five being, yeah, this is great, I love it. And zero being, oh, my gosh, I want to burn it down with passion.

And I get a lot of ones and twos, especially from people who are doing hourly billing. They know that they or they think that they have to be doing it because it's the way that law is practiced. It's all the tools and the models that we have, but they don't love it. And then for the most part, clients don't love it either and it depends on the client.

If you are the kind of attorney that works with sophisticated institutional clients or you've got long term clients and they've worked with you in an hourly way for a long time. Switching them to flat fee might not be a great idea because they're used to it and they have kind of gotten used to the steps of the dance and you've built up whatever trust you can build up, etc.

So again, I'm not saying that this is a one size fits all switch. But for most lawyers, especially those that are practicing in people law sectors, but I think even those that are doing business law, I think there's just a lot of opportunity here to reinvent how we deliver legal services.

So last week I talked about this tool that I've been developing around a methodology. This way of doing an apples to apples comparison about the profitability of law firm matters that you have finished. This only works for finished matters, but it's okay because it gets you a really good look at your data. And it allows you to compare the relative profitability of all of your matter types and all of your individual matters and you can do roll-ups too. But it doesn't matter what your billing model is.

It can take information about flat fee work. It can take information about hourly work, contingency work, hybrid work, it doesn't matter. It'll get you a profitability number that you can again, compare across all of your matters and make inferences and choices and things like that just using that data. So, it is really close to done. I still have a few things that I'm trying to get rolled up on it and I'm going to kind of call this a version one or a beta or whatever.

But if this sounds like something you would like. I don't yet have my website set up to deliver it. And in fact, this may not be something that ultimately I give away sort of for free. But I am interested in having some people try it out and use it and let me know what you think. So, if you're one of those people, please send me an email at john.grant@agileattorney.com and I'll either get it to you or I'm actually thinking about setting up a webinar or maybe a group coaching or something, so we can get a group of people together and talk through it and then shoot it at you that way.

So again john.grant@agileattorney.com and we'll try this thing out. And just put profitability spreadsheet or something like that in the subject line and that way I'll know what it's about.

So, this week I want to go back to something I teased at the end of last episode. This is a question that I got from two episodes ago when I was talking about how one of the anti-patterns around firms that are transitioning to flat fee either their entire practice or even just parts of their practice. That one of the killers of profitability under a flat fee model is a team that's working with hourly billing targets. And that might be hourly billing targets that are just a baseline expectation about the performance of people inside of your firm.

That might be hourly targets that are part of an incentive compensation structure. It doesn't matter, if you're incentivizing people to increase their efforts on a business model that rewards efficiency then you're working against yourself. It's just not going to work well. Those of you that practice contingency law, you've figured this out already. If you are under a contingency model, efficiency is very much your friend. You're trying to deliver a high quality outcome.

You obviously need to do all of the work that needs to be done for the matter in order to optimize your clients' recovery and do all the things that need to happen. But you need to do it in a really intentional way because every additional hour that you or your team puts into the matter is ultimately taking away from the profitability and flat fee works exactly the same way. So, the question is, if we're taking away billable hours targets, or at least maybe reducing their importance. I'm not, again, this doesn't have to be a wholesale approach.

We can sort of phase something out and phase something in and that way we're doing it a little bit more intentionally, but what do we replace it with? Where do we go when this tool that is so common in the management of law firms isn't available anymore? Before I talk about replacement, I'm going to make a quick case about why I actually think that billable hours targets are a terrible idea even if you're billing hourly. And that's probably a little counterintuitive, but there is some social science and some brain research around human behaviors that bears this out.

And I'm going to go all the way back to a book that's been around a while now, but it's a really good one. And if you are managing a team of people and you have any influence at all over compensation structures and bonuses and incentives, I highly recommend you read this book. And it is *Drive* by Daniel Pink. And the subtitle for *Drive* is *The Surprising Truth About What Motivates Us*. And there's a story that Dan Pink tells and I haven't revisited this book, so I'm going a little bit off of a hazy memory here.

But there's a story that Dan Pink tells at the beginning of the book. I think it comes from Dan Ariely, who is a social science researcher at Duke University. And they basically ran some studies that were trying to gauge the relative effectiveness of carrots versus sticks in motivating employees. And so, a stick is some sort of a threat. So, if you're saying again, in an hourly billing structure, "If you don't meet your billable hours targets, then there's going to be some consequence. You're going to be put on a performance plan, or maybe you're just going to be fired. Your job is at risk if you don't meet this thing." That's the stick.

