



REDUCING YOUR LEGAL SPEND

AN IN-DEPTH LOOK AT ATTORNEY TIME ENTRIES

Did you hear the one about the lawyer who bought a new pair of shoes and charged the client \$190 for “local travel?”

There’s no punchline . . . it actually happened.

How could this be? Aren’t attorneys respected professionals? Don’t they have ethical obligations?

What about when a lawyer bills two clients for the same hour of work? Yes, you heard that right. It’s called double billing, and it’s not uncommon. And you, the client, would never know it because you are seeing only your bill, not the other client’s bill or all of the lawyer’s time charged on that day. If you are outraged by that, you are not alone -- at least not in the business world.

But, sadly, many attorneys don’t share your opinion. Two facts came to light in a 2007 Samford University Law School survey. In 1996, 35.3 percent of lawyers believed double billing was ethical. Just 11 years later, in 2007, **48.2 percent of lawyers believed double billing was ethical.**¹ Now, another 12 years removed, it would not be surprising to learn that the percentage of lawyers who believe double billing is ethical and acceptable has exceeded the 50 percent mark.

Are all lawyers and law firms like this? No. The glimmer of hope is in the attorneys who do see double billing as unethical.

¹ Business Insider, July 10, 2013, 10 Ways Lawyers Rip Off Clients, <https://www.businessinsider.com/10-ways-lawyers-rip-off-clients-2013-7>

What lessons can we learn from this?

This paper explains some of the ways to discern between legitimate charges and unreasonable charges on attorney invoices and how to reduce inflated legal bills.

A Tale of Three Attorneys

In order to understand some of the ways that legal bills get inflated, we must understand how a newly-minted lawyer comes up through the ranks of a law firm.

Most law firms have minimum billable-hour requirements for their associate attorneys and paralegals. In the past, litigation associates had to bill 1,900 hours every year, and all other associates had to bill at least 1,800 hours per year. In 2016, large law firms raised associate salaries.² But they also raised the billable hour requirement to 2,000 hours per year for all associates. As one associate anonymously described the increase in hours on “Above The Law”:

“There’s not enough work for this move.... Now, associates will be scrounging for what little extra work there is, and it is very unlikely to me that more than a small minority of associates would be able to bill 2,000 even if they wanted to, especially in slower groups (of which there are many).”

So what must those associates do to meet the 2,000 minimum hours every year to stay employed? What must they do to meet the 2,500 annual hours to garner a spot among the partnership? Read on.

First-Year Associates

Alexa, Brian, and Charles have just graduated from law school with \$200,000 in law school debt and another \$160,000 in debt on their undergraduate degrees. They each were “fortunate” enough to land a job with a large law

firm at a starting salary of \$160,000 per year.

They are brand new to the practice of law. They don’t really know how it works or what to do. Many of their initial projects for the firm are first-time learning experiences where they spend a lot of extra time just trying to figure out what their work product should look like. And they dare not ask the partner who assigned the task or another associate for fear of looking like a novice. Then, they are told to enter the time they spent on their respective tasks in the firm’s billing system. They each enter 20 hours of work, although it should have only taken 10 hours.

Their time entries disappear into the firm’s billing machinery, and they never see them again. Alexa, Brian, and Charles assume that the attorney who assigned their respective task will make any adjustments necessary to their time entries. But the attorney who assigned their tasks is not necessarily the “billing attorney” who reviews (or should review) their time entries before the client is invoiced for the month. The firm invoices three different clients for 150 hours that month on each of the three associates’ matters. Their 20 hours of time is not reduced because it is a relatively small part of the larger bill, and after all, they have the lowest rate of any attorney on the respective invoices.



²Joe Patrice, “With Great Raises Come Great Increased Billing Requirements — The Other Side Of Raises,” Above The Law, <https://abovethelaw.com/2016/08/with-great-raises-come-great-increased-billing-requirements-the-other-side-of-raises/>

Right out of the gate, the client has paid double the amount for their time than it should have paid. But Alexa, Brian, and Charles don't even know it. Because their hours are not questioned, and the billing attorneys are not looking to reduce the amount of the invoices, Alexa, Brian, and Charles end up billing 2,000 hours in their first year -- an average of 40 hours per week. They're off to a good start. They each get a raise to \$170,000.

Second-Year Associates

Going into their second year of practice, Alexa, Brian, and Charles have gained some experience and begin to understand the work process. Multiple attorneys assign them work, sometimes from other firm offices. They each typically have 10 different matters for 10 different clients that need attention in a given week. They honestly bill their time, but because they have become more efficient, they each average only 36 billable hours per week, or 1,800 hours that year. None of them has met the minimum billable hour requirement for the second year. None of them gets a raise and the firm demands more billable hours in their third year.

