

Practice Success 101: 2.5 Hours a Day Gets You \$65,000!

by Peter Roberts

Say what? Let me repeat: if you bill 2.5 hours per day, you will get paid \$65,000! *You must be kidding!* Not at all. Here is the arithmetic:

2.5 hours x 5 days = 12.5 hours/week
12.5 hours/week at \$150/hour = \$1,875
\$1,875 x 52 weeks = \$97,500
\$97,500 x 80% = \$78,000 due to uncollectible bills
\$78,000 – \$13,000 for overhead = \$65,000!

Ah, if only life were so simple. But I know the practice of law cannot be reduced to a formula. Billing for your time assumes that the recipient of your bill can pay the amount that you bill. But if you find that you are billing 20 or 30 hours a week and not realizing at least \$65,000 in income, something is very wrong. This article is about billing generally, but the cardinal rule is: get the fees up front.

The billing process starts with verbal communication about your billing practices. Include this information in your fee agreement as well. Your fee agreement may vary depending on the practice area and your preferences, but the basic framework for a typical fee agreement is:

- Identification of the parties
- Scope of representation
- Fees and costs
- No guarantee of a particular result
- Duties of lawyer and client
- Signature blocks
- Third-party payer acknowledgement (optional)

The fees, costs, and billing practices are the most complex and emotionally charged aspects of the fee agreement. I recommend you discuss the following explanations with the client:

- “Fee” is the sum payable to the firm for the services of its personnel, including the lawyer.
- “Cost” is the amount payable for items that are receipted such as filing fees, travel expenses, copies from a copy service, or expert-witness services.
- “Expense” is the amount payable for re-



covering the lawyer’s overhead such as telephone, fax, and copies.

- “Retainer” is the amount payable for securing the availability of the lawyer for a period of time.
- “Advanced fee deposit” is the amount payable that goes into the lawyer’s IOLTA account and is gradually withdrawn for fees, costs, and expenses. Consider using an “evergreen” advanced fee deposit, which means that the balance is never zero. Sample language for your fee agreement may be: “This acknowledges receipt of your advanced fee deposit for fees and costs in the amount of \$5,000. Payment for our services and costs will be drawn against this amount and reported to you. We will bill you for an additional advanced fees and costs deposit whenever the current balance is below \$1,000. We thank you in advance for timely remittance of your additional advanced fees and costs deposits. Our efforts on your matter may cease if an advanced fees and costs deposit is overdue.”
- “Flat or fixed fee” is the amount payable for the services of personnel in the law office. Costs and expenses are in addition to this fee.
- “Billing practices” are the descriptions of what is included in the bill and the frequency of billing. It may include time-keeping conventions, due date, interest penalties, and other details so the client knows what to expect and when.

What about billing etiquette? Your bill is an important client-relations tool. The bill should be professional, attractive, and easy to understand. Do not “nickel and dime” your clients by billing small amounts. Wait until the amount is at least three figures. The worst example I have seen is a bill that included 75 cents for a can of soda that I had in my lawyer’s office.

If the bill will likely be larger than usual, alert your client to the work that you are doing and notify him that the higher bill that will be forthcoming. This gives the client more control over how much to spend on the matter. A client’s commitment to a matter can waver depending on the cost, so try to avoid being blindsided by a client’s reduced willingness to pay your fees due to the rising cost.

Bill at least monthly. A larger client load may benefit from billing half of your clients at the beginning of the month and the remainder at the middle of the month. Bill for time worked up to the close of the immediate prior month. Some matters may benefit from being billed twice a month. Consider a cover letter when bills are over \$1,000 or some other appropriate amount. The cover letter can describe the unforeseen circumstances that gave rise to the higher amount of the bill.

There are a number of billing methods that are ethical to use. See the Law Office Management Assistance Program (LO-MAP) Lending Library at www.lomap.org for a list of available books about billing methods.

Use a software program designed to bill lawyer fees. Examples are available at www.rtgsoftware.com and www.tabs3.com. A helpful aid for budgeting matters and for task descriptions is the ABA’s Uniform Task Based Management System, available at www.abanet.org/litigation/utbms/home.html.

If a bill goes unpaid over 60 days, you have a problem. Be sure to keep in touch with the client about the bill. Your practice is at risk if you find yourself as busy as ever but working on matters that are not being paid. That practice is called “*pro bono penitus nullus*.” Avoid this situation, since you want to earn enough income to allow you

to give back service to the community with your pro bono service.

The next step for a delinquent payment is a polite letter requesting payment. Include a stamped self-addressed envelope. Offer a payment plan and possibly a discount for early payment. Allow clients to use credit cards for paying fees — some clients want the airline miles! Next, after about 30 days send a second letter with stronger language. Hopefully, you are not doing work on the matter. That letter may describe a collection agency's potential involvement. Note that when hired, collec-

tion agencies take a large percentage of the payment.

Insurance carriers discourage suing for fees because there is a likelihood of a countersuit for malpractice. Be sure your file is “clean” and defensible as to your work for the client before proceeding with a suit for fees.

No one bats 1.000 when billing and collecting fees from clients. The legal industry reveals about a 10 percent attrition rate between time worked and time collected (\$1 worked yields \$.90 collected). Use each unpaid account as a lesson in client-

screening techniques. Screening potential clients is as much an art as a skill — but if your gut says “no,” Bar members tell me that it is best to listen. Over time you will improve your skill in assessing which clients are the best to keep on for your practice.

Remember, just 2.5 billable hours a day... ♦

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