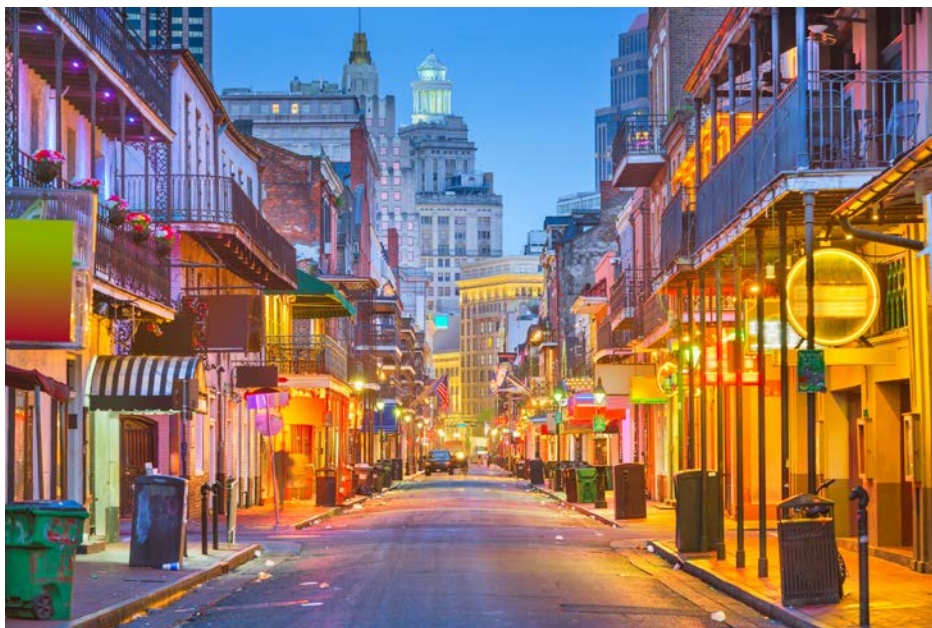


Hanging Out *your Shingle* **LOUISIANA** *Style*

CHAPTER 5

Time and Billing; Preventing Fee Disputes



HAVING THE MONEY TALK WITH YOUR CLIENTS

Talking about money is difficult, but it is essential for a successful law practice. It is particularly difficult when representing those with limited means. At times, you might even feel that it is not ok to be paid.

There are various reasons. You might be anxious about possible fee disputes and disciplinary complaints. You might encounter clients whom you thought were potentially fee generating who have morphed into low or *pro bono* clients. Or, you might have a dissatisfied or mad client.

It is hard to talk about money. However, you provide a valuable service to your clients! You are entitled to be paid for your services!

Aim towards making the conversation about money akin to breathing – an automatic discussion.

How to have that conversation:

- Do it in the beginning, in the middle, and at the end.
- Do it in person
- Know who you are talking to.
- Show it; don't just say it.
- Don't be ashamed of your fees.
- Listen to your client.
- Resolve your own issues about money.

A critical time to have the money discussion is at the very beginning. The discussion not only should include how you are to be paid, but also must include how expenses and costs are to be paid. Many complaints from clients about their attorneys arise from the fact that they were unaware of the costs and expenses that would be borne by the client. You should reinforce that initial discussion about money by having it again throughout the representation, especially when costs are incurred that are to be borne by the client.

Have the money discussion in person so you can pick up on your client's body language and answer any questions they have. Avoid having this discussion by phone or email (and never by text). Put your client at ease, so that they can easily ask the questions that they need to ask.



Know who you are talking to. Get to know your client and a little about their back ground. Adapt your discussion to the education and mindset of your client. Do not over talk your client or lapse into legalese. Explain the money situation in terms that your client can understand.

Illustrate by example how the fees will be paid and how expenses and costs will be paid. Give your client an example. For example, if your suit is a personal injury suit, create a hypothetical example on a piece of paper how fees would be paid, and how costs and expenses would be paid. Make sure that your client understands that your example is not an indication of how his or her particular case will go and that the example is just for purposes of explaining the monetary aspect of the matter.

Do not be ashamed of your fees. You are entitled to be paid. You went to law school and studied hard to be where you are. Be confident of the fees that you are charging. Before setting your fees with a client, ask your colleagues about fees and get a sense that your fees are in ballpark of fees for the particular matter that you are taking and for your experience level.

