

Ep #59: Stop Billing and Start Pricing with Jonathan Stark



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John E. Grant

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For as long as I can remember, there's been talk in the legal industry about moving away from hourly billing. But with the rise of generative AI and other technologies, that conversation has never felt more urgent. AI-powered tools are making it possible to complete a growing number of tasks and activities in a fraction of the time it would take a standalone human to complete. We all know this. But it's calling into question the viability of the billable hour model, even for its most devoted holdouts.

In today's episode, I'm continuing my exploration of alternatives to hourly billing, and I'm thrilled to welcome back Jonathan Stark. He's one of the best minds in professional services pricing. For almost three decades, Jonathan's been teaching services professionals on how to break free from hourly billing and why it's a good idea for providers and their clients alike.

In our conversation, we explore real alternatives, including pre-set fees, phase delivery pricing, value-based pricing, and even fractional outside counsel and other subscription models. We break down how those approaches work, some common mistakes people make when they're trying to implement them, and how law practices can start making the shift.

And most importantly, we dive into Jonathan's call to action to stop billing and start pricing, or how to convert from an effort-based mentality to a value-based one, and why that makes all the difference in the sustainability of your practice and the experience of your clients.

You're listening to *The Agile Attorney Podcast*, powered by Agile Attorney Consulting. I'm John Grant, and it is my mission to help legal professionals of all kinds 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.

John Grant: All right, well, I am really excited this week to welcome officially this time to the podcast Jonathan Stark. You've heard Jonathan in my podcast feed because he was gracious enough to let me replay an episode

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from his podcast where he interviewed me, but I get to turn the tables this time. So Jonathan, welcome to *The Agile Attorney Podcast*.

Jonathan: Thanks, John. Looking forward to it.

John: Yeah. So for those of you, and I'm not sure how many lawyers actually have come across you, I first came across you probably seven eight nine years ago. It's been a while now, but for lawyers that haven't discovered you yet, tell me a little bit about what you do and how you came into this particular part of your journey.

Jonathan: Sure. I mean, the quick answer is I'm a former software developer who's now on a mission to rid the world of hourly billing. And I have been on that mission officially since 2016, when I released a book called *Hourly Billing is Nuts*. But prior to that in 2006 I started my own solo consultancy after managing a dev shop before that, so small firm that did software development. And at that firm, I just had this epiphany like that hourly billing was creating all sorts of bad incentives and creating problems inside the firm.

John: So your book is *Hourly Billing is Nuts* and as you said, it's 10 years old now. Almost. Almost 10.

Jonathan: Yeah, the 10th anniversary next year.

John: Okay. And that's probably about the time that I first came across you as well. And I had read the Ron Baker value pricing book, which is great, but it's a lot, right? It's a big book. It's a lot to get through.

Jonathan: It's like a college text almost.

John: Exactly. And although I think it is applicable generally, it also is mostly focused on the needs of the CPA accounting industry, which is where he comes from and again, I think all of his work is amazing. But your book is so accessible.

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Jonathan: And short.

John: Well, exactly, in a lot of ways. And lawyers have to read for a living, but it's nice to get something you can get through quickly. So I mean, I'll plug your book. I'm a firm believer in it, but we're going to pull – and it doesn't have to be directly from the book, but what is the core message? Why is hourly billing nuts?

Jonathan: I mean, the most self-interested explanation or answer to that question is that it puts an arbitrary income ceiling on you. It's like why put that on yourself? That's the main one but there are some other ones that are really huge like it completely undermines your relationship with your clients which creates this very...

John: Inherent tension or almost, yeah, you're almost at odds with each other. You've got a conflict of interest. Yeah, almost from the jump in your relationship.

Jonathan: Yeah, for sure. I mean, there are plenty of people who call it unethical. It's an unethical way to price your assistance because the longer it takes you, the more you make. So it makes no financial sense for you to upgrade your computer, get better at what you do in any way to optimize any of your systems.

And software developers will do all of those things. They upgrade their tools, they will engage in professional development, but it's because they just love it and it's going to create a negative impact on their earning potential. If your computer takes whatever, 45 minutes to compile a binary, this probably doesn't happen, there's probably no equivalent in legal but a faster computer, if you spend \$5,000 on it to decrease your hourly rate, you've kind of paid double for the computer because it's less that you can bill for.

John: Sure. Well, and I'll tell you, well, let me give you a quick anecdote and then I'm going to come back and give you the parallel in legal. The

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anecdote is, you know, I grew up in sort of central rural parts of California and I worked farm jobs a lot as a teenager. And one of them involved building apple bins, you know, from kind of a stock thing.

