



## Young Lawyers Section

# Exceeding Client Expectations In A Tough Economic Climate

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### Executive Summary

*Keeping time records and converting those records to a bill for the client is perhaps the least appealing part of a defense practice, but it is an important part of maintaining client satisfaction. There are alternatives to the standard hourly rate, but it remains the standard. To make the process as palatable as possible and avoid or at least reduce client write-downs, some principles help. Detail helps because it lets the client know that the work was necessary and the time was appropriate. Principles to keep in mind are "what, why and how." What: a detailed description of the actual work rather than a generic description. Why: the purpose for doing that work. How: how the work relates to the goal of the litigation.*

### Legal billing – What would Honest Abe think?

*"A lawyer's time and advice are his stock in trade."  
Abraham Lincoln, Attorney.*

Long gone are Abe's days of "for services rendered" billing, and it's important to understand and appreciate what's really happening when you learn that a client has cut your bill or is unhappy with the amount of time you've spent on a particular project. As third party administrators, paralegals, and in-house claims managers get involved in the process, it becomes even more important to understand and promptly respond to your client's financial expectations.

### A. The billable hour – Our "friend" for the past fifty years

*For Services Rendered.* Most young lawyers can relate to this form of legal billing about as well as we relate to the eight track tape or purple bellbottoms. Today's fast paced legal world relies largely upon the billable hour and time entries are the cash registers of our firms. The bane of many an associate's life, hatred of billable hours is often cited as a motivating factor for moving in-house. While this is an option for some, the majority of us will continue to bill for the next 30 or 40 years, trying frantically to capture every task into neat little six minute increments.

But did you know that hourly legal billing has only been in vogue since the 1950s? Despite the growth of flat fees, fixed fees, performance based fees and other creative billing arrangements, the billable hour remains king, for now. While few young lawyers will learn to love this system, we can better understand our client's expectations in this area and can use this knowledge to enhance our client relationships and streamline the time entry process.

### Alternatives to the standard billable hour

Before digging into the world of billable hours, what else is out there? Even if you're not responding to requests for proposal from your clients or bidding on new work, you should understand that there are many available billing models. Some of the more common alternatives include:

**Fixed or flat fee billing** – Here the client is charged a fixed amount for a single case or group of cases. These fees are often established using prior case history and can be very useful in pattern litigation. Some cases in the group will settle early, resulting in a higher profit, while drawn-out discovery battles in other cases will even things out.



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These arrangements provide greater budget control for your clients and a consistent income stream for your firm.

**Phased billing** – Similar to fixed fees, each aspect of a particular case is broken down with a specific value assigned. This type of billing can be useful in cases where there are defined stages or timelines involved.

**Blended rates** – Instead of dealing with multiple rates for different partners, associates, and paralegals, the client pays a single rate for all work performed. This type of billing arrangement can be problematic if the client thinks a senior partner will be doing most of the work on the cheap, while the firm envisions an associate working up the case at junior partner rates.

**Capped billing** – Another variant of the flat fee, this billing arrangement utilizes standard rates, but provides certainty to the client that they will pay no more than the capped amount. Interestingly, some firms using this arrangement have an uncanny ability to resolve matters just shy of the billing cap.

**Rates tiered to volume** – If your client offers to give you 20 cases a year instead of the three you currently receive, reducing billing rates in exchange for volume can make a lot of business sense. Just be careful that your rates don't make the work unprofitable. It doesn't matter how many cases you have or how busy you are if the firm isn't making any money.

Corporate lawyers and executives, who have managed to stay within their budgets for years, often complain about the inability of outside lawyers to accu-

rately budget and their fear of flat fee arrangements. While talk surrounding alternative fee arrangements continues to grow, and some firms and companies report great success, the billable hour remains deeply ingrained in our profession.

### **You are not alone: Time entry and time recollection can be tough**

Alternative fee arrangements aside, as a young lawyer your stress level with respect to time entry will be particularly high. Not only are you adjusting to the practice of law, but you are now forced to account for virtually every minute of every day. Even with sophisticated billing timers and related software it's possible to find that huge chunks of your day have just disappeared, and you're frantically trying to recreate your day by reviewing email and trying to remember your various telephone calls.

