

Ep #58: The Key to Happier Lawyering with Brita Long



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John E. Grant

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John Grant: One of the things I talk about a lot on this podcast is the importance of having a law practice that is sustainable. I've got it right there in my mission statement at the top of every show. In today's episode, I speak with family law attorney, Brita Long, who is also the author of the book, *The Happier Attorney*, which is all about strategies for implementing flat fee pricing as a means to becoming happier in your law practice.

I've actually been sitting on this interview for a few weeks because I felt like my brain was chewing on a subtext to this episode, but I couldn't quite figure out what it was. And I wanted to be able to position this within the context of my other episodes. And I think I finally cracked it.

So, whether or not you already use flat fees, are considering switching to flat fees, or even if you have no intention whatsoever of changing your billing model, I think you're gonna find some really useful lessons from our conversation.

You are listening to *The Agile Attorney Podcast*. I'm John Grant, and I help legal professionals of all kinds harness the tools of modern entrepreneurship to build practices that are profitable, sustainable, and scalable for themselves and the communities they serve. Ready to become a more agile attorney? Let's go.

So, one of the things you'll get from this interview is that Brita is a huge fan of flat fees. At one point, she mentions that she thinks they are the solution to financial and overloaded workflow problems that so many attorneys experience. If you've been listening to me for any length of time, you'll know that I too am a fan of flat fees, but I'm not an absolutist about it. I think there are lots of ways to build more profitable and sustainable practices under an hourly model, although that third prong of my mission becoming more scalable, is harder to do when you're billing hourly with only twenty four hours in a day.

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But if you listen closely to this conversation, I think you may see that the switch to flat fees is not the solution in and of itself. But instead, I think what Brita and I both have experienced is that adopting flat fees can be a catalyst for the thing that really needs to happen in your practice.

It's a thing I talk about a lot, and I want you to see if you can figure out what it is. And don't worry, I'm gonna break back in in a few minutes to call it out explicitly in case you miss it. Alright. Here we go.

Brita Long, welcome to The Agile Attorney Podcast. I am so excited to have you. I first reached out to you about being a guest well over a year ago before I really had even launched this revamped version of the podcast. So I'm really excited to finally have you on my show.

Brita Long: Well, thank you for having me.

John Grant: So capsule introduction. I always like to have my guests introduce themselves. So tell me a little bit or tell us a little bit who you are and what you're up to these days.

Brita Long: So I'm Brita Long, and I'm an attorney. And I've been practicing since 1997. I've had my own practice since February. And in 2019, I wrote *The Happier Attorney*, which is a book about charging flat fees.

John Grant: Yes.

Brita Long: And I started teaching other attorneys how to use flat fees. And so that is my primary gig right now. I still have a law firm with my son who's a practicing attorney, but I'm really here to supervise and manage. My primary gig is teaching other attorneys flat fees.

John Grant: Awesome. Okay. And I'm glad you brought up your book because right out of the shoot, I want to quote back to you the very first lines out of your book because I think they're amazing, and they really resonate for me. And, you know, by the time people get to this part, they

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will have heard me, as I do in every episode, talk about my mission, which is to help attorneys or help legal professionals of all kinds build practices that are profitable, sustainable, and scalable. And I think it needs to happen roughly in that order. But your book starts with this line. The greatest threat to the integrity of the legal system is a broke and unhappy attorney.

Brita Long: So it's a beautiful line, and it wasn't mine. And in the revised version, it was an oversight on my part. In the revised version, I'm certainly giving credit. That was Mark Chin, who's a family law attorney out of Jackson, Mississippi. He's written a whole lot of books for the ABA. He is amazing. So Mark came up with that.

John Grant: Okay. Well, either way, you it resonated enough with you to have that be the very first thing that readers are gonna see after the table of contents. Tell me what resonates about that with you and in your experience, especially now working with so many lawyers over the years.

Brita Long: Reality. Absolute reality. You know, I I've been practicing a long time. And I remember back in the day when people had time, you'd look you'd get the bar news every month and you'd look in the back, you know, nobody reads the articles. You look in the back who got in trouble. Right? They used to give all the salacious details. Now they don't. But they Yeah.

John Grant: Not in Washington anyway. No. In Oregon, we still get it.