And the father of my friend who owned that farm, when he made the job offer, he said, by the way, this is piecework. You do not get an hourly rate, because no way was he going to hire a bunch of teenage boys hourly to build something, right? And changing the incentive into piece work, it made, you know, all the difference in our productivity as far as how we approach doing that work. And I think the value to him wasn't in the act of building apple bins. The value to him was having enough bins to harvest the apples into when harvest season came.

Jonathan: Yeah, it's a perfect example. In that example, they want an output. You know, he wants an output that is some number of apple crates, but that leads downstream to sales for him because he's got something to put his apples in. If he didn't have that, he wouldn't be able to sell them. So in theory, he could value price this somehow. But yeah, that's a fantastic example. I have plenty of similar ones, but that's perfect.

John: Right. The equivalent in legal and this is part of why I want to have you sort of talk about this more with lawyers, we've been talking about alternative billing models in legal for as long as I've been in practice, which is early 20, I guess mid 2000s. And I've been around the industry for much longer than that. And some success has been had and some practice areas have sort of switched to other pricing models more successfully than others. But hourly is still far and away the dominant paradigm in legal.

But there's this new sort of, I guess, existential threat, or at least thing that's in the zeitgeist in legal as it is in so many other industries, and that's generative AI.

Jonathan: Sure.

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John: And one of the things that is true is that bar associations and even the ABA, which can issue guidance, if not pure regulation, has come out and said, if you use AI to shorten a piece of work and you're billing hourly, you have to bill for the actual amount of time it takes. You don't get to say, oh, AI is like an assistant or, you know, suddenly becomes piece work in that context.

Jonathan: I just have to interject that it kind of blows my mind that someone had to say that out loud because it's so inherently obvious to me that that is completely unethical to charge for the AI as if – I mean at most, I could imagine this is just my value system. I'm not saying what's legal or illegal, but my value system that had something to do with my epiphany about hourly was that at the most, you could bill for your chat GPT account to that some portion of like, oh, I pay him, I pay ChatGPT 20 hours a month. So I'm going to expense a portion of that to this client, you know, like \$2 or something. But the idea that people would consider billing out an AI as a person's hours is shocking to me. I'm offended that they had to say that that is not allowed.

John: I should be also, and yet I've been around the industry long enough and I've sat on the board of governors of our bar as a regulator. And so, the things that I've seen people try.

Jonathan: Okay, let's walk through this example, Not to derail, but AI...

John: No this is great.

Jonathan: Okay. What is the premise here? Like what is even the premise? It would take five minutes for AI to do this and you charge for the five minutes or how long it would have taken a human?

John: So I think the guidance is built around the idea that the lawyer would be tempted to bill how long it would have taken them.

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Jonathan: Okay, so let's stop right there, because I think that must be what they're saying, because if they were just billing for three minutes of it, you know, that's not that big a deal.

John: The alternate reality, and I haven't heard this, but I mean, it's not impossible to imagine, is that you think of the AI as an associate that you've hired and you're paying them a salary of \$20 a month because that's what ChatGPT Plus costs, but you're billing them at a rate of \$1,000 an hour, right? Or \$5,000 an hour, because that may just be, right, if they can do that. But in the logic of the industry, at least as long as the industry's been in the hourly billing model, which is not for all of history, but it's long enough that we don't have generational memory of the before times for the most part.

And so in that world, right, you mentioned the \$2,000 hour partners in New York, and there's probably people that are going up beyond that now, that is the mindset is that, oh, I'm in high demand. My expertise is so good, and I'm so effective or efficient at getting results that your \$2,000 an hour burn rate is worth it to you.

And so you could extend that logic if ChatGPT or Claude or the VLACs or all the various sort of bespoke legal versions of these tools are that good. It's not beyond me that some lawyer would say, oh yeah, no, I'll just treat this like an employee and bill it as if it were an associate.

Jonathan: All right. A couple of things here.

John: I'm not saying that's what's happening, but it's not out of the realm of my imagination.

Jonathan: So I would be fine with it if they disclosed that to the clients in advance. I'm going to be billing you \$1,000 an hour for me using ChatGPT. The main thing with hourly is the lack of transparency around what's happening in those hours and what the deal is. People will either not pad

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their hours or they will say they don't pad their hours because they know that that's not the deal. Right.

John: Right.

Jonathan: People will sometimes, oftentimes eat hours even though that's not the deal.

John: And often they're doing both.

Jonathan: Maybe, but the fact that people pad their hours because like, oh I did this way faster than I thought it was gonna take or I wasted a bunch of time on it I went down a dead end so I can't charge him for that. The fact that anyone does either of those things illustrates that that person who had that impulse understands that they're not selling hours.

