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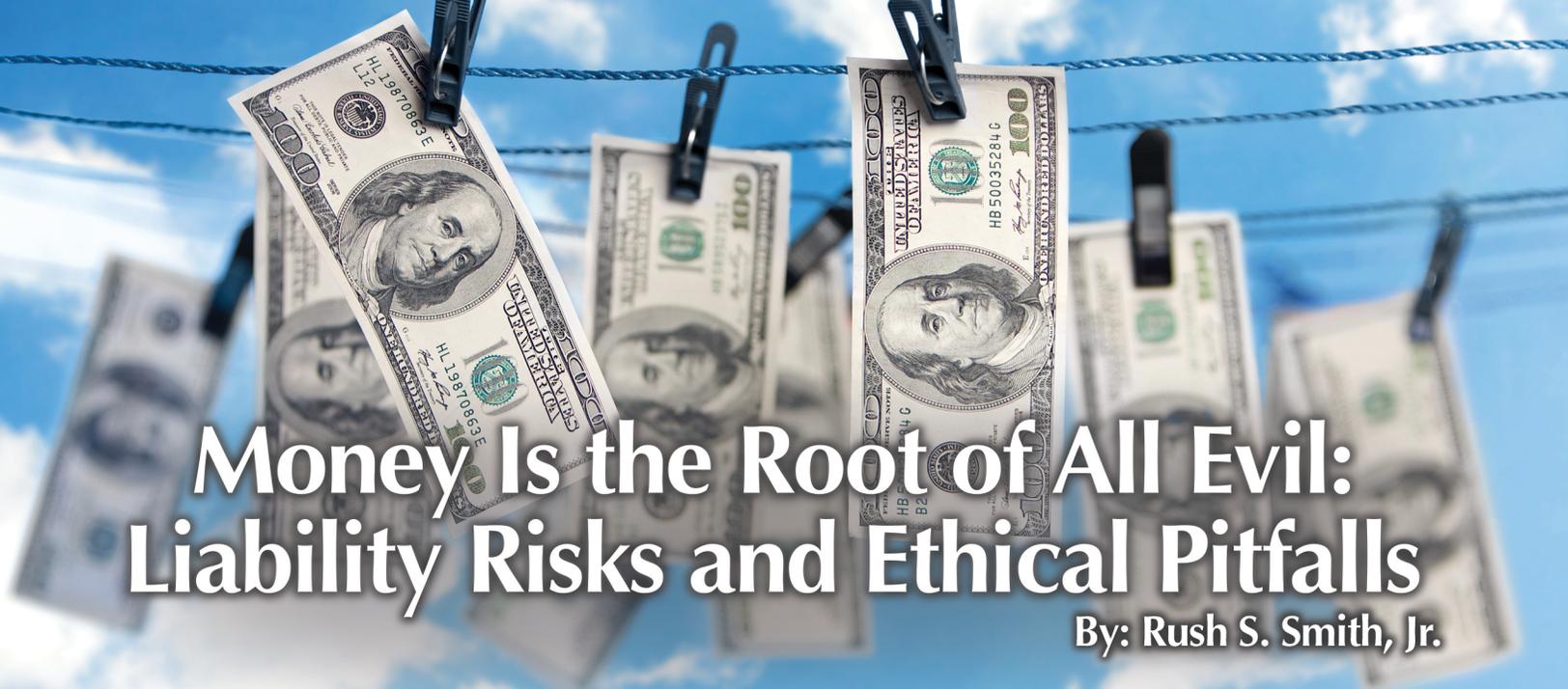
Billing Blunders

Tips for Ethical Billing Practices



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Money Is the Root of All Evil: Liability Risks and Ethical Pitfalls

By: Rush S. Smith, Jr.

Browsing through your inbox, you notice that the check from the insurance carrier you recently settled a claim with has arrived. Imagining all the wonderful things you can do with your portion of the proceeds, you pick up the phone to call your client and ask her if she wants to stop by the following day and pick up her portion. “How much do you get out of that again?” she asks skeptically.