The carrot is, you're going to get some sort of bonus. So, if you do what I'm asking you to do, I'm going to reward that behavior. This is the incentive comp structure where maybe your baseline salary is safe no matter what. Or maybe there's a billable hour minimum that you're fine as long as you get over it and it's well within the range of what's achievable. But if you get over a certain number of hours, then you're going to get a bonus in a certain way and so that's the carrot.

And in this study, they first looked at sticks. They looked at these threats that were meant to incentivize certain behavior. And what they found was, and I'm going to try to verbally draw a graph for you, which is always a risky proposition. But if you imagine on the Y axis this is the performance of the individual, the performance of a team and then the X axis is time. So, you have a performance that's sort of bopping around a little bit up and down, but there's a pretty clear trend around a certain level of performance over time. The line is kind of flat.

And what they found when you introduce a stick, some sort of an external threat, then what happens is that the team's performance does in fact go up in the short term, whatever the unit of time we're talking about, probably a couple of weeks to a couple of months. But then what happens is in the absence of that threat or as time passes after that then the team's performance renormalizes. The line flattens out again, but it flattens out at a level that was below what the previous performance was.

People become demotivated in the presence of management that is this sort of threatening style management structure, And that's not really surprising to people. We don't like to be threatened. It causes us to sort of want to be averse to the people or the organizations or the situations that are creating those threats. And so, the upshot then is, if you have an organization where you're using threats, when that performance starts to renormalize and starts to dwindle again, then the natural sort of managerial behavior is to reintroduce the threat or introduce a new threat.

And so, you kind of wind up into this sort of doom loop of having to have ever more frequent or ever more severe sort of consequences for the behavior you don’t like. And people become more and more disengaged, more and more sort of frustrated and even resentful in the process. No surprise.

Then they looked at carrots. And so again imagine the same graph. You’ve got a normal level of productivity bopping around at a certain horizontal line. And then you introduce a carrot, a spiff, a bonus, a prize, whatever it happens to be. And again, what the researchers found is that when you introduce that bonus, then people’s performance jumps again. Maybe not spike, is too hard, but you definitely will see a short term impact from a carrot.

And then again they wanted to see what happened as time passed after that bonus kind of faded into the memory. How did the team’s performance renormalize? And what they found is that it did the exact same thing as with sticks. The performance renormalized at a level that was lower than it was before the bonus was introduced and that’s surprising. And it generated a very similar managerial pattern where you have to keep reintroducing more frequent or more impactful bonuses to maintain that same level of engagement.

And so now you’re spending a lot of time and energy and probably money doing these things. And maybe an organization is going to alternate carrots and sticks. Maybe they’re going to use both in different situations. There’s any number of ways to mix and match this. But the question that came out of the study is, wow, this is surprising. We thought that carrots would be better than sticks. Why aren’t they? What do carrots and sticks both have in common? And the answer is they’re both extrinsic motivators.

They're both things that are introduced sort of from outside of the person's core values, core beliefs, core impressions of what their job is all about. And so yeah, they respond to the external stimuli, but eventually they're going to again, renormalize based on things that are kind of internal to them. And so, the rest of the book, again, I highly encourage you to read it. It's a very engaging read, and it changed the way I think about a lot of things.

Is that the better way to motivate employees is to find things that are going to be intrinsically motivating to the members of your team as opposed to having to constantly come up with extrinsic motivators, whether they're threats or whether they're bonuses. So how do we do that? How do we find things that are going to be intrinsically motivated to people on our team where especially if you have a lot of folks on your team, it could be kind of hard to find that common thread?

And this to me comes back to the importance of having a strong mission and a strong set of values for your practice. And I haven't done a deep dive episode on this. I actually mentioned it really briefly in episode one, if you go all the way back to the beginning of this iteration of the podcast. But I have a framework that I work with that there are really just four high level domains of activity in a law practice.

And at the top layer is the mission layer and that could be mission vision values if we expand it out a little bit. But I think it's really important that you have something that captures what this law practice is for. What is its purpose in the world? And this is something I should probably address in a future episode, ideas around how to write good mission statements. I talked a little bit about my own in episode 21.

And I think as I say in the top of the show, my mission is to help lawyers and legal professionals harness the tools of modern entrepreneurship to build practices that are profitable, sustainable and scalable for themselves and the communities they serve. And I've been really intentional about that mission because it, number one, helps drive my decision making about what I do inside of my practice. It helps inspire people that I work with. Actually, even some of my independent contractors, I share it with them and they like it. It is motivating to them.

And then it's also obviously attractive, I hope, to the clients that I have, the custom that I have. It also is something that allows me to structure goals that are built from that mission. So, I can say my goal is to help lawyers harness tools of modern entrepreneurship. I can do a goal based on the number of lawyers I help. And that's something that is, number one, very consistent with my mission and number two, is ultimately going to lead to revenue for my business.

