

## Billable Hours

A young lawyer was lamenting to me how hard it is for him to get his billable hours where they need to be. It turns out that he is probably cheating himself the way he tracks his time. If he's sitting at his desk thinking about a case before he starts, he is billing. If he takes a walk outside of his office to think about the case, he does not. It's hard to fault his honesty. However, I was taught that if you're advancing the case or matter, you're billing.

How would you advise a young lawyer with regard to billing policies? When is the clock running, and when is it stopped?

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Thinking about the case is working, I don't care if it is in the shower.

Shell Bleiweiss, Illinois

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Back when I was at a firm and we had associates, we would tell them that any time they were working on a matter, whether at their desk or elsewhere, they should be billing for their time, and that the partner managing the matter would make a decision about what to bill and what not to bill.

Younger attorneys tend to be less efficient, true, but that's why their billable rate is usually lower than that of a more experienced attorney.

It's a good practice to capture all the time you are considering a matter and treat how much to bill the client as a separate consideration.

Kevin W. Grierson, Virginia

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Along those lines, it looks good to a client and a judge when you show what you didn't bill for. It makes the rest look reasonable.

Mitchell Goldstein, Virginia

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Yes, also important to tell him that there's a difference between clock-time and billed time. I used to work with an attorney who was the master of the

49-second phone call. If you make three of those in a row to different clients, it's either .3 billables or .75 depending on how you're billing, even though it only took three minutes of clock time. I agree that young attorneys tend to think that billable time is the same as clock time and feel guilty to bill at all for a 49-second phone call, even though it should get written down. This older attorney was able to bill a huge number of hours, in part because he worked a lot but also because he was skilled at the art of the billable hour.

Katie Burghardt Kramer, Vermont

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This reminds me of the joke about the lawyer who dies and goes to heaven, and complains to St. Peter that it can't be his time because he's in good shape and he's only 45. St. Peter looks down at his book and says "well, according to your billable hours, you're 97."

In all seriousness, if you are going to bill in increments larger than a tenth of an hour, you'd better get the client to sign off on that in the engagement letter. Consistently billing clients for a quarter of an hour (or more) for a 2-minute phone call is going to net you a bar complaint at some point.

Kevin W. Grierson

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CLIENT: How much do you charge to answer simple questions?

LAWYER: It's \$100 for three answers.

CLIENT: Seriously, you charge \$100?

LAWYER: Yes, I do. What's your third question?

Brian H. Cole, California

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LOL!

I'm gonna use that the next time a client calls me at 8 at night to ask, "what do you think the defendant is thinking right now?". Which literally just happened. Well, I'd be happy to answer that for you! But first, \$100!"

Eugene Lee, California

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Be careful if all of those bills wind up on the desk of one federal agency.

A law school classmate took the interval billing to the extreme. He was indicted for sixteen counts of defrauding a federal agency, sentenced to fifteen months in prison and paid a \$40,000 fine. He was also disbarred.

Not too long after this he was killed in a car crash leaving a spouse and young child.

I am not certain I remember the details, but I think he billed clients \$1.5 million and 13,000 hours over a thirteen-month period. He was either working for the FDIC with several banks or the FDIC took over several banks that were his clients.

I don't think there is a problem with interval billing unless you are gaming the system.

Jim Pardue, North Carolina

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I found a little more information about my classmate:

Raleigh bankruptcy attorney Mark Kirby was indicted in federal court on 16 counts of billing fraud. Among other offenses, he billed 90 hours in one day. Between June 1990 and July 1991, Kirby billed a total of 13,000 hours, even though that 13-month period, calculated at 24 hours a day seven days a week, was only 9,500 hours long. Yet Kirby's trial resulted in a hung jury.

His defense: everybody does it.

Kirby eventually pled guilty to one count and was sentenced to 15 months.

<https://www.lectlaw.com/files/zbk02.htm>

Jim Pardue

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If I'm ever in trouble I want that jury.

Shell Bleiweiss

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Has anyone found an alternative to the billable hour?

Jordan Rosenberg, paralegal, California

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8 at night is more than \$100.

I knew an attorney who would purposely call a client he knew wasn't around.

Leave a message is .2. Listen to return call because he wouldn't answer was .2. Return call was .2. He billed .2 at a minimum. No wonder why his clients got mad.

Mitchell Goldstein

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Flat fees are better for criminal defense. Per my agreement, I bill in .1 increments against the amount paid in as work is done. That way I have earned income and we have set parameters in the event the representation is terminated by either party. I only bill for things that I actually do.

My conscience is clear.

Eric C. Davis, Alabama

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Plenty of books and articles written on that issue. Alternatives adapt better to some practices than others.

Darrell G. Stewart, Texas

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I tried flat fee arrangements (per task), but that doesn't really work for 50% of the tasks.