Being used to these sorts of questions, you kindly respond that the fee agreement she signed with you two years ago entitles you to one-third of the proceeds of any settlement. After an uncomfortably long pause, she angrily states, “I don’t see why you deserve one third of my money. I was the one injured when that tractor-trailer rear-ended me.” You give her your canned response as to the time you spent on the case, including the numerous depositions you attended and the hearing you attended over a discovery dispute with the opposing counsel, as well as the costs you fronted along the way. Without a second’s hesitation, she yells through the phone, “I don’t care how much work you put in, you don’t deserve one-third of my money!” You feel your heart sink as the dial tone echoes in your ear. What do you do now?

Steps to Take During a Fee Dispute

Unfortunately, the client-attorney interaction played out above happens in law offices across the country every single day. Some of the main reasons clients dispute the fees they are charged include:

- Little perceived value
- Poor service
- Lack of comprehensive written fee agreement
- A perceived lack of aggression on behalf of the client

For attorneys not on a contingent fee basis, clients may dispute fees due to lack of timely and detailed billing, or because they have the impression the attorney intentionally ran up the bill.

Although the attorney in the above scenario has the advantage of being able to deposit the settlement proceeds into the trust account prior to disbursing any undisputed portions to his client and his operational account, not all attorneys have it so lucky. Some attorneys will find that, even after billing a client for services provided, the client refuses to pay all or some of the amount billed. At that point, the attorney, utilizing his knowledge and skill, may choose to litigate the unpaid fee.

In addition to the obvious costs and headaches created for attorneys in such scenarios, fee disputes have the potential of causing costly and severe collateral damage via malpractice claims and ethical complaints.

An American Bar Association (ABA) study found that almost seven percent of all insured malpractice claims arose in an attempt to collect an unpaid fee.

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The study suggested, however, that the percentage may be even higher since it did not cover uninsured or unreported claims. Some legal malpractice defense counsels estimate that 20 to 30% of all malpractice claims and counterclaims are attributable, either directly or indirectly, to disputes over legal fees and expenses.

So, what can an attorney involved in a fee dispute do to maximize the chances receiving some, or all, of the unpaid fee while at the same time minimizing the chances that the fee dispute will blossom into a malpractice or ethical complaint? There are three main options available to attorneys to collect their fee: litigation, self-help and fee dispute programs.

Settling a Fee Dispute with Litigation

Filing a lawsuit against a client frequently results in a counterclaim by the client. In fact, malpractice carriers include questions in their application forms asking whether the applicant has filed any suits against clients to enforce collection. When considering issuing or renewing coverage, the increased risk of a lawsuit against the applicant who sues clients for fees is increased considerably.

Settling a Fee Dispute with Self-Help

The second option is self-help. In the above scenario, you may try discussing the fee agreement with your client and listing all of the work you did to earn the fee. You may even try to negotiate with your client for your fee, or a discounted amount of your fee. Regular email updates to the client regarding work done on the case goes a long way toward preventing this dispute down the road.

The informal self-help approach is preferred by many lawyers and may feel less adversarial to clients, not to mention it can save on the time and expense of litigation. However, this informal resolution does not come without risks for the attorney.

For instance, a settlement between a lawyer and client can be voidable at the election of the client in the event the client is not represented in settlement negotiations. Settlements become even riskier when the lawyer still represents the client but is advocating their own interests seemingly to the detriment of the client. When considering a self-help remedy such as settlement, a lawyer should consider the ethical rules regarding business transactions with clients (ABA Model Rule 1.8) and the duties of an attorney when communicating with an unrepresented person (ABA Model Rule 4.3).

