Introduction

For more than 50 years, the authors of this book have written about and lectured on the topics of fees, billings, and client relations. Each has been a partner in smaller “Main Street” practices, and both have had the opportunity over those years to use all the tips we have offered to other lawyers. However, none of the advice given lawyers has had such a dramatic and immediate impact upon successful client relationships as the approach to drafting bills outlined in this book. We know that clients will rush to pay bills drafted with this approach because it has worked for both of us and countless others who have motivated clients to pay bills with a high degree of reliability.

This book focuses upon drafting bills that clients will understand, find justified, and hence be more likely to pay promptly than the typical lawyer’s bill. Samples are provided throughout the book and in the Appendices, which you can use as the basis for redesigning your firm’s bills. By drafting bills based upon these suggested guidelines, you will better serve your clients and yourself.
The bill is a powerful vehicle for projecting the lawyer’s efforts. The client wants to know what work the lawyer has done. As lawyers who wish to be paid for our hard work, we need to draft client-oriented fee statements that clients will want to pay. The bill must reflect the full scope of the effort made by all members of the legal services delivery team on the client’s behalf. Consider the bill the climax of the lawyer-client relationship—its power to build or destroy that relationship should not be underestimated. If the client feels that the bill is unfair or unjustified, the client will refuse to pay it, in whole or in part; or the client may pay the bill but not recommend you to others, so you risk losing that client and potential referrals—a lose-lose situation.

The Missouri Motivational Study

As far back as 1960, the Prentice-Hall Missouri Motivational Study (Missouri Study) examined clients’ motivations in retaining legal services. The Missouri Study asked clients, the people who pay us, what they considered the most important single element that a lawyer should consider in billing for services. There were no prompts in the study format. Participants simply wrote the ten items they considered to be most important. Survey results revealed the following:

♦ Forty-seven percent of the respondents listed effort as the most important single element in setting a fee and creating a bill
♦ Only 18 percent mentioned the complexity and importance of the case involved
♦ None of the clients surveyed even mentioned “the fee charged”
♦ Only 15 percent mentioned ability to pay (which lawyers have been accused of finding of great importance)
♦ Only 6 percent of those surveyed listed the results achieved by the lawyer

The clients said that effort is the most important element in a lawyer’s bill! No subsequent research has disproved this conclusion. While the study was done more than 55 years ago, the surveys and studies done since have only reaffirmed these basics, including a BTI survey of general counsels in the United States in 2005 and a 2012 publication of a survey done in Europe by the International Bar Association.

Therefore, in each sample bill you will see in this book, the recommended final format includes having the amount of the bill placed between a detailed description of the work product and some individual comment. The client is not primarily interested in the amount of the bill,
but rather, in the projection of effort. By interlacing the amount of the bill between the description of the work done and the final comment, the amount of the bill is not given undue emphasis. A client may not even read a bill that focuses only upon the amount owing. But a bill that primarily emphasizes the work that has been done will be read by the client—after all, it tells the client’s story. By getting the client to read the bill—and even to look forward to receiving future bills—you increase your chances of having it paid.

Before concentrating on the kinds of bills that clients rush to pay, however, it is important to focus upon the initial activities that set the stage for successful billing.

**Setting the Stage**

Although the main focus of this book is upon the actual content of the bill and its style, the activities in which the lawyer engages before and during the course of legal services help set the stage for bills clients rush to pay. These activities include the initial client intake, the first discussion of fees, the fee estimate, the fee agreement, and sustained client communications.

When initially thinking about a fee, consider that clients want the following, in order of priority:

1. Concern
2. Honesty and ethics
3. Competence
4. Efficiency

Thus, a lawyer who places the strongest emphasis upon efficiency fails to understand the client’s perspective. Nonetheless, most lawyers’ priorities for delivery of legal services differ from those of clients. Most lawyers’ priorities are these:

1. Efficiency
2. Fair fee
3. Competence
4. Concern

The Missouri Study and subsequent studies and research have all shown that there is less than a 20 percent overlap between what lawyers and clients want from the lawyer-client relationship. However, now that we know what clients want, and in what priority, we can be more responsive.
The First Meeting

As you begin the first conversation with the potential client, show that you really care. While discussing fees is important in your first meeting with a client, start by expressing concern for the client and his or her issues. For instance, if someone tells you he has been injured, take care to show you really care about the client first as a human being. The effort projected in the bill is part of an overall approach of demonstrating concern for the client’s well-being and legal needs, which begins at the initial intake and carries through to the final bill.