John: Absolutely. I 100% agree.

Jonathan: But if the deal is I work an hour for you and you pay me \$200, that's the deal. So if that's not the deal, okay. Then if the deal is I'm going to use ChatGPT, I'm going to bill it out like an associate that I pay \$75,000-\$150,000 a year, I'm going to bill it out to you at my rate or less than my rate, \$100 an hour so you get a bargain. And that's all disclosed and they're cool with it. And they might be cool with it as long as they get results. And then I'm like, all right, fine.

John: But you better be actually timing ChatGPT at that point too, right? You better have the stopwatch on if that's what you're doing, which again, I don't think anyone's doing that, but it's an interesting mental model.

Jonathan: So, okay, but look at the pretzels we're twisting ourselves into.

John: For sure, I agree.

Jonathan: The client wants a result. If a lady comes into a divorce lawyer, what does she want? She's going to tell you what she wants. There's a

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price that she'd be willing to pay for some percentage chance of getting that outcome. Just price that and then use ChatGPT all you want.

I'm like, all fired up now. I can't believe that's a possible reaction to AI in the industry. It's like, oh, we'll just treat it like an employee. All right. I'll take a breath. I'll take a breath. We'll go back to the..

John: Well, and on the lines, not to keep you fired up, but one of the things I do for fun and punishment is read the various lawyer Reddit groups. And not a week goes by without someone asking the questions like, hey, if you call someone and leave a voicemail because you don't connect with them, do you bill that as a 0.1 or a 0.2? You gotta be kidding me. Oh yeah.

Jonathan: Bill it at all, I thought was what you were gonna say.

John: No, it's not do you bill it at all. It's understood that you're gonna bill it. And that voicemail, you know, pick up that dialing and whatever that took you maybe two minutes total, maybe three, do you bill it at 6 minutes or do you bill it at 12 minutes? Because a lot of firms will have a 0.2 minimum. It's like, okay, anytime I think about your file, we're just going to assume that I thought about it for 12 minutes.

Which again, it's a pretzel, right? There's this crazy set of pretzels that we twist ourselves into around it.

Jonathan: It's insanity. The overhead that it creates and the trust fracture it creates between the buyer and seller, it's nuts. Just give them a price. And then the faster you do it, the more profit you make.

John: Yeah, for sure. Okay. So let's say that we've convinced everybody that hourly billing is in fact nuts, which I don't think is true. But again, like I said, because this generative AI thing is in the zeitgeist, we're at a point, I think, in the legal industry and the profession where more people are open to it than ever before. People are convinced, oh my gosh, it's that, you know, whether it's through fear, which is the wrong way to come about it,

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but it's a way, or through the seeking of, oh, this is actually a way better way of working. What's a good way to think about getting started?

Jonathan: I mean, switching off of time obviously is a key. There's many ways to switch off of time-based billing that are useful. There's a million of them. Well, there are at least six that are common.

John: We don't have to go through all of them but give us a few.

Jonathan: Value base would be one where you know if the jilted spouse comes in and wants a divorce and you've got a price for it. Ask a few questions about their situation. It's small, medium or large situation. You just give them a price. And maybe like a doctor, you can't guarantee an outcome, but you just let them know what the odds are.

This seems like a slam dunk. This is going to be hard. And then it's up to them, like, is the fee in the amount acceptable or not. And then the quicker you can get it done or the more you can leverage AI, the more you can leverage your associates or the more you can have boilerplate prepared previously from other you know you maybe this is a kind of case that you handle automation. All automation, all of that stuff, voice typing, everything, then the more money you make and the client, they want it as fast as possible. They don't care how much time you spent, really. They just want the result.

So that's a quick example of like, well, that actually wasn't value pricing, I'm sorry. That was like a productized service version.

John: Yeah, okay. I was gonna question that. So yes, that's productized services. That's effectively fixed fee pricing. And one of the things in when you had me on your podcast, we talked about from my lens and this Agile approach, which, of course, you also are familiar with Agile coming out of software, is that you could try to fix fee price the whole thing from soup to nuts.

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But the more Agile approach would say, hey, I don't know what your spouse's opposing counsel is going to be like or do. If it's one of these folks, I know it's probably going to go great. If they hire one of these other weirdos, then we could be in for a real fight. And so what I'm going to do is phased fixed fee you and say, okay, we're going to get you through to, you know, this particular stage gate. And then when we get to that stage gate, we're going to reevaluate.