While many firms in Michigan have wonderful CLE courses on time entry and billing practices, which can vary tremendously by firm and practice area, this training often provides little insight into how your client actually reviews these bills and determines whether accept the bill or to cut entries that are inflated, unclear, or simply don't provide any meaningful contribution to the case or project. Some of these strategies are discussed below, but make sure you take the time to carefully review your client or insurance adjustor's specific billing requirements. Not all companies are the

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same and billing procedures and practices can vary drastically among your respective clients.

### **To a corporation, the legal staff is an unpleasant but necessary budget line**

In-house lawyers, paralegals, and claims managers are human. Given the lack of direct contact younger lawyers often have with these folks, they may seem the Great and Powerful Oz, but once the curtain is pulled aside, they're people too. Your clients have just as much stress in their lives as you do, particularly in Michigan's current economic climate. While you bill away by the hour or fill up the flat fee contract with shadow billing, your clients are faced with increasingly smaller budgets and constant pressure from the corporate suite to satisfy shareholder demands.

Believe it or not, and certain types of commercial litigation aside, most in-house legal departments are black holes that consume vast financial resources while contributing nothing to the company's bottom line. When "winning" at trial means paying your own lawyers a lot of money, while "losing" means paying your own lawyers and also paying the other side a lot of money, it can be difficult to get the executive floor excited about the important work being coordinated by the in-house legal team.

### **Clients? Young associates actually get to meet clients?**

With fears of layoffs, demotions, and mergers, partners are holding their cli-

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ents closer to their chests than ever before. Some of you may have little or no direct contact with the companies you represent, and have only internal clients (*i.e.*, senior counsel and partners). As a result, and even if you do have direct client contact, there is a good chance that you will never know if your client has concerns with your billing.

Corporate clients might make general cuts to the bill, or even more specific cuts that are reviewed and considered by your senior partner. Perhaps you'll get a cursory "include more detail in your billing" from someone, but without more, how will you really know what needs to change and how you can more effectively manage your client's financial expectations? One thing you can do, to the extent your time is being cut before it leaves the office, is to ensure that you are fully versed in your firm's billing software. You'd be amazed at how often partners will tweak a bill, cutting your time or modifying billing language before sending it out the door.

## What are clients looking for in my bills? How can I make them happy?

"How many attorneys does it take to change a light bulb? Let's see. One to check the socket. Another to order the bulb. Three or four to do research on how to change a bulb. Another to write a memo about how to do it. And still another to proofread the memo. One to twist in the bulb. Another to advise the bulb twister. Two more to serve as witnesses. Another to stand by if needed.

And one or two to write a memo to file about the operation." *W.G. Ross, The Honest Hour: The Ethics of Time Based Billing by Attorneys* (Carolina Academic Press, 1996), 99.

Needless to say, you want to avoid having your clients make similar analogies about your billing habits. There are some basic steps you can take to improve your billing relationships with both your internal and external clients:

1. Explain your entries and provide sufficient detail regarding your specific task or project.
2. Make sure to ask yourself "why am I doing this" and include your answer in your time entry description.

Partners rarely complain about too much information in time entries, but then again you want to spend your day practicing law instead of simply transcribing time. You should also recognize that your client is probably reviewing more than just your bills or even bills from your firm and too much detail can be a bad thing – you need to find a common medium. If your firm serves as national counsel, pull a few files where you have different local counsel and review their bills for fun. You'll be amazed at the differences in billing language and style used by different firms, practice groups and lawyers.

But how do you actually know that your time entries are any good? This is more of an art than a science, but here are a few ideas:

1. Read the entry and think about whether it describes work that shows case development.
2. Ask yourself whether you would rush to pay the bill if you were the client?

You must always remember that the case and the defense belong to your client. While you might be billing away on what you believe is some great work, you should always ask yourself "How does

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the work I'm doing right now provide value to my client and their case?"

## Improper billing habits can result in reprimand, a lost client, or worse

Billing abuse is something you want to avoid at all costs, and there are some big red flags that your clients will look for when reviewing bills.

**Block entries** – break down and identify your tasks wherever possible.

**Double billing** – if working on a project that benefits two clients, remember to split your time accordingly.

**Rounded time** – if it took a .4, you should bill a .4, but some will round up and improperly bill a .5. Some firm billing policies even support this unethical practice.

**Travel time** – if you're on a plane and want to bill for it, plan to do some work on the case and don't bill your client for the time spent reading a novel.

