TIME & BILLING FOR LAWYERS: LEGAL SOFTWARE ON A SHOESTRING BUDGET AND USING BILLING TO PROMOTE YOUR ETHICAL DUTY OF COMMUNICATION (WEBINAR AND BOOK)

Presented by the American Bar Association Law Practice Division, Young Lawyers Division and Center for Professional Development
Submit a Question

Visit https://americanbar.qualtrics.com/SE/?SID=SV_2uB91twXeymw6FL&pCode=CE1601LPI to submit a question on the content of this course to program faculty. We'll route your question to a faculty member or qualified commentator in 2 business days.

The materials contained herein represent the opinions of the authors and editors and should not be construed to be the action of the American Bar Association Law Practice Division, Young Lawyers Division or Center for Professional Development unless adopted pursuant to the bylaws of the Association.

Nothing contained in this book is to be considered as the rendering of legal advice for specific cases, and readers are responsible for obtaining such advice from their own legal counsel. This book and any forms and agreements herein are intended for educational and informational purposes only.

© 2016 American Bar Association. All rights reserved.

This publication accompanies the audio program entitled “Time & Billing for Lawyers: Legal Software on a Shoestring Budget and Using Billing to Promote Your Ethical Duty of Communication (Webinar and Book)” broadcast on January 27, 2016 (event code: CE1601LPI).
Time & Billing for Lawyers:
Legal Software on a Shoestring Budget and Using Billing to Promote Your Ethical Duty of Communication

Wednesday, January 27, 2016 | 1:00 PM Eastern
Sponsored by the ABA Law Practice Division, Young Lawyers Division and the ABA Center for Professional Development

Faculty

Britt Lorish
Affinity Consulting Group
- Law firm consultancy focused on helping law firms implement technology, finance, marketing and management solutions
- Chair, ABA TECHSHOW 2013
- Law Firm Finance Committee & Vice-Chair, Publications Board 2015-2016

Ed Poll, J.D., M.B.A., CMC
LawBiz Management Co.
- Collecting Your Fee: Getting Paid From Intake to Invoice
- The Business of Law, 3rd ed.
- Life Time Achievement Award, State Bar of CA (LPMT)
- College of Law Practice Management
Objectives

1. Collecting your fee – from the start
2. Dealing with slow payers
3. When non-payment becomes serious
   - Withdrawal
   - Alternatives to secure payment
   - Suit or arbitration

Law is Both a Business and a Profession

“Law is not a profession at all, but rather a business service station and repair shop.”

– Adlai E. Stevenson, Senator
Law is Both Profession & Business

“Law is subject to the same laws of economics as any other business. Having a great product is not enough.”

Tower Snow, Chairman (2001)
Brobeck, Phleger & Harrison
San Francisco corporate law firm

Lawyer ≠ Accountant

• Law School does not adequately prepare lawyers for running a business

• Best lawyer in the world could be the worst at business planning, bookkeeping and general accounting principles
Collection Begins at Intake

• Understand what client wants
  – Seek that result for that client
  – Client expectations
• Want vs. Need
  – Want this client/matter
• “Competent” to handle the matter
Written Fee Agreements

- Explain fee arrangement
- Written engagement letter
  - Transaction vs. Contingent
- Consequences
  - Two way street
- Credit check

Fees

- “Reasonable” under Rule 1.5
  - Excessive (ABA)
  - Unconscionable (CA)
- Types of fees
  - Time-based (usually hourly) fees
  - Fixed
  - Contingent
  - Other forms of alternative fee arrangements…
Alternative fee arrangements (AFA’s)

Top Ten Issues Facing Legal Industry

- Pricing/fee structure: 71%
- Compensation/salaries at law firms: 60%
- Law firm profitability: 49%
- Layoffs: 43%
- Competition: 39%
- Legal outsourcing: 36%
- Role of associates: 36%
- Law firm management: 33%
- Commoditization/de-professionalism of legal services: 32%
- Integration/use of technology: 22%

* Indicates significant difference
### BENEFITS

<table>
<thead>
<tr>
<th>Client’s Perspective</th>
<th>Firm’s Perspective</th>
</tr>
</thead>
<tbody>
<tr>
<td>More Predictability</td>
<td>Loyal Clients</td>
</tr>
<tr>
<td>Lower Risk</td>
<td>Number of Clients</td>
</tr>
<tr>
<td>Faster Results</td>
<td>Efficiency and Accountability</td>
</tr>
<tr>
<td>Better Financially Able to Pursue Matters</td>
<td>Predictable Revenue</td>
</tr>
<tr>
<td>Efficiency</td>
<td></td>
</tr>
</tbody>
</table>