So, I can create a situation where I ultimately, and I don't have a big team. I'm very small for now, but as I grow and as I even motivate myself, I am trying to set up something of a volume based goal. I have to help them in a quality way as well, but I still can do things that don't have to do with the effort that I expend or the people on my team expend that have to do with the outcomes we achieve. And the outcomes we achieve are consistent with the mission.

So how would that translate, if you had a similar goal to serve a certain community or cause a particular change in the community that you serve? You can then use quantity goals and this might be a completed case count, any number of things that become part of how you, again, set your own targets for the year, set your firm wide targets for the year, but also motivate your clients. Last year we helped 200 people. This year we hope to help whatever it happens to be. Notice that's not a revenue goal.

And I think it's okay to have revenue targets and revenue goals, especially if you're the owner of a law firm. But know that those revenue targets aren't often going to be directly motivational to your team, even if you're setting bonuses based on them and things like that. I think it's really important to have goals that are inside of the context of the behaviors and the situations that the team members have influence over. And delivery of legal work or delivery of outcomes to your clients is one of those things. That's the whole reason you hired them. So, they do have a lot of influence over that.

It also, frankly, in the context of the Kanban methodology, where we talk about one of these unofficial mottos is, stop starting and start finishing. It actually leads to the team being more acceptance of some of the things like maintaining that maximum case count or other behaviors that are going to get work flowing more smoothly through your systems. And getting to that delivery endpoint where the client has the thing that they came to you for as opposed to you just working on it.

And so, I think these volume goals based metrics wind up being sort of a win because it's something the team can wrap their head around. If it's tied to your mission then it's something that can help tie into the intrinsic motivation of the people on your team. Assuming that they're bought into your mission or maybe were recruited to your firm because of the mission. You have a shared reason for existing, and again, it leads to better outcomes.

Contrast that with the billable hours targets where the team is rewarded for working on things, not for delivering things. They may be motivated to bring too much WIP into the system, to make the case count really high, because there's lots of billable hours available. And even if not all of those billable hours are directly value added and those little inefficiencies that come from being overloaded. Some of those inefficiencies may turn out to be billable, even if they're not really totally necessary in a better managed practice.

But again, the billable hour thing can create sort of perverse incentives for how the people on your team behave. In terms of managing people and again, finding things that you can do as a manager, as a leader that will also tie into people's intrinsic motivations. There's a few other things that I think can be really useful.

Number one is, I would get away from annual evaluation. The feedback loop is just too long. You want to be able to have check-ins and be able to evaluate progress towards whatever goal or target or anything that you've set. We want to have multiple opportunities for feedback and course correction and praise if that's what it takes. We want to have that feedback loop so that we know whether, number one, the target that we've set is actually working for the individual and for the business.

Number two, whether the individual is actually showing motivation as a result of that target, again whatever this target or this sort of goal happens to be. So, I highly recommend that you evaluate your team and do check-ins on at least a quarterly basis. And your targets on a quarterly basis, I think is about right. I think that's a good timeframe to work with.

But we should be checking in at least monthly, if not slightly more often than monthly, maybe even every couple of weeks, so that we have a regular cadence, a regular check-in. And we make sure that we're consistently making progress throughout the quarter as opposed to doing sort of a diving catch type thing at the end. In terms of what sorts of things should be involved in those quarterly goals.

Again, I think completing a certain number of cases or delivering a certain number of interstitial widgets, that's a complex word that I just invented. But maybe if your case duration is really long on a quarterly level then we can talk about what are the things we deliver. What are the documents that we draft and get out to the client? What are the filings that we make with the court? It depends on what your practice area is, but have it tied to the completion of deliverables, even if it's not the deliverable of the entire case or entire matter.

And I like that better than hours targets because it has a direct line to client value and value that the client can actually perceive because there's a deliverable associated with it. Number two, I think it's really important to have a component of people's goals as an employee in your firm to be to create better tools and systems for the firm itself. And so, I think it can be really useful to incentivize people to create templates or improve tools or create knowledge based resources or do other things that will ultimately work to make the firm more efficient over time.

This ties a little bit into the lean notion of Kaizen, which is continuous, incremental improvement. It's something that, again, I actually talked about all the way back in episode one. One of the tools that I will sometimes recommend to my clients is to introduce this notion of 5% time. And the way I talk about it is a little different than the Google formulation of 5% time which I won't go into here.

But basically, it's that the team should be reserving about 5% of their capacity over any given time period doing business improvement work like these things I just talked about. Improving things that will make us more efficient over time. 5% doesn't sound like a lot of time right out of the chute, but it translates to half a day every other week. It is not an insignificant contribution. And I think helping people understand that, number one, they need to reserve part of their capacity for these improvement things.

