



Attorneys' Fees (Getting Paid for What You Do)

By Charles E. Hardy

More than once I have heard individuals comment that one of the benefits of practicing law is that we are selling our time and do not have the required "inventory" that many do in their businesses and, of course, the associated costs of maintaining that inventory.

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At first blush, you may agree with this assessment. Remember, however, Abraham Lincoln's famous quote that "a lawyer's time and advice are his stock in trade." As lawyers, we do have inventory and it is much more perishable than that of a florist or produce company. Our inventory is our time. It is fleeting and highly perishable. We have roughly 40 hours per week of "inventory" that we must either use or lose. Keep in mind the importance of tracking and accounting for your time.

Over the years, I have talked with many lawyers about their billing practices and amassed what I refer to as the "rules of billing." These simple rules can help you increase your efficiency of billing and make your clients happier. When clients understand what they are paying for, they are more readily willing to pay our fees.

Hourly Rates, Fee Agreements, and Your Billing Program

Assess (or reassess) your hourly rate.

When was the last time that you adjusted your rate? Take a hard look at your hourly rate and compare it to those practitioners with similar years of experience. Additionally, factor in the degree of any area of specialization you may have in assessing your rate.

Review your hourly rate annually.

Many firms consider updating their hourly rates each December. A common practice is to increase fees \$25 per hour per year. This seems to keep up with inflation as well as with your increased amount of experience. This hourly rate change should not apply to existing clients but does apply to new client's cases (or new cases of old clients).

Find a proper billing program.

There are many billing programs that are available for you to track your time. Timeslips is very popular but there are many other ones out there that you may be using or that may otherwise suit your needs. I believe that it is *absolutely essential* that you enter your own time in the system to maximize your efficiency and capture all of your time (writing something down on paper and giving it to someone to input is not only an extremely inefficient act but also inherently causes a loss of time).

Accept credit cards.

Credit cards offer an easy method of payment for your clients. Retainers appear much more easily when clients are able to put the charge on their credit card. Clients like credit cards in every day spending — why should your attorney's fees be dissimilar? Take advantage of credit card usage and allow clients to charge.

Referral fees to attorneys.

I do not believe that it is a good idea to pay referral fees on hourly cases. What I do for attorneys who refer me cases is to be sure to refer cases back to them. I would strongly urge that if an attorney refers a case to you that you keep that lawyer on your list of people you "owe" a referral and refer them cases that you believe they are competent to handle.

Tracking Your Time

Track your time (all of it).

Remember, your time is your inventory. Any amount of your time that is not tracked is lost, so track all of it and track it carefully.

Bill for everything.

You should bill for every iota of work that you do for your clients. Treat your bill as the "diary" of your case. I regularly explain to clients that they will see everything that I do on their case. A quick explanation to your client that short items will be "no charged" will put them at ease but help them to better understand the process. While we have to be worried about putting in too much detail (as a contract may fall in the hands of the opposing side), be sure to provide enough detail that your client understands what you have done on their case. Compare a time entry of "Telephone conference with client" with "Saturday telephone conference with client regarding Christmas visitation issues and problems with those issues." Which entry offers the client a more complete understanding of what you have done for them?

"No charge" billing.

Remember to include in your billing even those items that you do not charge for. A quick phone call to a client or opposing attorney, some quick action on a file, or a short letter to the other attorney should be reflected with a "no charge" billing entry. This reminds the client that you did the work but emphasizes that you did not charge for it.

Bill in quarter-hour (.25) increments.

Quarter-hour incremental billing is the easiest type of billing that you can find. Clients understand the concept of "rounding up" or "rounding down" to quarter-hour increments and there is not much work that you can do in a file that does not fit into this billing concept. If you do something that takes three to four minutes, I suggest that you still bill it as a "quarter-hour" but "no-charge" that billing entry.

Set your goal to bill a 40-hour week.