We're going to reassess, refine our strategies we need to and then that's where I'll give you – beforehand, I can give you a range of what stage two might look like but not until we get to stage two can we actually say, okay, great, I can do it for \$10,000 at this point, whatever it has to be.

Jonathan: I've interviewed lawyers older than me and I've given them this, if you can't see me, I have very gray hair. I've interviewed folks who I've put this question to, like how do you do this? I know how to do this in the software space and it's phased, that's the way you do it in the software space. He was like, yeah, that's exactly what we do.

If this is going to be a big thing, it's going to take a long time and it has a lot of stages and we can only really clearly see the map of what we're going to do for the next, the near term and it's hazy what's going to happen depending on what happens in these earlier stages, you just price the stages.

So the difference – I accidentally jumped into fixed fee, like as you pointed out rightly. You could have these prices set in advance and they just are what they are and when someone comes along, they're either qualified for that thing or they aren't. You wouldn't take every single client. You would take a very specific kind of client who fits the mold of who can buy this particular service and then it's just the price.

You don't have to think about it, they don't have to think about it, they just say yes or no and you start. So fixed, let's call it preset just to hyper

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distinguish. It's preset, it's like a menu at a restaurant, well it's a little bit more specific, it's not that granular, but it's kind of like that.

You have a list of prices either in your head or on your website, but you have a list of prices and a sort of ideal customer profile and ICP for who each one of these things is for and you slot them into wherever it makes sense. This is a very easy way to do it for people who do want to get off of time-based billing and aren't great at sales and they don't want to get good at sales. They don't want to get good at what I'm about to describe.

John: Let me drill in just because I've seen this as an anti-pattern too, or it's a pattern, right? And I think it's a suboptimal one, but it can be okay. Where people really do piece out all of it and say, okay, great. I mean, I've seen people price contract review by the page.

Jonathan: Yeah, yeah, yeah. That's too granular.

John: Too granular. So that, I mean, that is a form of preset pricing that's very, very far from value pricing.

Jonathan: And how do you know when you've gone too far? You know when you've gone too far when it's meaningless to the client. If a tree falls in my garage and I need the roof replaced, if I have a roofer come over and I say, how much is it going to be for a roof? And he says, shingles are 20 cents each.

It doesn't give me a price. How much is the roof? It's got to be broad strokes enough for the person who's buying it to understand. What's the next question? Well, how many pages are there going to be? You know, if you give me a page price. You can't go, yeah, you can't go that granular.

John: Can I have you review pages three, six and nine and I will review the other whatever seven in this thing? It can create some really perverse incentives.

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Jonathan: Yeah. You don't want – that's the other thing is if you do price that granularly, then you're inviting micromanagement from the client about how you do your job. And lawyers especially would consider, you know, that is a profession, doctor's profession, there's a governing body and you would never, doctor would never let you do part of your open heart surgery and same with a lawyer, it shouldn't let the client be tinkering around with how you do your job. And that's what happens if you have the pricing too granular.

John: Yeah, although it's funny because that happens in hourly all the time.

Jonathan: Constantly. Yes.

John: Specifically with insurance defense firms, right? Because there's this incredibly intricate and increasingly expensive from an administrative overhead standpoint dance around, well, how do you write bill in the magic language that someone else will actually let you bill a 0.3 for this particular thing as opposed to them thinking it should be a 0.1 or 0.2 or whatever. It is madness. I will get back away from that.

Jonathan: Yeah, we're looking for ways out of it. All right. So the sort of headline on my website is like, stop billing, start pricing. Because people think billing is pricing. It's not.

If the client doesn't know how much money they need to give you before they make a buying decision, that's not a price. They are forced based on some estimate to make a decision and in my experience in software, it is vanishingly rare that an estimate ends up being high. It's always low and there are reasons for that but we don't have to go into it because it has to do with hourly incentives.

Basically, you got to give prices for something so that the buyer in advance can make an informed purchasing decision and then you don't go over that price right you keep your promise for what you're gonna what you're gonna accomplish or deliver for that price and that's that. So I'm kind of jumping

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around here it can be this sort of phased fixed price where it's preset in your mind or on your website where a divorce is \$3,000 and then when someone comes along, you vet the client to fit the product.

If Kim Kardashian comes along, she's not allowed to buy that or you only price such that people like Kim Kardashian are the only people that can afford you. And you specialize in that end of the market and you maybe have two clients a year.

John: Yeah. And I think there are some lawyers that are doing something like that. I think some of them are still trying to do that but with their hourly rate.

Jonathan: Yeah, I think that's probably true. The \$2,000 or more per hour New York partner, I think I'm guessing the clients that are hiring them don't care. Just get the job done. I want the best in the world. Send me a bill when you're done and they're not making a decision like, oh, well, how many hours is it going to be?

