

SOLO

LAW OFFICE INFORMATION FOR SOLO & SMALL FIRM PRACTITIONERS



How to Write Bills Clients Rush to Pay

By Andrew C. Simpson

FEATURES

Seven Essential Billing Tips

Protect Yourself From Being Sued

The Art of Bartering

Laws, Guns, and Credit Cards

The Pros and Cons of Suing Your Client

If your car mechanic handed you a bill that read “fixed car – \$1,000” you’d probably question it, even if the car was running great. You might even drive off and delay paying the bill. Or wait for the mechanic to call to ask about it.

Often we forget that our clients examine our bills in the same manner. We want the mechanic to justify the \$1,000: How much for parts? Why did it take so

long? A paragraph of explanation goes a long way towards getting the bill paid.

Lawyers are in a more difficult situation. We expect payment regardless of results. Often we’re unable or unwilling to seek payment in advance. And ethical rules may preclude holding the file hostage. It’s important, then, that your invoice helps the client understand the true value of your work.

(continued inside)

editor/staff

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A lawyer's invoice should provide a detailed accounting of services rendered. If you bill by the hour, specify the date and amount of time spent and the services provided during that time billed.

Describe the services with particularity. If a motion for summary judgment takes 40 hours to draft, never submit a bill that simply lists five entry dates of "Work on motion for summary judgment – 8 hours." Break it into smaller increments with descriptive detail for each increment. For example, Day 1 might read:

- Reviewed key evidentiary documents and deposition testimony; began drafting statement of facts section of motion for summary judgment – 3.4 hrs

- Drafted "Statement of Uncontested Facts" as required by Local Rule 56.3 – .9 hrs

- Outlined argument – .5 hrs

- Begin draft argument regarding plaintiff's ease-of-claim by implication claim – 2.4 hrs

Provide similar detail even if you flat-fee bill, though there's no need to break it down by date and

amount of time. Remember, your bill is also a marketing tool. You want the client to be so pleased to have gotten so much value for the money that he or she returns for later work, or brag to others about the amount of work you did and your reasonable fees.

Here are two more tips. 1) List the time and expenses that you normally write off as "no charge." I practice insurance defense and many items are considered overhead by insurance companies. I list them at "no charge" on my bill. I've had clients call to say they've never before received anything free from a lawyer! 2) Email bills as PDFs. I receive some checks within a week rather than the 30 days' wait with a paper invoice.

Your bottom line? Treat clients the way you want to be treated. Write a bill that you would want to pay, and your clients will pay promptly.

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7 Seven Essential Billing Tips

By *jennifer j. rose*

Many lawyers approach billing with all the enthusiasm reserved for the semi-annual visit to the dentist. After marketing their services, winning the client's confidence, performing the work, they still dread that final step—asking for the money. The days of a grateful client discreetly slipping payment into a lawyer's pocket without encouragement are long passed.

1. Bill while the iron's still hot. That means billing as soon as you've done the work or obtained a minor success or milestone. There's no law that requires you to wait until the next billing cycle. If the results were obtained on the 2nd of the month, and your usual statements go out on the 1st, nearly a month's time has passed before you've sent out that bill. If you're on monthly billing cycle and the client pays at the end of the month, you may find yourself waiting almost two months for your money. Clients are more willing to pay while the memory of your hard work is still fresh.

2. Instead of billing in a

once-a-month marathon, bill one-fourth of the accounts every week. That breaks the job down into smaller, more manageable bites.

3. There is no law that requires that statements go out on the same day of each month. If you bill every 28 days instead of once a month, you'll give yourself an extra billing cycle each year. Or you could opt to bill every 21 days, serving up 17 billing cycles in a year's time.

4. Send out the "No Bill" bill when you've given away your time and counsel for free. That's a way of letting the client know that your time is valuable and that you've given the client something beyond simply lip service. And it's another way to get your name and contact information before the client's eyes once again. Otherwise, you're easily forgotten.

5. Offer up a discount for prompt payment. Ten percent off for payment within 10 days provides



some clients with the incentive to pay up promptly.

6. Get rid of those glassine-windowed envelope that shout "This is a bill." Who doesn't dread opening an envelope that bears tidings of a demand for payment, often delaying opening it for that very reason? Use the same envelopes that you use for client correspondence.