### Alternative fee arrangements (AFA’s)

- Fixed-fee per matter
- Value or incentive billing
- Flat fee by matter stage
- Volume discount
- Blended rate
- Flat fee for portfolios of work
Retainers

• True retainers
• Advance deposits
  – Evergreen
  – Withdrawal
    • After billing statement
    • With notice per engagement agreement

Software to Handle Retainers

• Good legal specific time/billing & accounting software should be able to handle all of these retainer types.
• Off the shelf standard bookkeeping software lacks these key features.
• Bookkeeping is hard enough – use tools suited to your needs. Need it to work with you not against you.
Budgets

- Estimate future costs and expenses
- Make client part of the team
- Manage client expectations
- Memorialize course of action client approves

Software to Handle Budgets

- Many legal billing products can warn you if budget is exceeded.
- If required to do electronic billing (e.g. Insurance Defense), some can budget by Task Code.
Software to Handle Budgets

<table>
<thead>
<tr>
<th>Phase/Task</th>
<th>ACTIVITY</th>
<th>EXPENSE</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>300-02 M. Peterson Insurance Co. Maintenance of Insurance Policies</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>L100 Case Assessment, Development and Administration</td>
<td>1576</td>
<td>1451</td>
<td>3127</td>
</tr>
<tr>
<td>Total</td>
<td>1576</td>
<td>1451</td>
<td>3127</td>
</tr>
<tr>
<td></td>
<td>480</td>
<td>4</td>
<td>481</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Hours</th>
<th>Budget</th>
<th>Fees</th>
<th>Expenses</th>
<th>Advances</th>
<th>Total</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>415.00 M Megacorporation Corporation</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3 RPA Corporate Merger - Megabuilders and BuilderCorp</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Billed 1,902.15</td>
<td>771,270.00</td>
<td>642.00</td>
<td>0.00</td>
<td>771,912.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>% of Budget 86%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>86%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>WIP 0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>% of Budget 0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total 1,902.15</td>
<td>771,270.00</td>
<td>642.00</td>
<td>0.00</td>
<td>771,912.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>% of Budget 86%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>86%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Billing Statements

Include:
- Matter
- Person who performed work
- Time spent (if relevant)
- Amount charged
- When payment is expected
- What will happen if payment is not timely received
Billing Statements

- You should be able to customize statement templates to include custom language, such as terms and finance charge information.
- Make sure to reserve right to charge interest in fee agreement and stipulate rate.

Sample Hourly Format

<table>
<thead>
<tr>
<th>Fees</th>
<th>Rate</th>
<th>Hours</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>11/18/2016 MLJ</td>
<td>Office conference regarding transfer of title to real property.</td>
<td>275.00</td>
<td>1.20</td>
</tr>
<tr>
<td>11/23/2016 PAM</td>
<td>Telephone call to client regarding letter from anti-defamation league; sent fax regarding same.</td>
<td>250.00</td>
<td>1.20</td>
</tr>
<tr>
<td>11/25/2016 MLJ</td>
<td>Reviewed note, deed of trust and easement; drafted correspondence to opposing counsel with proposed changes to settlement agreement; transmittal of same.</td>
<td>275.00</td>
<td>4.20</td>
</tr>
<tr>
<td>MLJ</td>
<td>Worked on option agreement; contract for sale and attachments; conducted legal research re same; conferred with opposing counsel re same.</td>
<td>n/c</td>
<td>6.50</td>
</tr>
<tr>
<td>For Current Services Rendered</td>
<td>1.80</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Sample Flat Fee Format

Fees

11/18/2016  MLJ  Office conference regarding transfer of title to real property.
11/23/2016  PAM  Telephone call to client regarding letter from anti-defamation league; sent fax regarding same.
11/25/2016  MLJ  Reviewed note, deed of trust and easement; drafted correspondence to opposing counsel with proposed changes to settlement agreement; transmittal of same.
           MLJ  Worked on option agreement; contract for sale and attachments; conducted legal research re same; conferred with opposing counsel re same.

For Current Services Rendered  2,000.00

Track All Time!

- Track time regardless of flat fee or contingency
- Effective hourly rate helps you decide most profitable areas of practice, if making/losing money on flat fees, etc.
- Good business decisions can be made if metrics tracked
- Record of time spent if lien filed; proves reasonableness of fee
Bills Influence Collections

1. Can the client understand the bill?
2. Value provided?
3. Does the bill make the services sound meaningful and reasonably priced?
4. (If billing cycles are relevant) Has the firm sent the bill when client is likely able to pay?