Brita Long: Oh, okay. Yay! And you're meant to be giddy, but it was like a train wreck. And part of the reason that I want to read it was, you know, to make sure I was not going anywhere close to any ethical boundaries. And when you read them over and over and over and over, you can see the patterns. And you start to see that, okay, well, this attorney probably didn't wake up that morning and say, oh, I am going to completely drop the ball on casework, or I'm going to just completely blow up my life today. That's not how it happens.

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And then I had a dear friend of mine in Seattle. She was a receptionist at an office that I was office sharing with. And her husband was a family law attorney in the Seattle area. Very good reputation. And this story, I think, is so common. He wanted to help everybody, which is great. Had resistance to charging, which is incredibly common, felt guilty overcharging. And so he started to have the issue that so many attorneys have.

Monday, client would hire him. He would drop everything, work on Monday client work, and then Tuesday, client would come in. He'd drop everything, work on Tuesday, client work. That goes on and that goes on. And then what started to happen? We all know what started to happen. The phone calls. Well, hey, you said my stuff was gonna be done. It is not done. You said we were gonna file this. So now he has a fire practice where it's just putting out the next fire, okay, which leads to really unhappy clients. You know, happy clients don't pay their bills all the time.

Unhappy clients really don't pay their bills. So then what has to happen, and he was the sole support of his family with three kids. So then what do you do? What is the go to for every single attorney unless they get on the other side of this? What's the go to? More clients, which means more marketing, more then we're just putting more and more on this really burdened practice anyway. Okay?

And there's only so many more hours that you can work. And the more hours you work, then, again, you're just going backwards because your work product is gonna suffer. I don't care who you are. I don't care what kind of great attorney you think you are. When you're working fifty, sixty, seventy hours a week, your work product is going to be crap.

John Grant: 100%

Brita Long: And so the inevitable happened. He got I think it was two bar complaints. I've been practicing nearly thirty years. I've certainly gotten bar

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complaints. I think it's under six. They were all dismissed nearly immediately. No real investigation or anything like that. But I know that feeling of getting that envelope. It's horrible. Even when you know even when you read it and you're like, oh, this is a bunch of crap. You know?

John Grant: Right

Brita Long: Even though you know that at the end of the day, it's gonna be fine. You're not gonna get in trouble. Everything you know, you didn't do anything wrong. It's still okay?

John Grant: It's a giant cognitive weight that you have to bear for a period of time.

Brita Long: Yes. And so he got two bar complaints. Now from what I know about the situation, the worst that the bar would have done I mean, the worst would have been to come in and tell him, hey. Okay. Time out on new clients. Get your crap together. Okay? And given what I know, they probably wouldn't have even done that. Alright? But he wasn't in that space. The bar hearing was on a Monday morning.

That Friday, he killed himself at his office. So we can have a whole hours long discussion on our profession that we think that going to one bar hearing is worse than ending your life. That's a whole another discussion. But that pattern, you see it and you can feel it. You can feel it when you're practicing, you know, especially in litigation when you're contacting in contact with other attorneys. Those attorneys who don't return phone calls. The attorney that, you know, is rushing into a hearing and it's clear they haven't even met their client. They have no command over the facts.

And that, again, I don't think most attorneys wake up and go, I wanna do a crap job. They feel like they have to. So when you reverse that, when I talk to clients and I'm like, okay. What is your when I say clients, I mean attorney clients. And I worked for an attorney when I was waiting for bar results. I had a caseload that I even knew was insane. Something's wrong

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here. Something's really wrong here. And sure enough it was. She got disbarred in a pretty public way.

So when I ask my attorney clients, like, what is the perfect case load for you? The perfect speed of the treadmill where it's not too little, it's not too much, where you can forget the money for a second. The case that makes you just wanna go in and just do a heck of a job. No constraints. It's amazing how the number comes down and down and down. But the money gets in the way.

Oh, I could do it, but I need to make money. So I need to make okay. Set that aside for two seconds. And the beauty of flat fees is you can do that. I know people don't think you can, but you can do that. But I've been practicing long enough. So if you, we've seen the horror stories. We've seen the attorneys who aren't here anymore, who got disbarred, who aren't physically here anymore. And I can look back and see so much of that is money. And that it just breaks my heart because it's so unnecessary. The way we are doing things is so unnecessary and so crazy and so harmful to us and our clients.

John Grant: Yeah. Well, okay. There's so much to unpack in that. And I'll have my most recent thought first, and then I'm gonna go backwards a little bit. But I don't know, for decades for me. The saddest businesses in the world of consulting for lawyers is Leave Law Behind. And that's not to say that they don't do great work. I think it's important work, and there are people that certainly need to transition out of law practice. But I wish they didn't need to exist.

