

The fine art of billing: What you really need to know

BY **EMILY MORROW**

BECAUSE LAW IS AS MUCH A BUSINESS as a profession and the billable hour is a critical part of that, handling the time recording/billing aspect of one's practice is a core capability for lawyers. As one of my former partners once said; "I'm going off to man my billing station this afternoon. If I don't do that really well, I'm wasting my own and everyone else's time".

One of the most frequent complaints clients make about their lawyers is that a billing matter was poorly handled. Either the amount was inappropriate, concerns were inadequately addressed, the bill was untimely and so forth. As I used to say to my team members when I was in practice, "You can't please all of the clients all of the time, but if you're not careful, you can upset all of them".

Because billing involves the exercise of professional judgement, it is more of an art than a science and getting it right can be challenging. Interestingly, relatively few firms proactively train lawyers about when and how to bill, address client concerns, describe work done in sufficient (but not too much) detail, write down a bill and so on. Here are some thoughts about how to improve your "billing hygiene".

The Truisms

The following are core concepts in terms of optimal billing behaviour. I have always found these approaches to be helpful.

- Communicate with your client early and often, particularly if there are any questions or concerns about a bill.
- If you start feeling uncomfortable about something in the billing process, lean in towards it. Do not go into denial.
- Remember: no matter how wrong the client is, the client is always right.
- Be sure never to win a battle in terms of a bill, only to risk losing the war in terms of that same bill. In other words, always keep things in perspective.
- It is more important that the client feels positive about the whole experience of working with you and your firm, including the billing process, than that your bill be paid in full.
- There is nothing more valuable in your professional life than your reputation. Do not let a client who is disgruntled about a bill besmirch that. One unhappy client in your community can do a lot more damage to your practice than almost anything else.
- Record your time in real time right after you have done the work. You



can always cut your time back later on. Do not rely on your memory to record time later on. At the end of each day add up the amount of time that you have recorded and if it is less than the amount of time you worked, figure out where the slippage occurred and fill it in.

- Be detailed in describing what you have done. Clients feel better about paying bills that show detail. On the other hand, don't be overly "picky", because that can irritate a client.
- Routine work done by less senior team members is generally best done on an hourly basis. Always utilise support staff appropriately so fees are reasonable.
- Bill frequently and do not let the account balance get too large. Clients are more comfortable paying smaller bills, rather than large, infrequent ones.

Some common billing issues and how to address them

How to set fees

This issue arises in connection with billing for work done on an hourly basis, fixed fee work and work "not to exceed a certain amount". Here's what I suggest:

- When you give an estimate (versus a flat fee), always

estimate high; things always take longer than you think.

- It's better to give a "not to exceed a certain amount" estimate than a flat fee in my experience. You're less likely to lose money that way.
- Only give a binding quote on matters that you know will take a certain amount of time based on your prior experience. Do the unique and complex matters on an hourly basis if at all possible.
- Resist the urge to "low ball" an estimated fee to get a job. If you do, it will just become a race to the bottom. Take the time to explain the value you will add by doing the work and then stick with your hourly rate, assuming it is in line with market rates in terms of estimating what a particular task will cost.

What to do when you realise you have underestimated the cost of work and are likely to have a cost overrun

- Think before you communicate the problem to your client so you calm yourself down and don't say something you might later regret.
- Consider whether to communicate the billing concern to your client via telephone, email, in person or hard-copy letter. Unless it is a simple matter, I generally recommend discussing billing matters either in person or by telephone so it can be a dialogue. Don't rush or avoid the discussion.
- Let the client know, very explicitly, that your primary concern is that he/she be entirely satisfied in working with you and your firm, including billing matters. Tell the client you will do whatever it takes to make sure he/she is happy with the result. Be sure you believe this is true yourself. You may lose a bit of money on this particular matter, but you will have gained a great deal of goodwill.

Addressing client concerns and complaints

Do so early, often, directly and transparently.

Tell the client it is important to you that the amount paid for the work you did is commensurate, in the client's opinion, with the amount billed for the work. Encourage the client to pay only that portion of the bill that he/she deems to be per the above. In the vast majority of cases, clients will go ahead and pay close to 100% of the bill after you say this and they will thereafter happily extol your virtues amongst their friends and colleagues.

Gearing to optimise profitability for the firm, reduce client fees and increase client satisfaction

Think about who is available to work with you on a matter and who has the capability to do the work

right the first time, but at the lowest cost for the client. Delegate accordingly.

Consistently make it a top priority to invest time in training your team members to do the work you delegate to them. In some cases, you may have to write off your training time, but in the long run this will be profitable.

How team members (who do not control billing decisions) should communicate with clients about billing questions, complaints and the like

Consider how you would like a support staff member to respond to a billing question a client might have. For example, what kinds of questions are appropriate for a team member to answer and what should be referred to you? Have conversations with your team members about this before it happens so everyone is prepared.

Timing and sending out bills

Bill often but do not bill until you have completed at least some of the work you are doing for the client and the client has some work product in hand.

If you have written down your own or someone else's time, consider indicating you have done so in a cover letter that accompanies the bill and explain your reasons for doing so. Clients appreciate this and it builds goodwill.

Following up on unpaid bills

Do so within 30 days after the bill has been sent to the client. Communicate first via an email or letter, and if that does not get results, make a phone call. If that still does not work, then raise the issue with the client in person the next time you meet with him or her. Don't let the matter languish. Either get the bill paid or write it off within no more than 90 days.

Most lawyers work hard and do good work for their clients. However, some are more successful than others in getting their bills paid in a timely manner by reasonably happy clients. Generally, it takes less time to handle a billing matter well than to mishandle one. Mastering the fine art of billing can make all the difference.

[Emily Morrow](http://www.emily-morrow.com)  www.emily-morrow.com was a lawyer and senior partner with a large firm in Vermont. Emily now resides in Auckland and provides tailored consulting services for lawyers, barristers, in-house counsel, law firms and barristers' chambers.

Because billing involves the exercise of professional judgement, it is more of an art than a science and getting it right can be challenging. Interestingly, relatively few firms proactively train lawyers about when and how to bill... and so on.