Settling a Fee Dispute with Mediation

In the event that the self-help approach proves unsuccessful, or that you choose not to expose yourself to the potential ethical pitfalls of self-help, you can look to your local state bar for assistance. Many states have mediation or arbitration programs available to their attorneys to handle fee disputes with clients. These programs vary from state to state, with some of them being optional and others being mandatory. Typically, these programs are less formal than litigation and less costly, and they eliminate the ethical concerns associated with self-help. The downside, of course, is that alternative dispute resolution almost always means that you end up receiving less than the fee you billed. However, considering the pitfalls of both litigation and self-help, this may be well worth it.

So, the next time you end up with a fee dispute with a client, take a moment to step back from the scenario and consider that litigation and self-help can lead to more serious issues. Given these potentially costly risks, think about researching the programs your state bar organization has in place. Mediation or arbitration programs can very well get you a good portion of the fee you so diligently earned, while at the same time, minimize the chances of a malpractice or ethical complaint.

**LIVE
WEBINAR**

August 24, 2022



WALKING THE LINE: KEEPING BILLING PRACTICES ETHICAL

One of the many challenges in law firm management is legal billing. Clients can avoid or delay paying legal bills for a number of reasons. Clients may disagree with the amount charged or may be confused about the billing agreement or the work performed. That is why it is important to implement client-centric billing processes, which can also help avoid potential fee disputes down the road. Join speakers Erin McCartney, J.D. and Erik Crep J.D. while they discuss legal billing tips that can help your firm establish more efficient and client centric billing processes, which can help avoid potential fee disputes down the road.



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Lawyer Billing Ethics: Billing Tips for Lawyers

By: Sarah Bottorff

As a lawyer, law firm billing can be daunting. You want to make sure you're billing correctly and ethically, but you also don't want to spend too much time on billing (which is non-billable).



What is a Reasonable Fee?

MRPC 1.5 discusses attorneys' fees and provides several factors to help determine whether a fee is reasonable. Some of these factors include: the time and labor required; novelty and difficulty of issues; fee customarily charged for similar services; the experience, reputation and ability of the lawyer. While the factors listed in the rule are not exhaustive, they provide a good starting point for determining what is considered a reasonable fee. Keep in mind that each state's Rules of Professional Conduct may have additional factors to consider when determining reasonableness.

Put the Fee Agreement in Writing

When it comes to legal billing, it is critical to get everything in writing. Sometimes clients do not fully appreciate or understand the value you provide or the effort and skill required to do the job well. Also, clients may be confused by whether certain things are itemized or concerned about inflated billable hours given headline stories about lawyers swindling and overcharging. A written fee agreement will ensure that both you and your client are on the same page, and it will help prevent any potential misunderstandings. Your client can refer to it later if there are any questions or disputes about the bill. If there is a later dispute, it is important to make sure your practices are in line with the ethics rules. Below are some common pitfalls to be

aware of to ensure your firm's billing practices remain ethical and efficient.

Double Billing

At its most basic definition, double billing is when you invoice two clients for work done during the same time period. If you end up doing an hour of research that can apply to two matters, split the difference and invoice each client .50 (30 minutes). Double billing becomes more of an issue if you are traveling for a client matter but end up doing work for a second client during the travel downtime. It's great to be proactive, but you might be better off single-tasking on the primary matter at hand.

Block Billing

Lumping together many distinct tasks into a single billing entry is block billing. This billing practice is dubious because you fail to accurately report the time it took for each task individually. Timesheets need to be clear and easily interpreted by someone reviewing them.

There may be instances where block billing is appropriate, like during travel. But generally, avoiding block billing is a best practice that benefits the client, and if a fee dispute later arises, you'll be thankful you took the time to have accurate timesheets.

Marking Up Your Time

Inflating your time spent working is the same as

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marking up your time. Only invoice for your actual time working on a matter. This will ensure that you are not overcharging your clients and will help maintain a good relationship with them.

