

Law Firm Finances:

Billing and Invoicing Tips



Your billing practices, fee structure, and the way you communicate the value of the work you perform can all reinforce the attorney-client trust relationship, but it is incumbent upon you to ensure that your clients understand, acknowledge, and agree to your fees and your billing practices before any work is performed.

The Initial Consultation

The initial consultation sets the tone for the entire engagement. It should define the scope of the engagement, identify the results the client wants to accomplish, establish the value of the engagement to the client, and eliminate any objections or misconceptions. It is crucial to ask good questions and to spend a significant amount of time listening to the client, rather than talking.

Many complaints about legal bills arise out of surprise or the client's lack of understanding of the original agreement rather than a problem with the fee itself. Remember that the client may not know what a typical engagement of this type usually involves; you must educate them.

Talk about your fees in terms of the value the client will receive rather than the cost of providing those services or the number of hours required to complete the matter. Explain how your fees are calculated and give the client an opportunity to ask questions. Whether you're billing by the hour or using alternatives such as fixed fees, build in some room for the unexpected to arise and don't make any guarantees.

Talk about your fees in terms of the value the client will receive rather than the cost of providing those services

No matter how you price your services, your initial consultation and your engagement agreement should cover these billing and financial issues:

- The scope of services to be provided
- Your rates and how they will be calculated (hourly, flat, contingent)
- Whether there is a cap or upper limit to your fees
- Whether the fee is tied to results
- The frequency of bills and when payment is due (upon receipt, within 15 days, etc.)
- The format of bills and what they will contain
- The circumstances and variables that may affect the fee
- How your firm accepts payments and the terms and conditions of using these payment methods
- Additional costs and expenses that may be incurred, such as expert witness fees, filing fees, and appraisal fees, who is responsible for paying them, and when
- Information about withdrawal for nonpayment or other consequences, including interest and fees to be charged for late payment

It is a good idea to have the client initial the fee provisions in the agreement as you explain them during the first consultation. Some resistance to fees is normal. You can reduce that resistance by ensuring that the client understands the scope of the engagement, the necessary steps involved, and if by relating your fees to the client's goals and values. A client who pushes back too much during the initial consultation may not value your services or the outcome of the matter enough to justify paying your fees. On the other hand, if none of your clients ever resist even a little bit, your fees may be too low and it may be time to increase them.

Charging for the Initial Consultation

Charging for your initial consultation can be a good way to avoid bad clients. Many attorneys have found that when the client must pay something for the consult, the result is less time spent with "tire-kickers" who aren't serious about their matter or do not value your time and advice - and fewer problems later.

Budgeting and Setting Your Fee

Clients are concerned with the overall cost of the representation, not simply a billable rate. Just because most lawyers in your practice area use one method of calculating fees doesn't mean that you can't devise a different system for your clients. Offer an alternative fee structure, service options, or quote a fee up front for the entire engagement. Provide payment options or payment plans to make it easier for clients to pay. Provide incentives to pay on time or occasional discounts to long-standing clients who pay promptly.

At the very least, provide the client with a budget or estimate of the total fees. Develop the estimate or engagement in conjunction with the client so that the client has some control over the process. Base the estimate or budget on the client's desired outcome and realistic expectations of what will occur during the engagement. You may not be able to predict everything that might happen, but you should know the possible variables and the things that can go wrong much better than your clients do. Outline them in advance and keep billing disputes to a minimum.

If you need more information from the client to prepare the budget or fee estimate, you might consider charging the client a flat fee to review the documents and information necessary, and then set your fee based upon what you learn.

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Establishing Good Billing Practices and Systems

Good billing and financial management practices can help you to reduce receivables and eliminate or drastically reduce your collections. Review your jurisdiction's ethical rules before implementing new practices; not all jurisdictions follow the same rules. Put billing practices and policies, including payment terms, in writing – clients find it more difficult to argue with written policies.

Get paid up front

Getting money from clients up front demonstrates their commitment to working with you on their matter and reduces or eliminates billing and collections problems.