**Overstaffing** – the light bulb analogy above says it all.

## Understanding the economic realities of your litigation practice

If you represent insurance companies, your clients' biggest cost, aside from employee compensation and claims management, is often litigation. Other types of corporate defendants are also concerned about their ever growing litigation costs. In an effort to cut costs and increase efficiency, outside counsel bills are being scrutinized like never before. Beyond internal review, some corpora-

tions have brought in third-party auditors to cut bills and help reduce excessive and wasteful litigation expense.

From an outside firm perspective, the cost of young lawyers, like you, continues to grow. Not only do first year salaries continue to rise (although the past few years have proven the exception), but your medical benefits and parking pass get more expensive every year. While the in-house team is trimming bills and reducing legal expenses, your firm is forced to raise its associate and partner billing rates. With clients cutting costs and partners are making you more expensive, here are some suggestions for dealing with the economic realities we all face:

### **How much are you worth?**

It's easy to assume, given your stellar billing rate and target busting performance, that you're making the firm a lot of money. With some firms reporting that their associates don't start making the firm real money until their third or fourth year, your assumptions may be unfounded.

While your firm's profit and loss statement might not be available for review by a lowly associate, you should start asking questions about how much your fancy office, secretary and deluxe espresso machine cost the firm on a per-associate basis. If you understand your worth to the firm, you can better represent your value to both internal and external clients.

### **Reducing expenses and managing project cost**

As a junior lawyer you probably won't be submitting a proposal to the management committee regarding secretary/attorney ratios any time soon, but this doesn't mean you can't make a difference to the bottom line and build client rapport at the same time. Given our project driven lives, e-mail distraction is one of the biggest drags on productivity. Consider turning off your e-mail pop-up notifications and checking your messages at set intervals throughout the day. You'll

be amazed at how much more you can accomplish for your clients when you are not checking and responding to e-mail interruptions every two minutes. There are dozens of things you can do to increase your efficiency and value as an associate every day.

### **What does your client want to pay for?**

Given the lack of client contact, young lawyers often find themselves operating without a real understanding of client expectations. While extensive memorandums, briefing, and rows of string citations may impress your law school professors and perhaps some of your senior partners, they are often wasted on the trial judge and provide little benefit to your clients. Instead of billing as much time as you think the client will pay for, consider preparing concise e-mails and well-researched but focused briefs. One sure fire way to obtain more work from a client is to save them time and have them wondering how you were able to achieve satisfactory results with lower than expected billings.

Billable hours aside, there are lot of innovate ways you can help reduce litigation costs for your clients, and every little bit helps! Start by looking at some of the standard practices in your firm. Do you have a paralegal or associate summarize records as soon as they arrive, only to review these materials again before the expert or witness is deposed? Do you routinely fax and then mail correspondence to other parties? Concentrate your efforts on necessary activities and get rid of expensive habits with little or no value.

### **What if you were the client?**

Try spending your client's money as though it were your own. While most of our clients have caps on travel expenses, out-of-town meals etc., your goal is not to reach the cap, but to spend your client's money as efficiently and economically as possible. Ask yourself "would I order the lobster if I were paying the

bill?" If you have the bad habit of waiting to file something until it must go via overnight mail or hand delivery, get out of this habit. While you only see the \$20 expedited charge, think about your client who might be facing hundreds or thousands of similar charges across their case load. These changes might not be noticed right away, but if your firm's billings reflect zero under the Fed-Ex or UPS column while your main competitor shows thousands of dollars, this could be a deciding factor in where your corporate client sends its next case.

While it's a minor point, you should also understand how to best communicate with your client. The costs involved with client communications can be tremendous and while important things are sometime missed (a key concern of clients), you would be amazed at how much time is spent summarizing irrelevant documents to clients via e-mails or transmitting materials that add no value to the defense in the form of advice or analysis. Every client will have a different level of comfort with you and will present a different case management style. Make sure you know what your clients wants to see and what they don't want to see, saving both time and money.

### **Making billable time work for you and your clients**

You probably didn't apply to law school thinking about time entry, alternative billing arrangements, or auditors flyspecking your bills. While the current financial climate has driven these issues to the forefront of legal culture, most of the strategies and suggestions identified in this article represent nothing more than good common sense. Communicate regularly with your clients, be fair and honest in how you spend their money, and do a good job representing their interests in the courtroom. For brownie points, think about putting together a CLE program for your client's in-house team, at no charge of course.