We work a 40-hour plus week. We should aim to identify a 40-hour work product. Granted, this time may include "no charge"

Seven Steps to Success

Start with a seven-step process to proper billing practices:

- Step 1** – Consider rewriting your fee agreement.
- Step 2** – Analyze your computers and consider an upgrade.
- Step 3** – Buy a good billing program.
- Step 4** – Use the program hourly and keep it open on your desktop.
- Step 5** – Get in the habit of reviewing your time and billing totals daily.
- Step 6** – Set a procedure for sending your bills monthly.
- Step 7** – Review your receivables monthly and remind your clients to pay you.

hours, but it still gives us a weekly goal. Check your billing progress throughout the week (or even the day) to ensure that you are capturing all of your time and trying to keep to your daily goals.

Bill throughout the day as you conduct your work.

It is easier to type in a time slip as you are talking on the phone as opposed to trying to remember your work later on in the day. Get in the habit of creating a time slip while you are on the phone with a client or while you are doing the billable work.

Have your legal assistants bill for their time.

Outside of basic typing, a legal assistant should certainly bill for his or her time. They, too, can bill in quarter-hour increments and should be billing for other than basic work. Examples of legal assistant billings can include telephone conference with a client, preparation of response to discovery, cover letters to clients/opposing attorneys, inventory and appraisal, and draft of final decree, just to name a few.

Assess and Educate Clients

Read your contract word for word with your client.

Ensure that your clients understand what is expected of them as part of the fee arrangement. Read each section to them and explain in your own words what the section means, especially regarding the importance of their paying their fees on a monthly basis. Offer to let them take it home for review.

Initial appointment fees.

There are pros and cons to initial appointment fees. The pros include that you are charging for your time and avoiding being conflicted out of cases. The cons include that you might miss seeing clients who might be shy of paying an initial appointment fee yet be willing to pay a substantial retainer if they hire you. I believe that some amount should be charged for an initial appointment fee, if not your full hourly fee. My personal experience with an initial office conference is that clients know that they “get what they pay for.” The payment of the first conference fee gets the client used to paying your fees and gives them an understanding that your time truly is your “stock and trade.”

Just say “no.”

Don't fear allowing a client to walk away from your office without hiring you. If they are meant to come back and hire you, they will do so. Otherwise, you will probably be much happier about their case if someone else is representing them.

Do clients a favor — refer.

If a client cannot afford you, help them out by finding them an attorney they can afford. Maintain a referral network of competent lawyers to whom you can refer those clients.

Maintain a client phone list.

Keeping a client phone list will serve several purposes. First, it will offer you a readily available source for your client's and opposing attorney's phone numbers and other basic information. Second, it will give you an opportunity to have a master list to review on a regular basis. (I try to go through my phone list with my legal assistant weekly to make sure that we are on top of our cases.) Third, it will offer you a vehicle for review at

the end of the day to ensure that you have properly billed for the cases that you have worked on during the day.

Monthly billing.

Send out bills to clients every month, no matter what, without fail. Avoid having clients receive a statement for two or three or more months of work at a time. Clients are entitled to ask you to slow down and your failure to send a statement on a regular basis does not afford them that opportunity.

Stay on top of receivables.

Be sure to have your staff call your clients every single month (my admitted weakness) should they fail to make due payment on their bills. If you go to a doctor's office and do not pay a bill, you receive a call from its staff reminding you to make a payment. Why should lawyers be any different?

Etiquette and Integrity

Be appropriate.

Clients are generally impressed with what you say as well as with things you do. Be professional. Do not disparage your opposing counsel. Far from disparagement, you have every reason to compliment the opposing attorney and his or her skills. Remember that your client will be more impressed with your professionalism and ability and, accordingly, more willing to pay your fees if they are impressed with you.

Maintain your integrity.

We can reflect on the importance of maintaining your integrity and reputation among fellow members of the Bar and judiciary. But remember it is just as important to clients. Clients do not need a reason to dislike attorneys. For many, your representation will be the first exposure that they have had to an attorney. Clients who lose respect for you will justify not paying your bill. Do not allow clients to lie or misstate the truth. Be honest and compel your clients to be honest. Maintaining your integrity makes more than ethical sense, it makes business sense!

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