John: I think that's right.

Jonathan: Yeah. The value pricing approach would be if you weren't going to pick Kim Kardashian versus Normo driving a Subaru Outback like me, then okay, you're just going to leave that open. When someone comes along, you have a sales interview. I would call it a sales interview in a software space. That might be a sort of gauche way to put it in legal, but that's what you're doing.

John: I call mine a discovery call, which sounds a little gentler, but you know.

Jonathan: Yeah, the same thing. You find out in your mind, you're like, not what is the scope of the work that this client is potentially bringing to me, but what is the value of the outcome that they're looking for.

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John: Yes, that's the key.

Jonathan: Which is a crazy, crazy 180-degree flip in thinking.

John: Absolutely. Yeah. Okay. And so that's value pricing. Yes. Is to really do and I'm going to say do the work, that's not quite right because I think 80% of it is having the mindset that you genuinely want to know what the outcome or be able to get to a reasonable understanding of what the outcome is because very rarely are they going to be able to come up with a number, right? Sometimes maybe. If it's business transactions and things like that, there are situations where it's possible.

Jonathan: Yeah, if it's like a cost reduction thing in a business context, maybe.

John: But someone who's going through, again, going through a divorce and if they've maybe got some kids and they've got some property and they've got a retirement account and some other things, especially if you're a divorce lawyer, which I'm not, but you begin to understand through your knowledge, experience, et cetera, kind of how people respond to, okay, the continuing relationship with my kids is important to me, the financial stability is important to me, the standing in the community or the address, you know, different things are important to different people.

Jonathan: Right. That's exactly all those things are exactly the kinds of things you try and uncover. If they're like, I don't care. I just want you know, I don't really care about that. I don't really care about that. It's no big deal. I don't care about the kids.

It's a totally different. You got a totally different animal here. The value is very low and you're like, okay, I can't give them a super high price and expect them to accept it, right? Because the value is not there. No one is going to accept a price that is higher than what the thing is worth to them.

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John: Absolutely, yeah. They're probably not going to accept a price that is what the thing is worth to them because that's right. They want it to be worth something more than that. It doesn't have to be like an economic model of margin but we're talking about margins, right?

Jonathan: Yes, exactly. Mutual profit because both parties need to profit.

John: Well, let me make one other statement, which is the act of asking these questions to get to the core of what the client values and what they find valuable is itself a really great way to build rapport and trust with the client.

Jonathan: Oh yeah, in the software space it's like a huge differentiator because most people bill hourly still and all they want to know is scope. They're just like, how many screens is it going to have? How many tables in the database? And they're asking all these questions. If it's a good client, if it's a good fit, they're not going to know the answers because you're the expert, not them. That's why they need you.

So you're asking them all, it'd be like a lawyer saying, well, how many pages are you going to need to be in this contract, in this NDA that you want me to set up for? It's like, how the hell do I know? Yeah. So you're asking them all these questions about scope that they're not going to do a good job answering. And then it's no surprise when the estimate turns out to be too low because there was a whole bunch of scope that the novice client was unaware of because they're not the expert.

So when you switch to at least in the software space or like the example you gave in the software space, when you switch to, you let them brain dump all the stuff that's been built up, they're either excited or frantic to talk to you, because they probably waited too long to do this. And they've got a bunch of baggage that they need to drop on your desk.

So that happens and it takes about 15, 20 minutes. And then you say, this is great, this is good background information, whether it may or may not be

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useful, but okay, they got it off their chest and they kind of exhausted their vent.

And you can say, okay, let's step back and in the software space I would say in the business context what do you hope this is going to accomplish for you so like let's say I deliver this software internal software system to you said increase productivity that's why you want it what's going to happen next? What are you going to do after that? Like, oh, we'll finally be able to expand into new markets. Oh, okay. What new markets are you looking for? Oh, okay.

And now that you're asking them questions like a fellow entrepreneur would be asking instead of, or in your case, a fellow human would be asking and saying like, okay, and if they ask, like, why are you asking questions like this? It's because there are like dozens of ways I could do this, maybe hundreds. And by knowing what your desired outcome is, it dramatically narrows down the solution space so that I can focus on like two or three or four different ways that we could probably tackle this very efficiently and ignore all of these sort of things that would turn out to be blind alleys that don't lead to the destination you're looking for.

So it's in their best interest and the owners are just like it happens all the time but It used to happen when I did software projects and it happens to my students all the time where after the meeting's over, the CEO is like, this is the best meeting we've ever had with a software developer. They're like, oh, we feel heard, we feel understood, we don't feel like idiots trying to tell you how many tables are gonna be in the database.