Brita Long: I didn't know they exist.

John Grant: Oh, yeah. There's a whole I won't Google it now on our podcast, but there there's a book and there's a consulting business out there that specifically exists for the purpose of helping people transition out of the legal profession and into something else because they feel destroyed

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in some way by the profession. Right? And all the various gamut of emotions from, I say destroyed, devastated, unhappy, unsatisfied, whatever it happens to be, but the profession is pushing them out.

They don't feel like they can be their authentic selves or be true to themselves, their principles, whatever, and also be an effective lawyer. And I just, I know that that's not true, but I also know that the dominant culture of the profession absolutely destroys people in lots and lots of ways. And it's not just you know, the culture comes from a lot of places. A lot of it is historical and, you know, my listeners know that I'm a fourth-generation attorney. One thing I haven't said on the podcast before, my stepfather recently passed away who was an attorney.

He was extremely complicated and it's funny, among other things, I did some subcontract work for him in my early days of practice, and he was my worst payer of any client I ever billed ever. Number one, he insisted on billing me hourly because that's how he knew how to work. But then his time to pay was, like, three, four, five months. Like, it was insane.

And part of where I'm going with this is that one of the reasons, like, that I feel a need to do the work that I do, helping lawyers find more fulfillment, find more balance, get more flow, and flat fees are a big part of all that, is that I've seen firsthand inside of my family how miserable people can become in the profession even as they're putting forward an image of competence and wealth and confidence. Or maybe even sometimes there's an odd connection between the need to present a got it together image, the duck swimming on water. Right? They wanna be cool and collected up top, but they just are going furious down below where you don't see it. And my stepdad was the epitome of that.

He had the kind of practice that at different times earned him millions of dollars, but he couldn't sustain it because he had all these misconceptions and these pressures that he felt, most of which I don't think were real. But the fact that he felt them were real, that drove him to the gamut of

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unhealthy practices. Right? Substance abuse and relationship problems. And, you know, I say stepfather. He actually was my ex-stepfather because he and my mom did wind up getting a divorce several years ago because of his unhealthy behavior.

So where I wanna tie it back because and I let you go with your story because it's, like, so consistent with my experience and so compelling to hear it in this way. One of the phrases I use a lot with my clients and my podcast listeners have obviously heard me a number of times is that we have to begin with an honest reckoning with capacity. And there's something about the culture of the profession that is, like, designed to put you over capacity.

Brita Long: I'm laughing because, you know, we attorneys, bless our hearts, I live in the South, so I can say that. We have this false notion and this pride, like, we are logical, and we don't do emotions, and we don't have feelings, and, you know, they're just so beneath us. And I study human beings. There's no one more emotional than attorneys. You know, and the people who think they're not emotional are absolutely the most emotional. And I will talk to attorneys, and one of the things that I asked them is and they will have just told me.

The ability to view ourselves and have any kind of self-honesty is really low with attorneys. I don't know about normal people. Most of who I know is attorneys, but it's really low. So they will have just told me that they have major health problems or maybe some mental health problems, some relation I mean, they will have just described a life where I'm like, oh, we are in deep water in one or more areas of your life, like, deep ass water that you're about ready to drown. I will ask them, is what they're doing sustainable in every area of their life? Is it sustainable financially? Well, yeah. Okay. Well, you just told me you're losing \$2 today. All the lights are on.

John Grant: Right. For now.

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Brita Long: Okay. And you just told me this health issue and this health issue and this health issue. I literally this is only happened once. I literally had one call where an attorney was in bed. Okay? That's how bad her health issues were. Once they start seeing it, they're like, well, maybe it's not sustainable. No. It's not sustainable.

John Grant: Yeah. Yeah.

Brita Long: What you're doing is insane.

John Grant: And also again, and I think partly this comes back to the culture and also this comes back to, you know and this isn't meant to be a criticism, but just like we live in capitalism. Right? It's all around us. And so there are constant marketing messages from mostly legal technology providers and then secondarily legal marketing providers. Right? And the core message from legal technology providers is how to do more with less. Right? That's basically what they're trying to sell you. But the implied need is you should be doing more.