Number two, that they're going to be rewarded. It's an expected part of working with this firm. And ultimately, these are things that wind up being very gratifying for people as well, because people like to feel like they're contributing to the building of a thing, especially when there is a shared sense of purpose or a common mission.

Related to that, but slightly different is, I think it's really important to incentivize personal growth and personal sort of expansion of skills and knowledge and capabilities. And so, a lot of my clients that I've been working with for a while will have goals, especially for their newer lawyers. Although I think growth is something that is important across the lifecycle of a career, to get better at a certain practice area, attend a conference, attend a CLE, read a treatise, whatever it happens to be.

But then also tie that back to something that is sort of a tangible deliverable. Just attending the CLE doesn't actually create an outcome but maybe saying, "Okay, I've attended the CLE and out of that CLE I've written a knowledge base article for the firm or I've done something else that creates a shared asset not just an individual knowledge." Although you will certainly create individual knowledge in the process.

Again, also related to that, it can be really beneficial to encourage people to take ownership of certain projects inside of a firm. So, if you as a team have identified the need to again, add a certain resource, adopt a technology, maybe, even just research technologies. But really, finding someone who is aligned in their interests for whatever the firm need is, giving them the goal and the authority to come up with a solution to that need. And then making it clear that they are expected to use part of their capacity.

You're willing to invest in that as a law firm owner, and they should be expected to invest their time. We don't want them to just be doing the client delivery work. We want to be doing some on the business work as well.

A few other things that help build intrinsic motivation that don't necessarily have to show up in your goals or in your sort of motivation or incentivization structures. Is just being really intentional about recognizing good performance, good behaviors when you see them in the moment. Don't wait for a monthly review, a quarterly review, an annual review. We want to be really clear that when you've set clear expectations about what the team is trying to achieve, what the firm is trying to achieve.

And someone does something that is consistent with those goals, call it out, let them know, "Hey, this is great. This is exactly what I'm looking for." Better yet, do it in sort of a public way with other members of your team so that they see, great. This is the behavior that is going to get kudos, which are frankly free. And that can then sort of motivate everybody to align themselves to the types of behaviors that are achieving the goals of the firm, which are advancing the mission of the firm. These things are all connected.

When you do that and when you're clear about calling out the right sorts of behaviors, you can also then be more intentional and clear about calling out when people are off track. And it doesn't have to be sharp. It doesn't have to be personal. It doesn't have to be accusatory. But you can make observations where you say, "Hey, this thing that you did, I understand why you might have thought that was a good behavior, but I don't think it's really helping advance our goals, our mission."

And then maybe even give them an opportunity to let you know if they disagree, it can be a discussion. But engaging people in that way, even if the behavior or the performance is suboptimal. By tying it to the mission and the goals of the firm, it allows you to have an adult conversation about it. Maybe they're seeing something you don't, and that's great. Either way, one of you is going to learn and that is engaging.

That is something that helps build intrinsic motivation and sort of intrinsic dedication to the firm. Because you are treating people as grown adults that are able to think about and evaluate and behave in accordance to your mission and goals or the team's mission and goals, and then have these sort of intelligent discussions around it.

So, to sum this up, to sort of try to tie everything together. The problem with billable hours targets, whether you're billing hourly or flat fee or contingency or whatever is that they are almost never intrinsically motivating to people. It is a construct that only works within the context of hourly billing. It's not sort of a natural human behavior to just want to put in more time for most people. We want to replace those extrinsic targets with something that is going to be more intrinsically motivating to the people on your team.

And the best way to do that is to tie those motivators to the mission, the purpose, the overall sort of reason that your firm exists, that people can actually get behind. And yeah, the purpose of the firm for the owners is obviously to make money, but that's not the thing that is going to be motivating to the entire team. We have to tie it to impact. We have to tie it to service. These are the types of things that people really value and are intrinsically motivated by.

And then number three, we have to create feedback loops, ideally the right sized feedback loops. They don't always have to be totally short, but for these sort of performance based metrics, whether it's deliverables, whether it's these improving the business type things. I think these quarterly goals with monthly check-ins is a really good cadence. But it's not the only type of feedback loop. We should be really clear about catching behaviors in the moment that we like and commenting on them. We don't necessarily have to reward them extrinsically, just acknowledging them is enough.

People are social, people want to have feedback from their peers and from their bosses in order to know that they're on the right track. And then that also gives us the ability to correct undesirable behaviors on a similar short feedback loop. We don't want people to sort of wonder or stew or maybe worse, perpetuate non-ideal behaviors over time.

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