Third-Year Associates

Alexa, Brian, and Charles need their jobs to pay their school debt and to afford the new high-ticket purchases they made while their eyes were still shining at the large salary they received. This is the point where their ethical foundations create divergent paths for them in a large law firm.

They each leave home at 8:00 a.m., arrive at the office every morning by 8:30 a.m., leave the office at 7:00 p.m., and arrive back home by 7:30 p.m. Most people would say they work a lot. They are gone all day long. Like most attorneys, they enjoy the perceived admiration and wear their long hours as a badge of honor.

Alexa is in the category of attorneys who believe that overbilling is unethical. She is diligent about stopping the clock when she receives personal emails and phone calls, when she has lunch, when she searches the Internet for personal reasons, when she checks her social media sites, and when she has conversations with her colleagues that are not related to a legal representation. And she always pauses one client's clock when she takes a phone call or email from a second client. Alexa is also diligent about entering her time into the firm's billing system at the end of each task.

But Alexa ends up billing only eight hours in a 10.5 hour day, after deducting an hour for lunch and 1.5 hours for non-billable personal time, like getting coffee, chatting with co-workers, and talking to her fiancé on the phone. She is only billing 40 hours per week (2,000 hours per year).

Brian spends the same 52.5 hours per week in the office as Alexa, and he works the same 40 hours of that time. But Brian does not enter his time after every task -- he doesn't even enter his time at the end of every day. At the beginning of most months, he has to look through his calendar and emails to reconstruct large blocks of time





for the previous month. At this point, Brian has to estimate the time he spent on each client's matter and he is staring at a blank timecard for many days of the month. And he has to account for his time in six-minute intervals. That's 105 little blocks of time every day and 2,050 six-minute blocks in a month.

Brian's memory of how he spent his time in the previous month makes those personal detours very short and makes his "work" for clients very long. He does not remember the times that he stopped work on one client's case to respond to an email from a second client. But he knows he received an email from the second client because it appeared in his end-of-the-month search. So he, perhaps unwittingly, bills both clients for the same hour of time. He does not remember stopping his work for a client to search the Internet for personal reasons or to text his friends. In his rush to finish his time entries, and because he cannot remember how long each task took, he lists multiple tasks under one time entry for a large block of time (called "block billing") and/or describes his entries in vague language ("inadequate descriptions").

Brian underestimates his personal time and overestimates his work time. And Brian is entering his time in a vacuum. He doesn't know what his colleagues billed to any of the clients. This creates the likelihood that Brian and another

lawyer will bill for the same work that month, especially since Brian is guessing at the time he spent and the tasks he accomplished.

Brian's overestimation of his work hours allows him to bill 9 hours of his 10.5 hour day, for 45 hours of billable time each week, for a total of 2,250 billable hours per year, although he only worked 2,000. Regardless of Brian's motivation, he has overbilled the firm's clients.

Reality Check: To illustrate Brian's inability to accurately reconstruct his time, write down specifically what you did every six minutes on this day two weeks ago. It's difficult, isn't it?

Charles also spends 52.5 hours per week in the office and works 40 hours of that time. But Charles does not stop the clock on one client when he receives a phone call from a different client. He bills both clients for the same segment of time. Charles bills for half of his lunch hour under the justification that he was "considering" the client's matter or gave his "attention to" the matter by thinking about it. He also chats with colleagues and searches the Internet on the client's dime.

Charles's rejection of the ethical norms allows him to bill 10 hours a day. He turns in 2,500 billable hours per year, when he only worked 2,000. Although clients would call Charles a "thief," the law firm calls him a "superstar." Here's why.

(Averages over Years Employed)		Alexa	Brian	Charles
Annual Hours Billed		2,000	2,250	2,500
Hourly Rate	X	\$500	\$500	\$500
Annual Revenue per Associate	=	\$1,000,000	\$1,125,000	\$1,250,000
Associate's Annual Compensation	-	\$200,000	\$200,000	\$200,000
Annual Net Revenue per Associate	=	\$800,000	\$925,000	\$1,050,000
Number of Years Employed (Years 3-10)	X	8	8	8
Lifetime Net Revenue per Associate (Years 3-10)	=	\$6,400,000	\$7,400,000	\$8,400,000
Net Revenue above Alexa		\$0	\$1,000,000	\$2,000,000

Partnership Decisions

Alexa, Brian, and Charles continue on their respective paths for the next seven years. Now it's time for the firm to consider associates for partnership. Here is the type of calculation the firm's leaders will perform for each associate: *see chart above*.