Brita Long: Grow, grow, grow. Grow, grow, grow, grow, grow, grow, grow. It doesn't matter if you have a million dollar practice and you're taking home 50,000, which by the way, they are. And now you have a staff of 15, which if you think that's fun.

John Grant: It can be fun, but it can be fun...

Brita Long: And there is this culture of my personal opinion is that, you know, an addiction is an addiction. And if you're addicted to work, the consequences might be different than drugs or alcohol, but you're still trying to numb the same. You're still trying to not feel the feelings the same. And but workaholism, especially in this profession, not only are you not gonna be criticized for it, you're gonna be praised for it.

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John Grant: Yes. Right up until you're not when you get that bar complaint.

Brita Long: Okay. So I will have attorneys, and I tell them, you know, if your self-esteem is directly tied to how much you're working or how much you're billing, you're gonna have problems.

John Grant: Yeah.

Brita Long: We gotta get over that hump. Otherwise, you don't stand a chance because, you know, your subconscious is 10,000 times more powerful than your conscious mind. So, you know, if I'm sitting there saying, okay, John. We're only gonna work forty hours a week, but John is going to feel like a lazy louse if he only works forty hours a week and you're not even conscious of that, there's no way you're gonna do it.

John Grant: Mhmm.

Brita Long: You will self sabotage every single time.

John Grant: Yep. Yep. Okay. So I wanna bring it around to flat fees as a very useful tool in the toolbox for moving to healthier practices, becoming a happier attorney, to use your book title. And so where do they fit in? When someone is coming to you and you're you and I are experiencing all the same problems with clients. Right? It's overwhelm. It's overcapacity. There's a lot of, I would say, suboptimal, to be gracious, mental models about what the work needs to look like, how the work needs to be performed, how the person needs to present, things like that. And you've kind of unlocked flat fees as being one of the things that can dramatically change people's perception around this.

Brita Long: I don't think it's one of the things. I think it is the thing.

John Grant: Okay. Yeah. So talk about that.

Brita Long: It is the foundation. It is the rebar in the foundation. I'll mention one thing because people just get so freaked out like, oh, this is new. This

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is scary. This is, you know, might be unethical. Attorneys have been practicing since ancient Rome, ancient Greece, you know, thousands of years BC. How did they charge?

John Grant: Oh, well, I can tell you. So this is one of the other pieces of being a fourth generation attorney, and I actually did an episode about this over the holidays. My great grandfather was a bigwig Hollywood Attorney in the thirties, forties, fifties. And the episode that I did was that he handled Jane Wyman's divorce from Ronald Reagan in 1947, and he did it on a flat fee. They were all flat figures.

Brita Long: They were all flat fees. That's right. There was no choice.

John Grant: Yes.

Brita Long: It wasn't until the nineteen sixties when the insurance industry because we all know the insurance industry has our best interest at heart, said with, you know, sarcasm.

John Grant: Right. Of course.

Brita Long: They wanted it to track time for the big firms. And so they got the big firms to do it. And then, of course, you know, we all just do what the big firms do because we assume they know what they're doing. Okay. They don't. Okay. And so here we are. So I wanna get that out of the way.

All we're doing is going back to what worked for thousands, centuries, thousands and thousands of years. Okay? So here's why they are such a huge foundation. Pricing is always going to be so important. If you get it right, especially with flat fees, if you get it right, it immediately gives you the bandwidth. The bandwidth in terms of time and money and energy to do a great job, to do whatever else you wanna do in your practice. If you get it wrong, then you're just going back to what the situations that we described earlier. You can't get out of that.

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So how flat fees work in a nutshell, and I will differentiate flat fees done properly, k, because they are an incredibly powerful tool. And just like any other incredibly powerful tool, if you don't know what you're doing and you just grab a table saw and start cutting, you're likely gonna get really hurt. So when they are done properly, you're getting paid for all of the work that you're doing. Imagine that. No AR. That alone should be enough to get people jumping.

John Grant: I agree. Yep.

Brita Long: You are not tracking your time, absent some very specific circumstances. It's interesting because the only people who that I have seen that advocate tracking your time with flat fees are people that don't do it, that don't use flat fees or don't use them very much.

John Grant: Yeah. That's funny. That's something because I do operations work, a lot of people assume that I want you to track time under the flat fee because we can then calculate, you know, are we maximizing our whatever utilization? And my answer is, I don't care if you do or you don't. I mean, if you really feel like you want to, I'm not necessarily gonna stop you. But it's not about the time tracking for we can figure out your allocation and your efficiency lots of ways in the operations world.