Obtain the client's agreement to move advance funds from the trust account into the operating account within a specified period of time after the bill is sent if the client has not objected to the bill. Use evergreen retainers. Instead of waiting for the initial retainer amount to be exhausted before asking for additional money, ask clients to maintain the original retainer balance by paying for disbursements and work performed monthly. Use the original retainer amount for the last payment and then refund any remaining funds to the client at the end of the engagement with a final accounting.

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Alternatively, request that clients replenish the retainer at strategic points in the engagement when you know a large portion of the work will be done (for example, when you are ready to prepare for trial). If the client refuses to replenish the retainer, you may be able to stop work or withdraw before you do work you may never get paid for.

Accept credit cards and use electronic options to make it easier to collect

Modern billing and timekeeping programs, including those incorporated into practice management programs, can greatly improve your billing and invoicing process by automating many of these tasks and removing one area of friction in the lawyer-client relationship. Accepting credit cards makes it easier for clients to pay for your services (especially online). Although there are fees associated with credit card acceptance and other online methods of payment, the convenience can far outweigh those costs.

Establish an online gateway or accept payments through your practice management system without the need for any additional equipment such as a credit card reader. Set up your credit card acceptance system so that clients have to enter their own credit card information, rather than providing you with the information to enter for them. Send clients electronic invoices that direct them to your payment system or practice management or billing software. In this way, you never see or retain their credit card information, reducing your cybersecurity risk.

If you accept credit cards, your engagement agreement should state that no dispute with the law firm will be raised with or adjudicated by the credit card company, that charges are non-refundable and cannot be reversed by the credit card company, and that any dispute over fees paid by credit card should be settled between the lawyer and the client, governed by the rules of professional conduct, your state bar disciplinary committee, or the courts. If the client disputes a fee charged on the credit card, showing the credit card company that portion of the agreement (being mindful of client confidentiality issues) makes it less likely that the company will credit the client or debit your law firm for that fee.

Be aware of the ethical rules in your jurisdiction covering credit card acceptance and separation of firm and client funds. In many jurisdictions, when the client's credit card is charged for advance payments, the client's payment must be deposited directly into the trust account, rather than the lawyer's operating account. But any fees, including credit card fees or percentages charged on that transaction, cannot come from the IOLTA or lawyer's trust account.

Use a payment processor that works specifically with lawyers and understands the ethical restrictions. The processor should provide options including the ability to open and close separate client accounts easily, process transactions through the client account or the operating account as necessary, and allow fees to be deducted from the attorney's operating account so that the full amount of the client's retainer or payment is properly credited to the client's trust account. These processors can also manage IRS requirements and 1099s to ensure compliance with all governmental regulations and requirements.

You may also want to consider a system which allows you to accept ACH payments and check processing, which converts traditional checks into electronic deposits. This can result in funds getting cleared faster. Robust reporting features can help you monitor cash flow, payments, trust account ledgers, receivables, and productivity in real time, firm-wide or limited to an individual client. A client portal within your practice management program can increase transparency by giving the client access to portions of their account to see upcoming appointments, work that has been performed, the status of their retainer or billing history.

Capture time and document all work performed

If you bill by the hour, it's extremely important for you to accurately capture all of the time you spend on a matter, and capture it contemporaneously, rather than trying to remember or recreate it later.

Choose practice management software that allows you to easily track time and create a billing entry for a specific matter and client, whether you're in or out of the office, working on your desktop, laptop, tablet, or smartphone.

Utilize practice management software that includes automatic timers enable you to start the timer when you begin working on a client matter, stop the timer when you finish, and automatically create the time entry for that client and matter with the amount of time you expended, at that client's billing rate, simply by pressing a few buttons and entering a short description of the activity.