Listen to your client. Allow them to share their doubts and concerns.

Resolve your own issues about money. Your ability to have effective discussions about money with your clients will depend on your resolving your own issues about money. Put your financial house in order before taking on clients.



LITTLE THINGS GO A LONG WAY AND THE IMPORTANCE OF THE ENGAGEMENT LETTER/RETENTION AGREEMENT

Pave the way for your money discussion by building good will at the beginning and throughout the representation. Little things will go a long way. For example:

- Have a comfortable meeting place for your clients.
- Be flexible when scheduling your meeting times and locations (particularly with regard to clients whose work schedule will not allow them to leave the workplace.
- Offer paid parking.
- Offer coffee/water and other refreshments.
- Ensure polite staff if you have them.
- Consider not charging them for short phone calls.
- Consider not charging for mail and nominal copying costs.
- Offer a discount for paying fees by a due date.
- Keep in touch with your client throughout the representation, even when nothing is happening, so that your client knows that they are still on your radar.

As discussed above, your engagement letter or retention agreement is your first opportunity to lay the groundwork for managing your client's expectations on a number of fronts, including money. Before you meet with clients, draft a routine engagement letter/retention agreement that you can adapt for your client.

Take advantage of your engagement letter or retention agreement to explain clearly in written form how you will be paid and how expenses will be paid. Establish your credibility with your client. Tell your client that you will send a letter confirming fee arrangement by "x" day and send it the next day. Make sure that there is a clear understanding with your client when their fee payment is due. Indicate that there is mutual right to terminate services.

Setting expectations early avoids sticker shock later then fees are due, and helps to prevent fee disputes.

Have your client sign the letter or agreement, and scan and retain an executed copy in your file. It will be the best evidence of what was discussed with your client should there be a fee dispute later.



TIME KEEPING AND STRATEGIES.

You may think that the monetary arrangement with your client is such that recording your time is irrelevant. However, whether your client's matter is contingent, hourly or based upon a fixed fee or shared fees, recording your time throughout the representation is important. Should there be a dispute regarding your fees, your recorded time along with your work product will be the best evidence of the value of your fees. You need to be able to prove that your fees are reasonable.

While lawyers do not anticipate being terminated or replaced by another lawyer in a matter, it happens. When this happens, disputes may arise between the first lawyers and the subsequent lawyer over attorney fees. Resolutions of these disputes will depend on the relative time that each lawyer has put into the case.

Further, at all times, an attorney must be able to provide an accounting of to the client of the attorney time expended on a matter.

A lawyer is bound to charge only reasonable fees.

When should I record my time?

Record time as contemporaneously to the task as possible. If unable to do so, create methods to capture time after the fact by emailing or voice mailing yourself an entry, or even texting yourself for later recordation. What you want to avoid is reconstructing your time at the end of a month or several months. Reconstructing time is almost always inaccurate.

Record time contemporaneously:

- To protect fee in dispute and
- To provide client with accounting of time.

What Do I Track?

You should record all time, even if you later edit it out or even never bill it. You should document everything that you have done in a file. Record all time.

The only way the client knows the value of your work is through reporting what you do. Also, you need to be prepared to render an accounting whenever the client asks for it.

Lawyers can charge only “reasonable fees” under Rule 1.5, no matter form of billing.

Confirm conversation.

How do I track my time?

You might opt for an old school method by recording your time in a small notebook or a stack of index cards with your client’s names on it. Or you might opt for one of the app tools that assist with capturing time. Many case management programs integrate time capturing and invoicing tools.

Whatever your method, stick with it. Keep in mind that when it comes time to assemble invoices, the fewer source documents for your time information, the easier it will be to put together the invoice. You will reduce the chance of errors this way as well.