John: Yeah, I can't remember exactly how you phrased it, but you are building and cultivating a relationship where it's one of more like colleagues and it is like vendor and client or provider and client.

Jonathan: Right. You end up on the same side of the table with the pricing too. Because now, as soon as you give them a fixed price, however you

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calculate it, whether you pre-calculated it and everybody gets the same price or you value price the client situation, it's fixed. So it's not going to change. And once they say yes, now all the pressure is on you to not have scope creep, to get it done as quickly as possible. And if you can do a slam dunk in one week for a \$50,000 fee, that was just worth a million dollars to the client. Great. Everybody's happy. Mutual profit.

John: I want to ask you about another model only because I've been seeing in your email list and on your podcast that you've been talking with your group a lot lately about the fractional executive model.

Jonathan: Yes, yes.

John: And so I would love since it's kind of hot on the front of your brain, what is your insight? Because it's something that we see a lot in lawyers, right? Fractional general counsel is something very common in the business law sector, little less common in other areas like you hope you don't need to have a fractional criminal law attorney on call. Sorry.

Jonathan: Maybe fractional contract law, I don't know.

John: Yeah. Well, you see a family office model is something where you see that. And so what do you think of in terms of that fractional model? And I guess what are the less optimal behaviors that you see and what's the better way to sort of approach that type of work?

Jonathan: Sure. I think a fractional is sort of a branded version of the general concept of subscription services. It's a kind of subscription service. There are others that I see, and I've used, I've used a fractional CTO model in the past. I've used an advisory retainer model in the past. There's also, there's one I haven't done in the past called an all-you-can-eat model, which is more implementation. It's more for people that are kind of, they kind of like doing implementation, whatever that means in legal space, I'm not quite sure. But they're all variations on a subscription model.

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And a subscription model, if you think of Netflix, or if you're familiar with Ron Baker, he talks about this a lot, they're paying the same amount of money every month at the beginning of the month, no invoice, just, I mean, maybe some later, but it's just like it hits their credit card or ACH and you get the \$1,000, the \$10,000, the \$100,000, whatever it is, and it just keeps rolling. There's no end date. It's open-ended. They can cancel any time, but there's no, it's not gonna stop after a year or whatever.

And in a fractional model, it's a very specific situation. So where you're going to sell a subscription to them, but the scope is very interesting and the pricing constraints are very interesting in that specific one, there's a lot of nuance to it. The first thing is, it's probably a company that can't afford a full-time version of you. So they're automatically not going to pay you what they would pay the full-time salary per month.

So just for round numbers, let's say it's \$180,000 a year, that's probably too low. That's \$15,000 a month and you're not going to get them to pay you more than \$15,000 a month. There's some exceptions to this, but let's just stick with it. You're a commodity lawyer, you're qualified to do this kind of work, but they can't afford to hire you or someone like you full-time. So that puts a real ceiling on your fees. Let's say they're going to pay you \$7,500, so half that.

If you had two clients, I mean the assumption here is you want to make more than you could as a full-timer, otherwise you'd just be full-time probably. So now you've got two clients and now you're making the same as you would have full-time but with tons of risk and potentially, you lose one client, you lost half your income, so there's a lot of uncertainty there, more risk than a full-time job. So you probably need at least three clients for it to make sense concurrently.

The anti-pattern is that you can't set your fee very high and you need to handle 3, 4, I mean ideally you'd have five to 10 clients that you're handling simultaneously. Okay, so at least for CTOs, I'm sure it's probably true with

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general counsel too, if you look at the list of responsibilities that a CTO would have, it's a long list. And there's probably eight different categories that are fundamentally different from each other.

At the high end, it's like technical vision, product development. Another thing would be investor relations and doing dog and pony shows. For very early stage startup, you might be writing code. There could be team development and management. These are all massively different modes of thought. So you have huge switching costs going from one to the other and a full-time CTO would struggle to get all of it done in a month too.

So how are you going to handle five clients with all those responsibilities and not go crazy, not be working 100 hours a week. And the answer that most people come to, and it's the wrong answer, is to give each one a bucket of hours. So I can handle four clients, I'll give them each 10 hours a week, and then my life will be perfect. Or another common one is, client A gets me on Mondays, client B gets me on Tuesdays, client C gets me on Wednesdays.

And all of those responsibilities can come flying at them, and now they've only got eight to 10 hours a week to tackle all that stuff. They're not going to be able to do it. So you're constantly going to feel underwater. You're going to be constantly getting requests that you can't fulfill. And then you have this conversation with the buyer, probably the CEO saying, look, I've only got 10 hours a week.

