

BILLING: BEST PRACTICES

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Why Good Time Entries Matter

You are asking your client to pay you for your time.
Time entries help you:

- Tell your client what you have done
- Set and help you meet client expectations requirements
- Help your client internally with their own financial projections and budgets

Why Good Time Entries Matter

Stated another way, time entries:

- Supplement ethical obligation to communicate (ER 1.4)
- Support reasonableness of the fee (ER 1.5)
- Fulfil ethical obligation to bill accurately (ER 8.4(c))
- Ensure maximum award in fee arbitration
- Defend against potential malpractice claims
- Ensure maximum award in fee applications

Best Practices

- Record your time soon after you've done the work, preferably the same day
- Have a system to accurately record time as you work on a matter
 - Use timers with care
 - Take notes, or record time on an electronic device when you are away from your desk
 - At the conclusion of an office meeting, discuss how much time to record for the meeting
- Never record time for work you haven't done
- Enter all of the time you work, don't round down because you think you are inefficient
- Proof your time entries before they are submitted

Best Practices

- Write an appropriate narrative description of the work you've done—that is long enough that the client and billing attorney understand what work you did (verb + noun + reason), but not so long that it overwhelms with detail.
- Use separate time entries for a discrete action or group of related actions or a single entry but use parentheticals so that the client can see how much time was spent on each action.
- Use “current hindsight”
 - Will your narrative fairly summarize the work you did after you no longer have a present memory?
 - Will it say more than it should, creating grounds for a claim as to what you should have done, but didn't do?

Best Practices

Discuss client preferences and practices with the billing attorney at the outset of your work:

- Does the client use specific task and activity codes?
- Does the client use a program to analyze time?
- Does the client require certain terminology?
- Does the client have internal budget pressures that you may not be aware of?
- Ask to see the bill from the billing attorney before it goes to the client.

Is a fee reasonable?

ER 1.5 – Reasonableness is assessed at the outset and conclusion of representation. Factors are:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) the degree of risk assumed by the lawyer.

Ok, ok, but does this *really* matter?

- Your firm is in fee arbitration;
- Your firm is being sued for malpractice;
- Your firm is attempting to recover fees from an adversary; or
- Your firm attempting to seek approval from the bankruptcy court for fees.

Fee Arbitration

- Many firms have committed themselves to submit fee disputes with clients to State Bar fee arbitration;
- Sole standard in fee arbitration are factors in ER 1.5;
- Fee arbitrators urged to disallow all “block billing”;
and
- Fee arbitrators may discount hourly rates that exceed those in the SBA’s “Economics of Law Practice”

Defending Malpractice Actions

- Among first things reviewed by defense counsel;
- Creates a “record” of work performed after memories have faded;
- Jurors expect lawyers will write everything down and follow law firm guidelines, court guidelines; and
- Overbilling can subject the firm to tort liability for breach of fiduciary duty. See *Bird, Marella, Boxer & Wolpert*, 106 Cal. App. 4th at 429-30 (convicted defendant may sue attorney for breach of contract in fee dispute involving overbilling without showing he was innocent because dispute involved “quantity” not “quality” of legal services).

Fee Applications

- Time must be recorded “in sufficient detail so that the work performed or task accomplished is clearly described and identified.” Attorneys’ Fees Manual, at § 1.6.3, 1-5.
- Litigants who submit excessively vague time entries “take their chances” that those entries will be disallowed. League of United *Latin American Citizens No. 4552 v. Roscoe ISD*, 119 F.3d 1228, 1233 (5th Cir. 1997).
- Courts disapprove of block billing, a practice in which lawyers combine multiple discrete activities into a single time entry. *In re Guardianship of Sleeth*, 226 Ariz. 171, 178, ¶ 34, 244 P.3d 1169, 1176 (App. 2010).
- Courts disallow recovery for hours expended on purely clerical or secretarial tasks. Attorneys’ Fees Manual, at § 1.6.4 at 1-6; accord *Spegon v. Catholic Bishop of Chicago*, 175 F.3d 544, 553 (7th Cir. 1999).

Fee Applications – Sufficient Detail

- Terse time entries, such as “library research,” “analyzing documents” or “phone interviews,” entered with no further explanation, are insufficient and stricken as inadequately documented. *E.g., Walker v. U.S. Dep’t of Hous. & Urban Dev.*, 99 F.3d 761, 73 (5th Cir. 1996).
- A court is assessing whether the fee sought is reasonable, if the time entry does not let it make that assessment, it will be excluded. *E.g., In re Wheeler*, 439 B.R. 107, 110 (Bankr. E.D. Mich. 2010) (regarding time spent on attorney meeting).

Billing Examples – Detail

What is wrong with this entry?

Produce documents – 3 Hours

Does this fix the issue?

Coordinate document production (.5); review and categorize documents (2.5).

Billing Examples – Detail

What is wrong with this entry?

Call paralegal; meet with attorney – 1.2

Is this fixed?

Teleconference with paralegal for opposing counsel re document production (.7); office meeting with Lawyer X re hearing preparation (.5).

Billing Examples – Detail

Change this:

Organize motion filing – 2.5

To:

Compile exhibits to motion for summary judgment (2.5).

Billing Example – Detail

Change this:

Perform quality control on production of documents in discovery checking for improper redactions and defects (1.0); amend faulty language in response to request for production after performing quality control on production of documents (.2).