Charging Clients for Law Office Overhead

More simply put, do you bill a client for creating a bill? Clients do not expect to pay for your administrative tasks. It's best to remit tasks like accounting services to general services done by the law firm. The ABA has declared this unethical, but many states handle this differently. Some states say it's permissible to include overhead as long as you clearly state those fees in the client fee agreement. You can always reach out to your state's Ethics or Grievance department to talk through the appropriate billing practices for your firm. Billing clients is a highly challenging aspect of any practice. However, developing a good timekeeping and billing process is critical. Technology can help with many complex tasks and considerably reduce the time involved.

Maximizing Your Minimum Time Increments

Don't be the attorney who bills in half-hour or hour increments (yes, it's happened). The issue with billing at a slightly higher rate, even at .25 hours (15 minutes), is that there might be too much padding for the billable tasks. Billing at .25 hours might inflate the invoice. If there were to be a fee dispute, a higher time increment would be examined thoroughly. Take a reasonable and balanced approach and choose the billing increment that is acceptable for your practice area.

Be a Better Time Keeper

You can keep track of your time in different ways. It is essential to record the time you spend on work tasks as soon as you do them. You can use a legal pad, a billing program, or even your smartphone to do this. Additionally, you can estimate the amount of time a task will take before starting it. Knowing how long you expect to take on a task will help you stay on track and avoid underestimating or overestimating the amount of time a particular task will take. The most important thing is to be consistent in keeping track of your time. This way, your records will be accurate.

Enter Time Daily

From here, I think you're getting the hint that the more frequently you track your time, the better odds of capturing an accurate picture of your work daily. One way to ensure that you track your time daily is to make it a habit. You can do this by setting aside a specific time each day to review your time entries and update your timesheet, which will help you stay on top of your work and ensure that your billing records are accurate. Timekeeping and billing software makes this as seamless as possible.

Single task

Single-tasking means that you do one thing at a time. So, when you are editing a brief for a matter, you aren't also answering phone calls or checking email. To be better at single-tasking, you need to create an environment conducive to it. So, turn off notifications on your phone and computer, close any unnecessary tabs in your internet browser, and keep your workspace organized. You may also want to set time limits for how long you work on certain tasks so that you're not distracted by other things.

Don't Underestimate Your Time

Underestimating your time can happen for two reasons. First, if you are not keeping consistent records of your tasks, you may forget tasks, like phone calls, you've completed. This omission will make it appear you spent less time on a matter than you did.

The other reason for underestimating time is that sometimes new lawyers think they should be faster as a task than they are. Talk to your manager instead of getting in your head about your speed and pace. Ask them what amount of time they expect tasks to take.

Break Down Your Entries

As for the billing entries, divide the tasks into separate entries to make sense of the cost of the time. For example, if the bill is for "review and preparation of draft medical documentation" the client may not understand why this charge required so much time. Break down your entries and provide the client with an explanation as to why this task is beneficial to their case.

Itemize Your Bills

Start noting the timed breakdown of your tasks and activities on your bills. Itemizing your bills will help you avoid block billing. Below is an example of a detailed time-tracked list.

02/22/2022: Zoom conf. with expert witness Wardle (1.0); reviewing documents for cross prep (.3); sent comms to and from client re: files(.3); reviewed new eDiscovery files (2.4); prepared exhibits for defendant (1.5); Zoom conf. with court for motions (.5). Total: 6.0 hours

Tracking your time diligently and detailed with a law firm CRM can add administrative time to your workday. But the lasting value is that you won't have to go back to recreate a day or weeks' worth of billable time - which would be nearly impossible to do accurately.

You have a responsibility to your clients, which is why billing ethics are so important. The tips provided should help you bill with ease and efficiency. Remember, following these steps will ensure you maintain professionalism in all aspects of your practice. It not only helps you stay out of trouble but also creates transparency with your clients.



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Monica has over 20 years of expertise in the insurance industry. She is an avid animal lover and shelter volunteer who is passionate about cooking, fishing, spending time with her daughters and of course insurance!