7. Include a personal touch with your statement. It can be a simple handwritten note or a client newsletter. And don't forget the pre-addressed envelope so the client can quickly and easily send that check back to you.

jennifer j. rose, editor-in-chief of *GPSolo*, receives her e-mail at jjrose@jjrose.com.

Protect Yourself from Being Sued

By Chuck Driebe

What is the worst nightmare for a practicing lawyer? Ranking right after having no business and no clients is the specter of being sued. It used to be that lawyers would not sue other lawyers either because they knew them or because the local lawyers formed a small community. The expansion of the number of lawyers and the lack of personal contact between them has lessened if not overcome those restraints. Suits against lawyers are now common. Malpractice lawyers estimate that every lawyer will have between three and five suits or bar complaints

during their professional career.

How to protect yourself from such suits? Here are several ideas:

- **Don't make mistakes.** This simple concept is obvious. If you don't make any mistakes, it will be difficult if not impossible to sue you. Ensure that you don't miss deadlines and appear when in doubt.

- **If you make a mistake, admit it.** Perfection is a wonderful aspiration, but lawyers are human. Therefore, we all make mistakes, including me. My experience is that the frank and candid admission of an error can often engender client sympathy.



The Art of Bartering

By Sharon K. Campbell

An alternative way to bill for legal services is to barter. A successful barter transaction involves exchanging goods or services of equal value with little or no money changing hands. Since finding persons or businesses with which to barter services on a piecemeal basis would be time-intensive and inefficient, there are numerous barter exchange groups or clubs within which one may operate. There are a few national groups and many groups that operate on a local or

regional basis that may or may not have reciprocal arrangements with other regional barter groups. Barter exchange clubs or groups will have a number of different businesses whose services you may purchase or who may purchase your legal services with "barter" dollars similar to a checking account.

When one joins a barter club, your barter "account" may be immediately credited with a certain amount of "barter dollars" that you may use to purchase goods

or services from other members of the club. Payment may involve the use of a "checkbook" or it may be handled directly with the barter club that handles the debiting and crediting of accounts. When a person pays for your legal services, the agreed upon fee in "barter" dollars is deposited into your account that you may then use to purchase other goods and services. Filing fees and other out-of-pocket expenses, such as sales tax, are not included in the barter

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Such clients are more likely to remember that “to err is human, to forgive is divine.”

- **Cover-ups are like Watergate.** Most of us know what happened at Watergate: The cover-up compounded the original crime! You’d be surprised at how often lawyers attempt to create phony notification letters even if they use their current letterheads rather than the letterhead in use at the time of the supposed letter.

- **Don’t sue your client for fees.** This action can often trigger a malpractice countersuit. (More on this in related article.)

- **Have malpractice insurance.** Typically a malpractice insurance premium amounts to around \$250 per month. It won’t protect you from being sued, but it sure makes life more comfortable when the

malpractice carrier takes over your defense. Enough said!

Of course there are some situations in which the lawyer was not at fault and still stands a chance of a malpractice suit. There is a recent Virginia case where a lawyer filed a notice of appeal while he was suspended for 30 days. But, he had not been notified of the suspension at the time of filing. The Virginia Supreme Court held that his filing was null and void even under these admitted facts! Chuck’s Rule No. 106: No protection is foolproof.

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transaction and would be paid outside the barter transaction. Reputable barter organizations send some type of accounting report at the end of the year that may be used for tax purposes. Income from barter transactions is considered income just as if you were paid in cash.

Using barter is especially helpful for lawyers who are just starting out. Typically, barter groups or organizations are eager to have lawyers join and may give higher credits or better terms to lawyers in order to persuade them to participate. It is then possible to purchase many items that are necessary to start up a practice, such as printers,

copiers, fax machines, printing services, etc. Most barter groups or organizations have a good supply of restaurant scrip, too, which is also helpful for start-up lawyers with limited funds. It is recommended, just as in dealing with a client who is paying cash, to check out the businesses first and to check out their accounts with the barter group to ensure they are in good standing prior to agreeing to perform any legal services. Often it is possible to pick up cash paying clients through barter organizations as well. It may also be viewed as a networking opportunity and another way to get your name in front of other

businesses and people.

As many services as are available in barter groups, it is not possible to survive solely on barter income. As your practice becomes more established, it is probably wise to limit the number of matters you handle for barter. Managed successfully, however, barter remains a viable way to supplement your income and market to another group of potential clients.