Over the course of his time at the law firm, Charles has netted the firm \$1 million more than Brian has and \$2 million more than Alexa has. So if the law firm has 100 associates in the same class (i.e., tenth-year associates), and 30 available partnership spots, associates like Charles are going to fill the vast majority of open partnership spots. This is because Charles-type associates will have netted a total of \$60 million more for the firm than the Alexa-type associates for those same 30 partnership slots.

And Charles is not going to have a sudden change of ethics about overbilling clients upon rising to partnership. Why would he? Overbilling is precisely what put him into his partnership role.

Some notorious examples of overbilling include a New York lawyer who claimed to have worked

1,271 days in a single year³, and a partner in a major law firm who **billed 5,941 hours per year for four years in a row** -- that's over 16 hours a day of billable time, 365 days a year, for 1,460 days straight, without a single day off. Yes, lawyers work long hours, but not that long. In fact, the "standard assumption" is that, "at most, only 70 percent of work time can be turned into time billed to a client."⁴

A Kansas lawyer charged an average of 33 hours per day for ten days straight. A California attorney billed a client for 50-hour workdays. A Louisiana firm routinely billed four hours for one-sentence letters. And a North Carolina lawyer billed 13,000 hours over 13 months, even though there are only 9,500 hours in that time period.⁵

Were these rogue attorneys working alone? No, these impossible billable hours did not go unnoticed by the other partners in the respective firms. Instead, the other partners profited from these impossible hours and the culprit was very likely rewarded with a large bonus.

What happens when the overbilling mindset becomes entrenched in a law firm? One largest law firm had to produce damning internal

³ Martha Neil, American Bar Association Journal, November 5, 2009, Iconic N.Y. Lawyer Settles Pension Probe; 'Worked' Over 1,200 in a Year, http://www.abajournal.com/news/article/iconic_n.y._lawyer_settles_pension_probe_allegedly_worked_over_1200_days_in

⁴ Richard Zitrin & Carol M. Langford, The Moral Compass of the American Lawyer, Ballantine Books, 1999, excerpted at: <https://www.upcounsel.com/lectl-the-billing-abuses-of-lawyers>

⁵ Ibid.

emails when their client sued the firm for gross overbilling. One email between partners at the firm applauded the firm’s lawyers for being “already 200k over our estimate.” Another lawyer replied: “Now Vince has random people working full time on random research projects in standard ‘churn that bill, baby!’ mode. That bill shall know no limits.”⁶

Would a lawyer who believes double billing is acceptable and ethical then find any other bill inflation practice abhorrent?

Lesson 1: You cannot assume anything about an attorney’s billing practices.

In many cases, what clients would call “thieves,” large law firms call “superstars.” But you cannot assume that any lawyer who does work for you is honest or dishonest. You cannot assume that entire law firms are honest or dishonest. Each lawyer within the firm must be judged individually. You need a way to tell the difference between ethical and unethical attorneys in order to protect your business from being overbilled.

Hey, wait, this “lesson” doesn’t answer any questions, it only raises questions (cue the “typical lawyer” wisecracks). True, but knowing a little more about the underlying motives and morals of attorneys working on your matters and the inner workings of law firms can help you spot overbilling in your legal invoices. How? The key is in the individual time entries on your legal bills.

Lawyer time entries: a window to the soul.

It’s been said that the eyes are the window to the soul. But it’s not looking into someone’s eyes that reveals that person’s soul, it’s what that person’s eyes are fixed on. So how can you tell whether your attorney is looking at your interests or their own interests? It’s in the individual time

entries. Here are two actual entries for the same client by the same associate for two consecutive days:

Description	Hours	Rate	Charge
Attention to proposed deal structure and related regulatory approvals; analysis of qualifications for pro-forma transfer; evaluation of license transfer structure and proposed revisions to same; emails re alternative deal structure; review follow up emails concerning same.	6.7	\$540	\$3,618.00
Attention to licensing files and review of licenses and leases; attention to pro-forma license transfer structure; additional review of proposed structure; attention to fees and timing relevant to pro-forma and non-pro forma assignment; address related licensing matters.	7.4	\$540	\$3,996.00

These two time entries account for 14.1 hours of the more than 100 hours this associate billed to the client in seven weeks. The client was charged more than \$54,000 for this associate’s time.