Brita Long: Right.

John Grant: It does not require you to have someone over your shoulder with a stopwatch in their hand.

Brita Long: No. It doesn't. And so when you're using flat fees, generally, your caseload is going to go down a little bit. I say that, and then I've had plenty of clients that are like, it's not going down. I'm like, up your price. It's not going down. Up your price. Up your price. And then it starts going down.

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John Grant: Okay. I'm gonna break in here and call out the thing that I teased at the top of the episode. Hopefully, you caught it. The whole thing with flat fees isn't really about pricing. It's about limiting WIP or work in progress inside of your practice.

So what Brita talked about just there is that the key to becoming a happier attorney is to get yourself to a place where, first and foremost, you're no longer overwhelmed by the sheer volume of work in your law practice, and then number two, that you're still bringing in enough money for your practice to be profitable and sustainable. Now, again, there are things about the flat fee model that I really like from a profitability standpoint, and we're gonna talk about that in a few minutes in this conversation. But I wanna point out that you can also use pricing as a tool to limit WIP if you bill hourly.

Raising your rates is a tried and true method for shaping the demand for your services. But here's the other thing. You can just limit WIP without messing with your pricing model. And to some extent, even if you're billing hourly and you're super overloaded, you won't actually lose money for a long while by dropping your case count because you'll actually gain back some administrative overhead or other non billable time that will actually become billable.

One of the themes I keep hitting on in this podcast is the need to take your practice from a roiling boil to a gentle simmer before you start messing with other things because you need to get your stress levels off the red line and start to claim some of your finite capacity to be able to do the deeper strategy work anyway. Now if you do that, I think it's likely that you will eventually want to change your business model or pricing model to something that rewards your efficiency instead of punishing you for it.

But the key point is that the benefit that Brita is talking about doesn't come directly from the fee model change or from increasing prices. It comes from achieving a better balance between your actual capacity and the

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commitments you make or the work you allow into that capacity inside of your practice.

It all comes back to that honest reckoning with capacity and the brutal assessment of priorities that I talk about so often in this show. The fee model is a way to trick your brain into making that change, and it's a good way. It's just not the only way. I'm gonna come back into this conversation during a discussion around the disconnect between the amount of time and effort it sometimes takes a lawyer to produce a piece of work and the value the client receives from that work. And we'll start with Brita talking about a provision in one of her estate planning documents.

Brita Long: I'll give you an example. I have a provision in our trust that I've had for many, many, many, many years. It's a lifestyle provision. It took me, I don't know, probably three minutes to write. Okay. If I was billing by the hour for that, it would be worthless. It would be absolutely worthless. That provision has literally I shouldn't say saved. It at least postponed the death of a child of my client. That one provision.

And what's the value to that of that provision? If you're talking to attorneys that just think of their value in terms of time, they're gonna sit there and go, well, it only took, you know, a minute to come up with, and it was really easy. It was easy because you know what you're talking about. And it's easy because I'm creative. Why am I creative? Because I have time to be creative. You can't be creative when

John Grant: Running with the red line. Sure.

Brita Long: I think about the value, put yourself in my client's position. She was dying, already on hospice. Her child was going to get a check for nearly a million dollars. She was in her early twenties, and she was an active methamphetamine addict. Without that provision, she was handing her daughter her meth addicted daughter a check for almost a million dollars. What would that have went to her daughter?

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It would have killed her. What was that worth to my client? She would have paid me anything. She would have paid me her entire estate to prevent that from happening. Now are you gonna charge, you know, her entire estate? Of course not. Of course not. You're not gonna charge anything close to the value. But when you start thinking in terms of, we attorneys have a really hard time understanding what we're selling and the value of our work.

And when we start shifting to start thinking about what your clients are actually getting from that work, then you can start thinking about your value. And then you can start charging for it and stop believing all the assumptions that you're making to yourself that nobody will pay that. Yeah. They do.

John Grant: Well and not only do they, but, you know, there's a few things. And then I wanna loop back to something you said earlier, but you don't need everyone to pay that. You only need as many people as you have capacity to serve to pay that. And so, you know, one of the things I'm actually gonna get, two things you said earlier. Because one of the things you mentioned is that if you're still too busy under your flat view paradigm, you can raise your price.