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LAWYERS, GUNS, AND CREDIT CARDS

By T.J. Thurston



Much of our lives are tracked by the use of credit cards (especially if debit cards are in the mix). We use them at grocery stores, Chuck E Cheese's, and at Hollister's when our 16-year-old just has to have that \$350 sweatshirt. So why shouldn't lawyers get in on the deal? It makes payments from clients simpler, right? Not so fast, plastic man! Here are some points to consider.

There are plenty of services that gladly process credit card payments: Costco, PayPal, your bank, and those many independent credit card processing companies that have a zillion telemarketers who pester you with the "Can I speak to the person in charge of accepting payments at your firm?" calls.

There are various methods to accept credit card payments: A stand-alone machine provided by the credit card merchants; a direct call to the service provider; or payments through the credit card merchants' Web site or integrated with your own Web site in a "shopping cart"-type system. Determine which works best with your practice while ensuring that "Skippy" in Bulgaria can't hack into your account.

Next, decide how to alert clients to this new payment method. You can send a mass email to your existing clients, but you may incur their wrath for spam. (Spam, spam, spam, spam. . . . Sorry, I don't know how the Vikings got in here.) You can publicize it on your Web site or include it as an option on your invoice.

But there are more difficult issues to resolve first. Credit card convenience comes at a cost. Some ser-

vices require that you buy or rent the stand-alone machine. Charges may attach when it dials for authorization or when you complete the transaction. All service providers charge a processing fee—usually a percentage of the total sale. If the invoice is \$500, you may lose \$12.50 of that to the credit card company.

Let's assume you're comfortable with the costs involved. Here are some tougher questions. Do you accept a credit card payment for the retainer? How do you ensure that fee doesn't commingle with your other funds (Model Rules of Professional Conduct 1.15 Safekeeping Property)? How do you handle charge-backs or a client's canceled payment? (The Fair Credit Billing Act gives consumers the right to dispute a charge.) If your practice is primarily criminal law, do you really want to accept credit card payments from clients charged with identity theft or purse snatching? Your practice area will help determine whether credit cards are a viable payment method. It is illegal for bankruptcy lawyers to accept credit card payments from clients (creditors in bankruptcy don't take too kindly to that), but the clients' relatives can pay by credit card.

Flat fee services also lend themselves to credit card payments. But your conscience may wrestle with the debt, interest, and stress this payment method may add to your clients' lives.

“Guns and credit cards” may be redundant for lawyers, so make sure you’re not shooting your clients or yourselves by accepting payments from them—credit cards, that is, not guns.

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The Pros and Cons of Suing Your Clients

By Joan M. Swartz

This is an uncomfortable topic. Lawyers do not like to sue their clients. Instead, many of us carry accounts receivable far in excess of reasonable accounting principles. Worse, we write off fees rather than pursue collection. In the end, the lawyer is cheated. Our time is our trade, and clients who do not pay harm us. They devalue our time, in essence devaluing our services. From a larger perspective, it harms the practice.

Having said that, I am a cautious advocate for pursuing clients who do not pay. Before you do so, you should do the same cost-benefit analysis you use in considering when to file any lawsuit. Here are some of the pros and cons:

Pros

- The upside is that you collect your fee. Only sue clients from whom you can collect the judgment.
- You send a strong message to that client and others that you value your time and deserve to be paid.
- You are vindicated.

Cons

- You get paid, but only after you pay your own lawyer.
- Malpractice carriers are convinced the best way to pick up a claim for malpractice is by suing your client first. Many clients react by filing a counterclaim for malpractice, if available.

- You cannot be objective. Do *not* represent yourself.
- Malpractice carriers deny underwriting lawyers who sue their clients. This is a hidden truth.

As is true with any lawsuit, consider the strengths and weaknesses of the claim. Pay keen attention to whether the client may have a malpractice claim. Remember, some clients will attempt such a claim whether it has merit or not. Finally, be realistic, you will need representation, and so you will not collect your entire fee. So only pursue claims that justify collection efforts. Also only pursue claims where the client ultimately has the means to pay you.

Joan M. Swartz, a former law firm partner, started her solo practice in March 2000 in St. Louis, Missouri. She concentrates on small businesses as well as real estate, contracts, and civil litigation. Contact her at jms@jmsllc.com.



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