At first glance, it appears that this associate has done a lot of work for the client. But notice that the task descriptions are all nebulous: “attention to...; analysis of...; evaluation of...; emails re...; review follow up emails...; attention to...; attention to...; attention to...; address...” And NO actual work product was produced in that 14.1 hours of time. Whether this associate was reconstructing his time at the end of the month or had more sinister motives, this time entry screams: “I need to fill my time card!” This lawyer’s eyes are not fixed on the client, they are staring at an empty timesheet and the consequences of failing to meet his required minimum billable hours.

Why are inadequate descriptions indicators of

⁶ Peter Lattman, New York Times, March 25, 2013, Suit Offers a Peek at the Practice of Inflating a Legal Bill, <https://dealbook.nytimes.com/2013/03/25/suit-offers-a-peek-at-the-practice-of-padding-a-legal-bill/>



potential overbilling? Lawyers are, more than anything else, professional writers. You would not want an attorney drafting your contract who could not precisely state the intention of the parties and the terms of the agreement. So why would a lawyer not also be precise in describing the work he or she did on a client's behalf? Most businesses go out of their way to identify the value they deliver to their customers, unless they are not delivering value. Vague descriptions suggest exactly that: the attorney is not delivering value to the client.

And where was the billing attorney, who should have reduced these charges before this invoice was sent to the client? First, the law firm makes more money, and the billing attorney makes more money personally, when the associate overbills. Second, the billing attorney's time entries were similar ("focus on. . .; review. . ."). Perhaps the billing attorney made partner by entering hundreds of valueless hours every year.

In addition, these time entries are classic

examples of block billing. There are five different tasks stated under each entry. The California Bar Association did a study on attorney billing issues and found that block-billed time entries typically equate to a 10 to 30 percent inflation in the actual time worked by "camouflaging noncompensable tasks" within large time blocks.⁷

There are numerous other billing practices that lead to inflation of legal invoices, such as using high-rate attorneys for tasks that can be done by entry-level attorneys or paralegals⁸, billing for multiple attorneys to participate in intra-office conferences with each other, billing for overhead items like copying and printing, charging paralegal rates for an administrative staff member to transcribe a lawyer's dictation, charging for a junior lawyer's training (usually the client is charged for both the senior and junior attorney's time), doing unnecessary and/or unauthorized tasks, and, of course, recording more time than a task actually took, or should have taken.

⁷ California State Bar Association, Committee on Mandatory Fee Arbitration, Arbitration Advisory 2016-02. March 25, 2016. http://www.calbar.ca.gov/portals/0/documents/mfa/2016/2016-02_Bill-Padding_r.pdf

⁸ As one court quipped, "Michelangelo should not charge Sistine Chapel rates for painting a farmer's barn." *Ursic v. Bethlehem Mines*, 710 F.2d 670, 677 (3rd Cir. 1983).

The Big Picture

So what can you do? When analyzing a legal bill, ask how each time entry adds value to: (1) the particular work product it produced, (2) the phase of the representation, and (3) the goal of the representation as a whole. If the work product is not important to the client's goal, it doesn't matter how great the lawyer's work is.

As a recent example, a law firm charged the client 32.4 hours for drafting a summary judgment motion. The motion was well reasoned and persuasive. But, before the firm began drafting this masterpiece, the court had entered an order prohibiting any party from filing a motion for summary judgment. The law firm's work had no value at all to the client, but the firm still expected to be paid.

Analyzing the line item charges on legal bills is no small task. The analysis itself is

60 percent experience in legal practice, 30 percent psychology, and 10 percent mechanics and mathematics. Unfortunately for many businesses, computers can only assist in the last and smallest category. Then, when the analysis is done, someone has to negotiate with the billing attorney to convince him or her that certain charges are unreasonable and should be removed from the bill.

But there's hope – even if you don't have the resources inside your organization, these functions can be outsourced. Although there are various fee models for legal bill review services, the most client-focused providers will waive their fee if they do not achieve savings for the client. Make sure your outsourced legal bill review provider will analyze every line item of every legal invoice, every month. After all, the devil is in the details when it comes to reducing your organization's legal spend with outside counsel.



SIB Legal Bill Review cooperatively works with your outside attorneys to ensure that you are receiving maximum value for the money you spend. Our mission is to free you and your in-house legal team to focus on running your business, not combing through mountains of attorney time entries. We want you to be able to focus on the legal issues, and we'll focus on the legal invoices. The best part? The new legal invoice plus our fee will always be less than your original invoice.

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