I look at that through my operations lens as adjusting your entrance criteria. And one way to adjust your entrance criteria is by being more selective based on price. You're using price as a selection tool. There are other things you can do too. You can say, oh, there's certain types of clients that drain my energy, and I'm gonna put some Brown M&M tests into my early phase work, you know, my screening mechanism so that I can figure out who those energy vampires are.

Brita Long: Oh, we don't work with energy vampires.

John Grant: Right. Uh-uh. There are other things too and, you know, this is something I've learned in my coaching consulting practice is that there are certain ways that I can onboard my clients that I know are going to set the

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stage for success in the relationship down the road. And I often counsel my clients to do the same thing with their clients because creating the right ramp into your particular way of working in your practice helps set the stage. It helps engage the client not in the engagement letter sort of way, but in the actual, like, psychological engagement way, and it's just gonna set the tone for the relationship going forward.

So there's lots of things that you can do in addition to raising prices. I'm not saying that raising prices isn't a totally valid way to do it, but it's one of many techniques to bring your capacity or bring your practice back into your capacity to deliver work and, like, to riff on right? You said more, more, more is all the marketing and, you know, I will sometimes say and it will sound like tongue in cheek and it's not, is the best way to do more with less is to do less.

Okay. Let me break in again to take us to another part of the conversation. Brita and I went on a bit of a deep dive around the ethics of flat fees that I'm gonna summarize here.

Brita pointed out that not only are flat fees expressly allowed under the rules of professional conduct, they were the primary way that most lawyers have charged for our work for most of the history of lawyers. And, you know, we've been using hourly long enough now that there isn't a ton of institutional memory of the times before hourly, but it still hourly is something of a historical blip. Yet there's still a funny perception among a lot of attorneys that there are ethical quandaries around using flat fees, which led to this exchange.

Brita Long: I would even argue with flat fees, it is the ethical way to bill. It is the ethical way to bill. How can somebody and I'm gonna get on my soapbox here. How in the world can you sit there with a straight face and argue that it is ethical to have someone come into your office and many times in some pretty bad life circumstances and have them sign a legally binding contract whether you enforce it or not is not the point that says, I'm

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gonna do this work for you that you have no control over. You have no control over it and you're gonna pay me \$400 an hour until I tell you...

John Grant: But I can't tell you how many hours it's gonna be.

Brita Long: But I'm not gonna tell you how many hours. I quote can't. Yes. You can. But you can't you know, you won't. You have no control over it. And you know what? The bill could be \$4,000. It could be \$40,000. It could be 400,000. I don't know. And you're telling me that's ethical? Versus is...and I'm gonna charge you \$20 from here to here, and that's it. What feels more ethical to you?

John Grant: Well, again yeah. You're preaching to the choir for me.

Brita Long: Our thinking is, like, so screwed up as attorneys. We've bought into this that is absurd in my humble opinion.

John Grant: Well and I think okay. So I'm gonna try to stew this because I think for the most part, I think that people who are listening to this podcast are not arguing with what we say. And if you are, please call me. I will happily debate you. Or call Brita too.

But in terms of actually making the switch and so one of the things and I'm a big fan, especially in more complicated matters. It is literally the Agile approach to do iterative development, and so that translates well to me to a phase flat fee approach for complex matters. Right? I think that, you know, and I should say, right, there are certain matters matter types, practice areas that are already largely flat fee.

Right? Estate planning, you know, there's still some hourly ones out there, but a lot of estate planning attorneys have flipped over to flat fee. I would say certain types of family right? Premarital agreements is sort of an easy one. The kiddie pool of flat fees, I don't mean to, like, demean that part of the practice because it's important, but it's relatively straightforward to flat fee that. Immigration is another one that I see a lot of flat fees. Trademark

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work, copyright work, business formation, it's out there. So this is not new by any stretch.

But the thing that I'm sure you hear all the time and I hear all the time is, yeah, but I do family law. You can't flat fee a divorce. That's way too complicated.

Brita Long: Well, right. I have for fifteen plus years.

John Grant: Exactly. Okay. So maybe could you give us, you know, high level overview? What's your approach to flat feeing let's say even a complex divorce. Right? Maybe high net worth or high conflict or whatever it happens to be. How do you go about working with your client to say, yeah, this is what it's gonna cost?

Brita Long: So I'm gonna back up a little bit because

John Grant: Please. Yeah.