What do you want from me? I can't get all this stuff done. It's the same mismatch incentive because of the hours. This was my main thing way back when I ditched hourly. The main thing that attracted me to fixed pricing was that I finally felt like I could deliver customer satisfaction reliably. When you're going over budget all the time, things are taking longer and costing more, it ends up ruining the relationship. The longer it goes, the worse it gets.

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This is one of those things where they're going to be like, well, you said you were going to – but you're our general counselor, you're our CTO and it's like, well, I can only talk to you on Mondays, you're going to have to wait until next week. It's like, but the meeting's tomorrow. So what do you do instead though, right? You're not a barista, you're not like a part-time employee, it doesn't work like that.

So what do you do instead? I tell people instead of thinking of it as fractional hours, think of it as fractional responsibilities. You make a list of all the responsibilities that a general counsel would potentially be expected to undertake and you say, I'm only doing these two. Or, and probably if you're smart, you probably only do those two across all of your clients. I can't even imagine what those two things might be, a contractor.

John: Yeah. Well, it's not hard for me, right? So business startups, they have sort of the formational needs around the company, right? So getting the entity set up and then getting it positioned in a way to be able to take investment, if that's the route that you're on, or to bring on new partners, and that's the route that you're on, or position for an exit, if that's the route that you're on.

Jonathan: Sure. Yeah, those are all great.

John: Right? And there are lawyers that are really good at that type of work, but that isn't always ongoing work or it's, you know, again, depending on the company. For some companies it is, for some companies it isn't.

Jonathan: Right. So that brings me to two other aspects of sort of a fractional business model. So the main one would be finding someone who does have kind of on, got some kind of ongoing thing. So like business formation, that's going to be done soon. That might take a while, but it's got an expiration date on it.

But just dealing with ongoing stuff operationally, that's a good fit for fractional. And then there are two other things that usually come along with

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it. So fractional would be like your core offering, and they pay you monthly to handle the responsibilities that you've agreed to. And then the second thing, a lot of times people will sometimes even require that first there's this paid diagnostic with recommendations. And it could be like you said, initial business setup, and it's just fixed price.

It's like, I do initial setups for startups of this type, it's \$25,000 or whatever, I don't know what a reasonable price for that is, but you just pick a price that you'd be fist-pumpingly happy to do it for and that's how much it is and I don't work with anybody on a fractional basis that hasn't gone through this. Some people make it like a prerequisite or other people are like, well, your business is already set up. I agree with the way that it's set up. It's not going to cause problems for me and I'll just take you on on a fractional basis. But a lot of times there's this initial, it's not really client onboarding.

It's not set up, but it's like, it's this initial high levels, probably strategic, very important set of decisions but it's going to be over in six weeks at the most and you might price that at a certain amount and it may or may not be a prerequisite for working with you on a fractional basis.

John: Well, it's funny because I love that approach regardless of whether you're looking for a fractional work or not. I think a diagnostic strategic assessment, whatever you want to call it is actually a great way to begin any number of engagements.

Partly because even if you're doing full on value pricing, you can only get so deep in the sort of the salesy type conversations. That initial assessment really does get you in under the hood, see what's going on, talking to people, understanding what their motivations are.

And it also gives you an opportunity to really demonstrate your expertise, your value, get them feeling comfortable with you. And probably 70% of the time or more, that works out really well. And maybe 30% of the time you realize, oh, you know, we're not a great fit. And that's okay too.

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Jonathan: And it could go either way. You might find out that you're not a fan of working with them or it's just not a good fit. Yeah. One nuance that I'll add for people is that whenever I did this, it's very successful for software developers. Because like you said, it kind of extends that relationship building, partnership, sitting on the same side of the table kind of thing, because it's in your best interest to do a great job as quickly as possible to get the maximum profit for you and minimize the opportunity cost for them.

But I would always say, because I'd say like, oh, let's test drive the relationship. We'll do this initial whatever we call it. It'd be like a roadmapping thing or a diagnostic or some sort of strategic planning or recommendations. And I'd say, and it's no lock-in. At the end of it, you're gonna know, you're gonna have a map from New York to California. You're in New York, you wanna go to California, you're gonna have the map. You don't have to work with me if you don't want to. I might not even be available, but you can take this to anybody.

Any decent software developer is going to understand this map and you're not gonna have to go through it again. So it's yours to keep, so to speak. So you've priced the deliverable and what they're gonna walk away with, the value, the tangible value, is clarity on the steps to take to get where they need to go.