To:

Finalize production of documents (1.0); revise response to request for production (.2).

Billing Example – Detail

Change this:

Meeting with discovery vendor regarding production, imaging and bates labeling (.3); subsequent issues with production and work with discovery vendor (.6); review redaction of documents to be produced (.2); continue reviewing possible exceptions in production (2.2).

To:

Prepare document production in response to subpoena (3.3).

Billing Example – Detail

Change this:

Several calls and emails with Attorney X regarding production (.3); quality check production and different bates ranges (1.1); update disclosure statement with bates numbers and ranges (.4).

To:

Finalize initial disclosure statement, including revising disclosure statement with specific document numbers, and email Attorney X re same (1.8).

Fee Applications – Block Billing

- Courts disapprove of block billing, a practice in which lawyers combine multiple discrete activities into a single time entry. *In re Guardianship of Sleeth*, 226 Ariz. 171, 178, ¶ 34, 244 P.3d 1169, 1176 (App. 2010).
- Block billing “obfuscates the amount of time expended on distinct tasks.” *Miroglio S.P.A. v. Conway Stores, Inc.*, 629 F. Supp. 2d 307, 312-14 (S.D.N.Y. 2009). It also inflates the amount of time claimed by up to 30%. See *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 948 (9th Cir. 2007).
- A court will not separate block-billed entries “into their constituent tasks and apportion[] a random amount of time to each.” *Cobell*, 407 F.Supp.2d at 158-63. Rather, the court applies a percentage discount to all block-billed hours. The Ninth Circuit reduces block-billed entries by 20-30%. E.g., *Lahiri v. Univ. Music & Video Distribution Corp.*, 606 F.3d 1216, 1223 (9th Cir. 2010) (30%); *Welch*, 480 F.3d at 948 (20%).

Billing Example – Block Billing

Change this:

Review transcripts, discussions with Word Processing re transcript and meeting with Lawyer X re organization of transcripts (3.5).

To:

Revise statutes and transcripts for appendix (1.2); cite-check transcripts in opening brief (2.3).

Billing Example – Block Billing

Change this:

Download securely transferred files; email discovery vendor moving documents to server; import files to discovery platform; create copy of files and send to filing (3.0).

To:

Coordinate importing Plaintiffs' document production (2.5);
file Plaintiffs' document production (.5).

Or:

Coordinate importing Plaintiffs' document production.

Fee Applications - Billing Judgment

- Lawyers must exercise billing judgment when submitting bills to clients and when seeking fees from their adversaries. *Attorneys' Fees Manual* at § 1.6.4, 1-5; accord *Hensley*, 461 U.S. at 434, 103 S. Ct. at 1940.
- Courts scrutinize fee requests for “excessive, redundant or otherwise unnecessary hours which firms would have excluded from bills to their own clients.” *Cobell*, 407 F. Supp. 2d at 158-63; accord *China Doll*, 138 Ariz. at 188, 673 P.2d at 932 (the court must determine “that the hours claimed are justified”).

Billing Example – Billing Judgment

Discuss this:

Draft notice of service (6.5); teleconference with Attorney X re notice of service (1.5); videoconference with Client Y and Attorney X re notice of service (1.5).

Fee Applications – Administrative Tasks

- Courts disallow recovery for hours expended on purely clerical tasks. *Attorneys' Fees Manual*, at § 1.6.4 at 1-6.
- Clerical work is viewed as part of a law firm's overhead and reflected in the attorney or paralegal's hourly rate. *Seven Signatures Gen. P'ship v. Irongate Azrep BW LLC*, 871 F. Supp. 2d 1040, 1057-58 (D. Haw. 2012).
- Non-compensable administrative tasks include copying and mailing documents, filing pleadings, and maintaining case files. *Role Models Am., Inc. v. Brownlee*, 353 F.3d 962, 973 (D.C. Cir. 2004); *Okla. Nat. Gas Co. v. Apache Corp.*, 355 F. Supp. 2d 1246, 1257 (N.D. Okla. 2004).

Billing Example – Administrative Tasks

Change this:

Make photocopies of exhibits (.5); organize file of exhibits (1.0); mail copies of motion (.5); read motion for summary judgment for typos (.5); file motion for summary judgment (.2).

To:

Finalize motion for summary judgment (1.2); compile exhibits to motion for summary judgment (1.5).

Your turn – Example 1

Services rendered February 2018	\$10,000.00
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Your turn – Example 2

Assume you do the following:

09:00 – 09:30 Meet with Partner X and Attorney Y

09:31 – 10:24 Fact research on issue

10:25 – 11:00 Write email to Attorney Y re fact issue

Your turn – Example 3

08:30 – 09:00 Teleconference with Client A, Client B, and Partner C at which you discuss motion to dismiss and status conference.

9:01 – 9:12 Conversation with Attorney D about weekend plans

9:12 – 10:30 Westlaw cite check on research into security interests over dog grooming licenses

10:31 – 10:36 Coffee break

10:37 – 10:54 Call Attorney D to discuss research

10:55 – 11:24 Proof memo summarizing research

In sum

Use action words like cite-check, coordinate, confer, compile, revise, review and analyze

Record your time contemporaneously with the work

Make sure that record conveys the work you did

Don't write off your hours

Don't bill for work you didn't do

Talk to your supervisors if you have questions