Your bill should reflect all of the activities you performed and the time expended on the client's behalf. This is particularly important if you decide not to charge the client for some of the work. In this way, you can use billing as an opportunity to communicate and reinforce the value you provide to your clients. Detail what was done, why, and what it means to the client. Relate the work back to the client's goals and values discussed during the initial consultation. A bill that communicates the value of the work you are performing and how it benefits the client or helps to advance the client's main objectives is a bill the client will want to pay.

Send better bills

The simpler the language you use in your bills, the better. Write without legal jargon. If the client cannot understand what your bills say, they will not want to pay them. Anyone reading your bill should be able to tell what was done, by whom, when, and why, even if they are not familiar with the case or its subject matter.

For example, instead of an entry, "Research," say, "Research current case law in support of motion for summary judgment on issue of homeowner's exception to the labor law." Rather than, "Telephone call to client," say, "Telephone conference with client regarding scope of work to be per-

formed under client's contract with XYZ vendor." These kinds of billing entries convey the value that you provide to the client in their legal matter, reducing confusion, client questions, and fee disputes.

Develop standardized billing language throughout your firm so that billing entries are consistent regardless of who performs the work for the client. Create shortcuts or macros within your practice management and billing program which will insert long blocks of repetitive text using only a few keystrokes to make creating billing entries faster and easier.

Even if you receive payment up front, send regular billing statements so that clients can see the progress of their matter and the status of their retainer or advance payments. Include the fee charged, outstanding previous balance, remaining retainer balance, due date, and preferred payment method on every bill. If you are giving a discount, be sure the bill reflects your usual fee and clearly identifies the discount the client has received. Tell the client who to contact with billing questions and how to contact them.

Don't let your bills be your only communication with your client; you don't want them to get the impression that you have time to bill them, but not to discuss their matter with them personally. Advise clients immediately of a change in status or a change in the law that will affect their matter. If unanticipated services arise, discuss them with the client before you bill for those services.

Bill while services are fresh in the client's mind, particularly at the end of an engagement; don't wait until your regular billing cycle is completed. Bill consistently. If you want clients to pay you on time, make sure your billing statements and invoices are sent on time, preferably every month, so that clients know what to expect. Respecting your own billing practices is the first step to getting the client to respect them.

Don't hold bills because you're afraid to tell a client that you made a mistake or the firm has failed to deliver what was promised. Avoiding these kinds of difficult conversations for fear that the client will be angry only makes the situation worse, and may cause clients to file an ethics complaint or a malpractice claim.

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Following Up and Getting Paid

The longer you wait to attempt to collect on overdue amounts, the harder it is to collect. Establish procedures to automatically follow up with clients for unpaid amounts, whether they represent work already performed or additional advance retainer funds required. Include different methods of communication in your system (email, regular mail, telephone calls, etc.). Integrate this reminder system into your practice management software.

For example, you may decide to bill clients every 30 days, or at the conclusion of the engagement. If the first bill remains unpaid (or there are retainer funds that must be replenished), instead of waiting 30 days until the next regular bill would be sent, set an automated reminder for two weeks after the bill is sent to take your first follow-up action if payment has not been received, or use a system that will automatically send the client the first follow-up for you. Once the first follow-up is sent, it should trigger the rest of your system. Perhaps the first follow up is done via email and, if the bill remains unpaid, it may be time for a telephone call.

It can be helpful to have someone other than the handling attorney perform the initial follow up with the client for payment of outstanding invoices or retainer fees. They can ascertain whether the bill has been received and answer basic questions. If you do not have a billing department or an assistant who can perform these functions for you, you may wish to hire a virtual assistant to make these telephone calls. If the client has questions about the bill or the services rendered, it may be appropriate for the client to speak to the handling attorney or the partner in charge of the matter to resolve these issues.

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Finally, if possible, cut off clients who don't pay. If permissible within your jurisdiction, advise clients in advance and in your retainer agreement that if funds are not received in a timely fashion from the client, work will be stopped on their matter. The sooner you end a relationship with a client who does not pay you, the better your bottom line will be – don't wait until the eve of trial when the court may not permit withdrawal or until the client owes you large sums of money for work you have already performed.

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