Bills Influence Collections

- Don't be vague!
- Use time entries as chronology of matter
- Shows reasonableness of fee
- Protects your interests if change of representation – file lien for time expended

I'm sorry, that's not vague enough for me. Could you be a little less specific?
Who Handles Collections?

- Lawyer involvement
- Staff involvement
  - Obligation to supervise
- Need for joint plan and staying informed
Bills Not Paid Timely

Follow up – “Dial & Smile”

– Did client receive the bill?
– Did client understand what was done and what was billed?
– Does client have any questions or problems with the bill or the services?
– When will the client pay?

Collection Reports

• Many software products have not only aged AR reports, but also collection reports that sort by balance due and can contain collection notes.

<table>
<thead>
<tr>
<th>Reference</th>
<th>Reference</th>
<th>Amount</th>
<th>Amount Paid</th>
<th>% Paid</th>
<th>Amount Due</th>
<th>Amount Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>10/22/2019</td>
<td>2000</td>
<td>500.00</td>
<td>500.00</td>
<td>100%</td>
<td>500.00</td>
<td>10/22/2019</td>
</tr>
<tr>
<td>11/22/2019</td>
<td>3000</td>
<td>500.00</td>
<td>500.00</td>
<td>100%</td>
<td>500.00</td>
<td>11/22/2019</td>
</tr>
<tr>
<td>12/22/2019</td>
<td>4000</td>
<td>500.00</td>
<td>500.00</td>
<td>100%</td>
<td>500.00</td>
<td>12/22/2019</td>
</tr>
</tbody>
</table>

Total:

- Amount: 500.00
- Paid: 500.00
- % Paid: 100%
- Due: 500.00
- Date: 12/22/2019

Last Payment Date: 12/22/2019
Average Days Between Payments: 20 days
Last Payment Amount: 2000.00
Days Since Last Payment: 0 days
Interest on Delinquent Accounts

Generally permitted but
- Must disclose possibility of interest fees at outset of representation
- Some jurisdictions require written client consent to arrangement

Stopping Work

- See engagement/fee agreement
- Impact on client and matter
- Impact on lawyer-client relationship
Withdrawal When Non-Payment

Permitted under Rule 1.16
Will not cause materially adverse effect on interest of clients
Time sensitivity

Alternatives to Non-Payment

• Payment plans
• Revisit when client's finances improve

*Avoid an arrangement that the client will almost certainly fail to satisfy*
Reporting Client to Credit Agency

• NYSBA Opinion 684 (1996) states that reporting is not permitted because the disclosure is not reasonably necessary to collect the fee

Filing Lawsuit

• Check jurisdiction regulations
• Review E & O insurance policy
  – Carrier may want/require notice
• Use outside counsel
  – Objectivity
  – Better protection for confidences
Risk of Cross-Complaints for Legal Malpractice

- Only 10-15% of suits for fees result in cross-complaint
- First loss is best loss
- Need to make sure case is one worth sending to suit
- Peer review of file before suit is filed

Tools of the Trade

- Traditional “terrestrial” software
  - Apps and web portals for mobile time tracking
- Cloud/browser based software options
- Hybrid approach
  - Traditional software on hosted virtual servers
What’s Important

• Feature set is key for each firm’s needs
• Very small firm may need more sophisticated billing (e.g. ebilling, “eat what you kill” fee compensation rules, etc.)
• All in one v. links v. duplicate entry

Size Matters

• Solo and small firm options
  – Cloud: Cosmolex, ActionStep
  – Tabs3, PCLaw, Coyote Analytics
• Small to mid-size firm options
  – Tabs3, Coyote, Orion, Juris, ProLaw, Rippe Kingston
• Large firm options
  – Elite, Aderant
Affordable Add-On Options

• Chrometa – can track everything done on your PC, Mac, iOS device or Android to help track time. Can be converted/imported to many other billing products ([www.chrometa.com](http://www.chrometa.com)) $12-$29/mo

• iT imekeep – mobile time tracking and timers – also integrates with many billing products

• Mobility apps and web portals for time & billing products (e.g. Tabs3 Connect, PCLaw Mobility, etc.)

Process Summary/Conclusion

• First meeting + Engagement letter
• Budget
• Proper billing process
• Internal collection procedure
• Peer review of file; Arbitration if required
• Write-off
• Lawsuit
• Have an internal process that takes into consideration all of the information provided
• Use proper tools to make the process easier
Thank You for Attending!

Ed Poll
www.lawbiz.com (many free related articles)
edpoll@lawbiz.com
800-837-5880

Britt Lorish
www.affinityconsulting.com
blorish@affinityconsulting.com
877-676-5492

Questions?
All attendees can submit questions via the chat feature on the webinar interface