Brita Long: We're like, you can't charge a flat fee in in family law. They're not ready to hear this yet. So we're gonna get it ready a little bit. Alright? One of the biggest problems attorneys have with flat fees is that they overthink it. They overcomplicate it. They want all of the data. They think that there is a right price, that there's a perfect price. There's not.

Pricing is inherently subjective. And one of the beauties with flat fees is that it's always going to be inherently reasonable. Always. Because if I say, John, this is gonna be \$10,000. If you believe that what you're gonna get from me is more valuable than your \$10,000, you're gonna hire me. If you don't, you're not. It's inherently reasonable.

John Grant: Okay. Let me pause on that for a minute because I think that's important from the regulatory question. Right? Because one of the regulations that we are subject to is that your fees have to be reasonable. And I think that there's a fear that, oh, this meeting of the minds that I had

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with my client, which I agree with you, by definition, as long as you weren't doing a bait and switch of some sort, as long as you weren't hiding key information, right, the fact that you set out a scope of work and a price for that work and the client had an opportunity to think and say, yeah. I will pay that. Good luck proving that unreasonable to a judge or an arbitrator or whoever is gonna be the one that dives into that.

So I'm with you a %. I just wanted to call it out specifically because I think that's one of the objections. How can I charge more than I was making hourly for this, right, to sort of come back to your thought?

Brita Long: We'll get back to this in in a minute. But Mark has been practicing longer than I have. And he said, if I looked at somebody another attorney's billing statement, there's no way I could tell whether that was reasonable or not. Neither can anybody else. It's just a guess. Now if I looked at somebody's billing statement, they had, you know, 1.1 for drafting a notice of appearance. Yeah. That's gonna get my attention.

I'm gonna ask questions about that. Okay? But I couldn't neither can the judges. Okay? Right. So getting back to the how.

John Grant: Yeah. Sorry. I had to break in there just because it was such a key. Yep.

Brita Long: The simpler you make this, the better. The more you start overcomplicating and overthinking and and wanting to get into KPIs. You know, once people start talking about crap like that in spreadsheets, I'm like, stop. Stop. Stop. Stop. You're overcomplicating.

So you are going to, this is fact specific. It's jurisdictional specific. But there's a finite time period when you start when most cases are gonna get done. So let's say for family law. When most cases are going to get settled, right, where I have been that has been six, seven months. Okay?

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In that time, you're gonna know if this is gonna be one of those holy crap cases, you know, or we're going to trial. Alright? So you're gonna set the price for when you start versus going through that phase or a time frame, whichever happens first in time.

So let's say I was still in Seattle. This is before COVID. It was about seven months. Six, seven months. We get into mediation, and I had the best mediator in the world in the world up there. If he couldn't settle it, you're going to trial. So get in with him as soon as, you know, possible. And unless there's a strategic reason to delay. So you're setting the price for seven months, eight months, or settlement, or through mediation. That's it.

John Grant: And you're gonna reevaluate at that point.

Brita Long: Right. So at the, you know, end of mediation, okay, if we didn't settle, I'm still out, or our fee agreement has ended, or if we settle or let's say, I do a bang up job. I come up with, you know, the smoking gun, and we settle the case three weeks in. I still have earned it.

John Grant: You've created the value you promised to create.

Brita Long: Now, of course, you can get into facts and, you know, that that isn't always the case and blah blah blah. But I'm not gonna get stuck in the case. And then let's say it doesn't settle. Alright. Then we're gonna have a fee addendum, and we're gonna be talking about trial. We're gonna set the trial price then, not at the beginning. You don't know how to set trial price at the beginning of the case. You have no idea.

John Grant: Because you don't know enough. You don't know enough about the case. Yeah. Okay. Let me break in with the Agile principle again because I have to do this as, you know, my Agile Attorney podcast. But the whole point of an iterative approach in Agile is to maximize your learning before you commit to the next phase. Right?

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You get smarter by saying, okay. We're gonna chunk this out in reasonable steps, and there's going to be an exchange of value for every step along the way. And that's not to say that you don't like your approach because I think it makes sense. You're basically packaging the first series of steps together.

Right? So there's a chunk of steps that gets you from intake to pleadings to disclosures to etcetera, etcetera, and then mediation. Right? Or, again, the other side is being so obstinate that even after seven months, you can't get to mediation, but that's great because now you know that you're up against an opposing side. Right? And whether that's opposing counsel or opposing party or both and, you know, somehow the obstinate ones seem to find each other, it's kind of magical.

Brita Long: They attract, right.