Demonstrate a high level of integrity in the way you handle cases. This will indicate to clients that there is also integrity in the billing process. Before you discuss money at the first interview, project integrity and build trust. For example, give the client some understanding about conflicts by checking for problems while the client is in your office. Then talk about the client’s case and give an honest assessment of it before you decide whether to handle the matter. Clients should know what lawyers’ expectations are, and lawyers must know how to manage clients’ expectations regarding services, outcome, and billing.

Communicate competence by using the appropriate terminology, citing relevant cases you have handled or reviewed and their outcomes, and acknowledging up front some of the obstacles you may encounter and how they can be handled. Demonstrate concern and honesty by referring the client to another lawyer when you lack competence in the subject matter.

Timing Fee Discussions

The timing of fee discussions, billing, and payment is of vital concern to clients, and thus is important to client-oriented lawyers. Of the Missouri Study participants who said they did not use lawyers, only 1.5 percent reported the reason as being they could not afford the fees! (Eighty percent of the respondents in this group reported that they simply did not have a legal problem.) Among those who did use lawyers, the need for a lawyer with a fair fee was assigned the relatively low priority of fourth place. Finding a lawyer with a fair fee was less of a problem to the respondents than finding a lawyer who (1) was concerned about the client and the client’s case, (2) evidenced a great respect for ethics and honesty, and (3) was competent to render the client service. These days, given lawyers’ poor public image, it is particularly important for lawyers to be concerned about these findings.
Lawyers know that when a lawyer promises to render a legal service and a client promises to pay a fee, both parties have created a contract that will support a suit by either party. For the most part, however, clients do not care about this legal background. Experience indicates that, particularly in consumer practice areas (such as divorces and adoptions), a client who makes a substantial fee deposit up front, often with borrowed funds, simply wants to know that he or she then has a lawyer. The “comfort factor” of the fee payment is highly valuable to the client. Although the law office may not have a desperate need for the fee deposit, the client has an acute need to feel sure of the employment of the lawyer. A policy by the law firm of always asking for a retainer deposit for new clients is just good business practice. The client rests confidently in the knowledge that the lawyer is involved with the client’s problems when the client has engaged the lawyer’s services by paying, or promising to pay, a fee.

**Estimating and Discussing the Fee**

Most of the time, a client wants to have at least a ballpark idea of the fee—of what it will cost the client to be represented until completion of the matter. Clients, however, are afraid to raise the issue of fees with lawyers. Therefore, the lawyer must initiate discussion about the cost of his or her services. To do so, a lawyer must first assess the case, determine the time that will likely be involved, apply the rate for the lawyer’s time per hour and the rate for any associate lawyer time per hour (or determine whether an alternative fee arrangement is appropriate), charge for staff time, and estimate any other likely expenses. Only then can the lawyer offer a reasonably reliable fee estimate to the client. Lawyers should overestimate the charge rather than underestimate it, as many lawyers are tempted to do to get a client’s business. Remember, if you give the client an estimate that you can do the job for $5,000 and you complete it for $4,300, you are a hero. However, if you estimate a fee range of $2,500 to $3,000 and the final bill is $3,400, the client will be reluctant to pay.

Estimating fees is as much art as it is science. The more a lawyer handles certain types of work, the better he or she is at estimating what the fee will be after a thorough discussion with the client of what the legal needs are and what needs to be done. You will often hear lawyers say that if you take your initial estimate and double that, you will be closer to what the fee should be than not! Consider each step or task needed in order to accomplish what the client needs done and estimate the time you or others in your firm will need to accomplish that task.
When you have arrived at all the tasks and the estimated time to accomplish those tasks, add time for unanticipated issues coming up and add 50 to 75 percent to the estimate. It is better to be over on your estimated fee than under!

You must have a rule that you will never let a client leave the first interview without discussing fees. Give a ballpark determination of the fee, such as, “I believe the fee will be about $1,500,” or “My experience is that this type of matter can normally be handled here for between $4,000 and $6,000 depending on a number of factors such as...” Talking about money tells the client that you will keep adequate records, through which you can keep track of your overhead and what you ought to be charging. The client will be happy to pay you.

Of the Missouri Study participants who used lawyers’ services, 80 percent preferred that lawyers discuss fees in the first interview; yet nearly 36 percent of the lawyers in the study did not do so. A full 92 percent of participating clients said they did not want lawyers to wait until services were completed before discussing fees; 88 percent did not want lawyers to make the clients ask about the fees. This means we must readjust our thinking and be willing to discuss fees near the end of every first client conference and establish an appropriate retainer arrangement. Of all the disciplines that are recommended as a result of the Missouri Study findings and all other subsequent studies, none require a stronger backbone than the discussion of fees.