Paula J. McGill, Georgia

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We charge for all billable work and round up to the nearest tenth of an hour. We do not, however, bill for questions related to their bill or other matters related to billing the client. I also think about my client's cases while getting dressed in the morning but don't bill for that.

Question: If I solve a client's problem during the REM and non-REM sleep cycles, how do I bill for that? ☐😊

Carena Lemons, North Carolina

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Seriously, that happens. It happens to me fairly frequently, at least for me "sleeping on it" sometimes results in me waking up and going "Aha; that's what I need to do, or that's the solution".

Ronald Jones, Florida

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Ron, some of the articles I've read on sleep cycles show that problem solving and learning occurs during the REM and non-REM sleep cycles. I wake up in the morning with my mind on fire. I all of a sudden remember everything that I need to do for the day and I have a plan of execution for all of it. I tend to text people early in the morning while it's fresh on my mind. I wish my mind were like this during the entire day! Lol

Carena Lemons

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We charge flat fees for almost all we do, and require a signed fee agreement and payment in full up front. Clients can budget for the fee because they know exactly how much it will cost, and we have \$0 in receivables.

We take a bath on some projects but come out ahead on most others, depending on how efficient we are and how well-oiled our processes.

\* We don't litigate, so there's that. Not sure mere mortals can reduce litigation to flat fees.

\*\* We do place a limit on the scope of work in the engagement agreement.

Scope creep does result in hourly billing which everyone hates (us included) so clients tend to be more forthcoming with needed information earlier on.

Gina Bongiovi, Nevada

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MANY years ago my father, not a lawyer but a consultant that billed hourly, told me the same thing about ever moment you spend working on a client's issue is time that should be billed. He also cautioned about overthinking things and billing too much (as that will make for an unhappy client) and that your thinking needs to be judicious. He said think about a solution and then implement or move on.

He would keep a notebook by his bed so if he woke and had an idea he could make note of it, or if he was unable to sleep and started to think of work he could make notes about it along with a time record.

He always cautioned about over billing as it was better to lose some time than lose a client (or the client's happiness). An unhappy client may give a larger immediate fee, but future business will be lost and you never know how much new business will be lost as a result. A happy client means future business from the client and from all the client sings your praises to.

I have had referrals from non-clients because I spent ten minutes to explain why they do not need me, or what would need to happen before they needed me. That ten minutes turned into HOURS working on new clients that mentioned the PC's name. That ten minutes is attributed to my "marketing" costs.

Phil A. Taylor, Massachusetts

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My lingering question is how does one go about billing for "thinking" about a case?

"Thought about response to discovery whilst shampooing. .3"

All kidding aside, I usually only bill for substantive/tangible work: meetings, phone calls, emails, fingers to keyboard (drafting motions, etc)...I am very interested in how to bill for "thinking" about a case.

Debb Reece, California

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Client has an issue and you sit at your desk planning what to write, or what to do, to assist client. Do you bill only when actually hitting the keys for the letter, or do you bill from the time you start the process? When you pause while writing do you stop billing while you think of what to say next?

Lawyering is a "thinking" profession. We get paid to think about problems and come up with a solution. Do you only get paid for implementing a solution and NOT for the time to figure out the solution?

Phil A. Taylor

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Sung to Cyndi Lauper's "Time After Time,":

If you come to my office or call my phone, I'm billing time.

If you stop me at parties to whine and moan, I'm billing time.

If I think of you when I am all alone,

I'm billing time.

If you're late for appointments,

I will be waiting and billing time

There was a whole song. See this article and follow the link, there, to the whole song: [http://blog.technolawyer.com/2006/12/im\\_billing\\_time.html](http://blog.technolawyer.com/2006/12/im_billing_time.html)

Timothy A. Gutknecht, Illinois

No longer an insurance defense attorney, thankfully that stopped two decades ago, but the following descriptions might be appropriate if truthful:

"Analyze..." [issue, e.g.] "Evaluate ..." [motion or damages claims or evidence needed...] e.g.] "Consider" [various tactics and defenses to rebut .... e.g.] "Plan" [what to do in written discovery.. e.g.]

Michael L. Boli, California

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Thank you, Michael. I appreciate your help.

Debb Reece

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Saw client on other side of street; crossed over to update client about case; got there, and realized it was not client; crossed back to original side of street. 0.2 hours.

Brian H. Cole

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"Consideration of [issue] and determination of recommended approach to be taken."

"Review of [issue alternatives] and conclusion on approach to recommend to Client." Remember, you are reviewing issues when you think about them.

Etc.

Caroline A. Edwards, Pennsylvania

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I personally like "Assess strategy and next steps," as a catch-all for general strategizing or thinking about a case, with more specifics added when appropriate ("regarding discovery," for example).

Katie Burghardt Kramer, Vermont