John Grant: Right. But still, you know that and you can be honest with your client even who might be the most reasonable person in the world and is just having horrible bad luck. Well, they often chose the wrong spouse, but they didn't know that at the time. And so they're stuck in this bad, complex, sticky divorce that is, like, the other side is pulling out all the stops to do whatever. But you can still be honest and genuine with, like, this is what we're up against and this is what it's gonna cost.

Brita Long: It is what it

John Grant: It is what it is. Exactly. Sorry. I had to break in with the high level piece. So keep going.

Brita Long: So, I mean, that's it in a nutshell. It's really simple. And so when I see other attorneys trying to, like, break it out kind of in an a la carte menu, I start twitching. Because, a, it's not necessary. And, b, again, if we are focused on what's best for our client, what's best for us, you know, how do you like it? How do you like it when you go to buy an airline ticket and it

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says it's \$400? And you're like, oh, okay. Click, click, click. Oh, well, do you want a seat? Yeah. Okay.

That's an extra \$40. Do you want the opportunity to go to the restroom on the plane? Yeah. That's an extra \$20. Do you want okay. By the time and, of course, I'm making this up for effect. But, you know, by the time you buy that airline ticket, it's not \$400 anymore. It's 500, which I don't care. It's not the 500. Just tell me at the front it's \$500. Now you've wasted my time and I'm ticked.

John Grant: Yeah. Because the value is I need to get to Albuquerque. With my bags.

Brita Long: And you should know what your jurisdiction does. You should know whether people do a lot of discovery or not. Add that in. Bake that in. And I'd say, you know, you can always give money back. Okay? I just had a case. We just had it in the in the firm. It was a modification action. And it's a little different here in Texas versus Washington, so we didn't understand what it was based on. They don't have to say.

But it's a modification. This is no joke. Right? So we charged the fee, client paid it, and got on the phone with opposing counsel and was like, what's this about? What's going on? Oh, we'll send you a proposal. Okay.

Again, I don't know if this is you know, I wanna do 6:00 instead of 05:00, or if this is I want the kids. Okay? They had changed the practice, like, three years ago based on her work schedule. All he wanted was that memorialized in the order. Now okay. Now why he couldn't pick up the phone and just tell her that is beyond me, but okay.

John Grant: No accounting for people.

Brita Long: We had a final order within three weeks. Now that wasn't anything I mean, I'd like to sit there and say, you know, he saw our notice of appearance and quivered in his boots and, you know.

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John Grant: No, he was actually reasonable to begin with, just not communicative.

Brita Long: So guess what we're doing? We're giving our client a lot of money back. Now I don't have to legally, but I'm going to. And what goodwill is that going to bring me with my client? She's not even expecting that, and she's getting that back. So you can always give money back.

John Grant: Okay. I'm gonna leave it there. Brita and I got a little chatty at the end, and I'm trying to keep the length of these episodes as tight as I can. I want to thank Brita Long for coming on this podcast. If you wanna learn more about her, please look her up at happierattorney.com or go search for her book, *The Happier Attorney*.

As far as takeaways from this episode, I hope it will convince you how essential it is to create balance in your law practice between your capacity and the demands you allow into your practice that take up that capacity. Obviously, that is a huge theme of mine, but it's a drum I'm gonna keep beating because I think a lot of attorneys still really need to hear it. To learn more about limiting whip, go back a couple weeks to episode 56 where I do a full deep dive on the topic.

And I'll again recommend you also go all the way back to episode three, which is titled *The Honest Reckoning with Capacity*, because there's a really good core message in that. For more on flat fee pricing, you'll wanna stay tuned for next week's episode where I interview pricing expert Jonathan Stark, author of the book *Hourly Billing is Nuts*. And, again, even if you don't intend to switch your pricing model, you're gonna wanna listen to this one because Jonathan's got a really interesting lens on professional service delivery models and pricing for those models, including things like the outside general counsel model. You're not gonna wanna miss it.

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Finally, if you wanna dive a little deeper on how you can improve your thinking around your pricing strategy, your product strategy, or your overall business model, you're gonna wanna pick up a free copy of my new book, the agile attorney pocket guide to law firm strategic planning. I've got it as a free download on my website at agileattorney.com/sps, where you can grab it as a PDF, a Kindle version, or an ePub file that should work on your phone or tablet or whatever your favorite e-reader is. That's agileattorney.com/sps.

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