Discussing fees with clients in the last part of your initial meeting, along with a discussion of the billing procedures, timetable, and who will be working on the matter are critical. Personal experience indicates that discussing fees with clients places you in a businesslike position with them. They expect you to discuss money, and they appreciate you showing concern for how money is spent in delivering value and solutions to their problems. This is particularly true of business clients, who sometimes wonder whether your rates will exceed their budgets. The first discussion puts it all on the table, up front. Further, if someone does not want to pay you, can you think of a better time to find out than in the course of the initial intake?

A word about discounts: everyone likes them, and it is not a bad idea to consider them under the right circumstances. Do you really want the type of work offered or the client enough to provide a discount to your normal fees? Is this a client that warrants a professional discount because of his or her profession or the referrals he or she could give you? Is the work for a family member? Keep in mind that any discount given will either reduce your budgeted income or increase the amount of work you will have to perform to reach the same compensation expectations.
J. Harris Morgan practiced in the same community where his family had lived since the Civil War. So, as one might suspect, his firm did a considerable probate business. The great temptation for people who had known him all his life was to think that he would make exceptions in fee arrangements in their cases. As a result, he felt it critical to talk about money and both their expectations and his! Whether you provide a discount to those folks or not, it is critical to talk about money and there is no more important time for discussing money than during the initial meeting.

At the outset, clients must understand your policy on billing for services, and whether you will give them a deal or treat them as you do all your clients by charging a fair fee. The fee discussion and initial estimate lay the groundwork for a successful billing experience. Most clients want to understand and accept what they are paying—and do not want any surprises when it comes to their bills. So avoid unpleasant surprises and increase your chances of being paid in full (and avoiding ethics complaints) by simply keeping the client apprised of any changes to the estimate.

Lawyers are well advised to recognize that although they may define effort as time spent, clients do not. Most clients equate effort with service rendered, not with time. In one Texas Bar study, lawyers and clients were asked how lawyers were to determine reasonable charges. Fifty-six percent of lawyers replied, “time, or by the hour”—but only 20 percent of clients gave this response. The clients felt that lawyers should determine fees based upon services delivered.

Clients think of time as minutes on a clock, unrelated to service rendered or work completed. This means that clients believe a lawyer can work very hard or very little in an hour. Clock time is not effort in the clients’ eyes. From a client’s point of view, how hard the lawyer tries—as perceived by the client—is effort, and that projected effort is the service the client seeks from the legal professional. The implication of both the Texas and Missouri Study research is that, for most clients, bills need not include the number of hours expended but, rather, should give detailed, specific delineation of the work completed for the client. Time expended can be detailed in a separate accounting statement and furnished upon request of the client. In addition, maintaining this time accounting is critical for justifying attorneys’ fees requests made to courts. Figure 1.1 shows a bill that delineates specific work done for the client, as well as a corresponding hourly time accounting statement. This is the conventional style of bill, and in most instances, the authors do not recommend it. Figure 1.2 shows a bill that delineates specific work done for the client but does not include the corresponding hourly time accounting sheet. This is the narrative and recommended style of bill.
Figure 1.1 Bill Delineating Specific Work and Accompanied by Hourly Time Statement (Conventional Style)

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
<th>Timekeeper</th>
<th>Date</th>
<th>Hours</th>
<th>Rate</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>03/16/17</td>
<td>Conferred with daughters worked out filing application to probate and for appointment of successor guardian; Worked on application; Drafted order and agent for service appointment.</td>
<td>RJD</td>
<td>03/16/17</td>
<td>3.50</td>
<td>180</td>
<td>630.00</td>
</tr>
<tr>
<td>03/16/17</td>
<td>Prepared check; Printed documents.</td>
<td>SC</td>
<td>03/16/17</td>
<td>.60</td>
<td>100</td>
<td>60.00</td>
</tr>
<tr>
<td>03/17/17</td>
<td>Prepared permanent file.</td>
<td>OLM</td>
<td>03/17/17</td>
<td>.30</td>
<td>60</td>
<td>18.00</td>
</tr>
<tr>
<td>03/17/17</td>
<td>Notarized application.</td>
<td>OLM</td>
<td>03/17/17</td>
<td>.10</td>
<td>60</td>
<td>6.00</td>
</tr>
<tr>
<td>03/18/17</td>
<td>Conferred with Julie Barnett; Will set up bank accounts at Appleton Bank tomorrow.</td>
<td>RJD</td>
<td>03/18/17</td>
<td>.30</td>
<td>180</td>
<td>54.00</td>
</tr>
<tr>
<td>03/19/17</td>
<td>Went to bank and secured two accounts for the estate</td>
<td>RJD</td>
<td>03/19/17</td>
<td>1.00</td>
<td>180</td>
<td>180.00</td>
</tr>
</tbody>
</table>