Like you said, almost always at the end of that, you can say, all right, here you go. Almost always, they're going to be like, we want you to do it. And I would say like, look, I'm definitely going to be the most expensive option. I don't do implementation normally. I love you guys. It'd be great to work together, but you can find someone cheaper who would do a good job. Like, no, no, no, just give us a, well, how much, how much is it going to be and give us a price. You can either decide to take on that implementation work or not.

There's a middle ground where you can be there as an advisor and oversee the people that do the implementation to make sure that they're

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not, you know it's like, let's say you do this initial setup for a company. They can't afford you on a fractional basis, but you give them a recommendation of somebody who bills hourly because that's their only option, and then you just sort of oversee it. You just check-in asynchronously from time to time. It's not very much work, and maybe they have you reviewing the invoice. Like, these guys are gouging you. They're padding their hours, and you can just keep the project on track. At least this works great in software. I don't know about how it work in legal.

John: Well, it's interesting. Like I can't see it necessarily working in legal in terms of using other outside counsel, but it's actually not far off of how a lot of smaller lawyers run their own firms. I mean, one of the things I hear all the time from law firm owners is I want to get out of the grunt work. I want to get out of the day to day, I wanna do strategy, I love that part of it, but I don't need to be dotting I's and crossing T's, that's not a great use of my time and energy.

And so a big part, I think, of building a firm for lawyers who are inclined to do that is they see it as wanting to move themselves into a higher and better use, right? Not always highest and best, but at least making some progress that way. And the challenge then is making sure that the people that you have working under you are staying on track to your specifications, to your quality standards, etc. So what you're talking about makes perfect sense, just not always in the context of, oh, I'm going to oversee another lawyer's work.

Jonathan: Yes. So yeah, for sure. I always think in terms of like solo consultant because that's my background, but you're right. That is very common.

John: Well, Jonathan, I have like 20 other questions I want to ask you. So I hope that I can invite you back on at some point to talk about some of those.

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Jonathan: Sure, yeah, yeah. Especially if questions come in from the audience, you can make a list and we'll just like rapid fire.

John: Yeah, no, I love that idea. So okay, so well, there's number one call to action, which you always rattle off my email at the end of these shows. So if you have a question for me or for Jonathan, send it in and I'll bring him back and we'll talk about that way. The thing to sort of presage it, what I hope to bring you back on is your desire to stay solo, which you mentioned just a minute ago. Right.

And just the thing I'll hit on, and we talked about the little bit a little bit before I hit record. But, you know, I talk a lot about the honest reckoning with capacity and being able to right size your business to meet the capacity. And you've made the decision that your personal capacity is the capacity of your business, which then forces you into a conversation with yourself around, okay, how do I then optimize the use of that? I'm not even going to ask for your reflection on that right now because I want to bring you back to the deeper part of it.

Jonathan: Yes, how to grow without hiring.

John: Yeah, I think that is a big question. I think well again, I won't I won't go down the rabbit hole. We'll save it.

Jonathan: Cliffhanger

John: Thank you for coming Jonathanstark.com is that right?

Jonathan: Yep. That's right Yeah, if you can't spell that go for the ditching hourly guy and Google will send you the right direction

John: Perfect. Yeah. Okay. So ditching hourly, Hourly Billing is Nuts is on all the bookstore things. And yeah, your daily email is great. And weekly comic is also great. So lots to tease. Thanks so much and hope to have you back soon.

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Jonathan: It's always a pleasure. Anytime.

John: All right. I hope you found some solid insight from that conversation. At the end of the day, there are plenty of reasons to move away from hourly billing, but two stand out to me as core to Agile principles.

Number 1, the different business models that Jonathan talked about all allow you to focus on how your practice is delivering true client value, rather than just billing for your efforts.

And number 2, as I talked about more in depth in last week's episode with Brita Long, stiffing your pricing model can be an important tool for helping you get the right kind of work and the right amount of work into your practice, which in turn will help make your practice more sustainable for you, your team, and your business as a whole.

Okay, that's it for this week. Next week, I've got one more interview episode coming up, this one with attorney and technologist Damien Riehl, who is at the forefront of building lawyer-specific AI tools that several of my clients are already using in their law practices. And chances are that you've already started using AI in some capacity, but Damien will give you some great information on what the technology is capable of today and where it is headed.

If you have any questions about what pricing models might work best for your practice, your business model overall, or anything else having to do with the operations of your law practice, definitely check out my website at agileattorney.com, where you can also book a discovery call with me to chat about your specific needs.

As always, I get production support from the amazing team at Digital Freedom Productions, and our theme music is Hello by Lunarah. Thanks for listening, and I'll catch you next week.