If you want to explore the technology route, search the internet for a good time capture tool. There are many apps and programs that are as easy to use as your cellphone. Three excellent timekeeping apps for lawyers (there are many) are as follows:

- *iTimeKeep by Bellefield Systems, LLC:*
iOS, Android
This app allows you to record time on your smartphone and enter time information manually into your desktop or laptop upon return to the office. The app also connects with other document management tools such as Tabs3, ProLaw, Juris, PCLaw, Time Matters, Timeslips and more. There is a free stand alone version with extra features offered at a cost.
- *Time Master + Billing by On-Core Software*
iOS, Android
This app integrates easily with QuickBooks and DropBox and is offered at a one time costs of \$9.99 (an invoicing module for desktop an additional one time cost of \$9.99)
- *Bill4Time by Broadway Billing Systems*
iOS, Android
This tool offers a comprehensive time keeping and billing system with integration with LawPay. There is a free app download but this tool is better with the offered software packages with pricing starting at \$9.99 for your desktop.



EFFECTIVE TIME KEEPING NARRATIVE

Often overlooked by lawyers is the narrative used to describe the time expended in a file. Lawyers will often use the same vocabulary over and over in the statement for services rendered and lose the opportunity to explain better the value of their time. This is particularly important to the lay client who might not understand how time consuming the practice of law can be.

- Develop an effective time entry vocabulary.
- Tell a story with your narrative.
- Avoid long narratives for large blocks of time.
- Avoid lazy wording.
- Avoid abbreviations.

When developing an effective time entry vocabulary, vary your action verbs. “Analyzed” is a good word, but not when you use it too often. Try instead, “studied,” “reviewed in detail,” “evaluated,” or “interpreted.” For “review,” use “examined,” “inspected,” or “assessed.” Use a thesaurus for word inspiration.

Use your invoice as an opportunity to educate your lay client about what you have done to earn your fee.

Tell a story with your entries, but avoid describing large blocks of time with little detail because clients will view this as inefficiency. Detail your time sufficiently.

Consider the following example:

- 6.5 hrs: Trial prep.
- vs.
- 6.5 hrs: Trial preparation – Reviewing expert witness depositions and preparing cross-examination of expert; drafting witness subpoena; marshalling exhibits for case in chief; telephone conference with witness Richard Goodman re: possible trial testimony.

Avoid lazy wording. Keep in mind that your client will be reviewing this statement to understand what you have done to earn your fee.

Some other words to avoid:

- “File review” – Add detail. Why were you looking at the file?
- “Trial preparation” Describe the tasks that you were doing to prepare for trial. Analyzing discovery? Preparing cross-examination questions?
- “Conference” with no explanation of what was discussed.
- “Conferring” too many times with one person (change to strategy meeting with Joe Smith regarding, e.g., “handling of hostile witness.”)
- “Research” – Some clients do not understand that lawyers need to research the law. Often they expect that you already know the law. If you have a client that is sensitive to this, try another tactic. Instead of saying legal research regarding the rights of domiciliary parent who wishes to leave jurisdiction with minor child,” personalize it to the case. Try “Analyzing Mrs. Jones’ legal rights to leave jurisdiction with minor child Tom.”

Avoid abbreviations. While they might make sense to you, they may not mean anything to your lay client. Use simple language. Avoid legalese when describing billable activities.



BILLING AND COSTS STRATEGIES

Billing is an opportunity to inform your client of your value and to market yourself. Take advantage of it.

When do I bill?

You should bill regularly and accurately for prompt payment. A good tip is to send an invoice before a trial, mediation or arbitration. This is particularly effective for a cost and rate sensitive client who is resistant to settlement. It helps the client to become informed and to understand better his or her exposure from a financial point of view.

Costs are often a hot point. If you have used an effective engagement letter or retention agreement, your client should have been made aware of how costs will be incurred during the representation and how those costs will be paid. In addition to the engagement letter or retention letter, you should also keep clients apprised of costs as they are incurred. Inform clients of the costs of court filing, deposition and transcripts, expert fees, mailing charges, etc..

Account regularly to the client about any funds in trust.

Resolve slow or no payment quickly. If you are unable to prompt payment, cut your losses as soon as it becomes apparent that you won't get paid. Keep in mind that if you are close to a trial date, the court might not allow you to withdraw even if nonpayment is occurring.

Include in your engagement letter or retention agreement, that withdrawal may occur for nonpayment.

Create a sense of urgency in your bill. Include a due date.

Pay attention to how your clients would like to be billed and comply with their wishes.

- Ask your client where to send the bill.
- Send a bill to your client only after the client is aware that the work has been done. If your client is not aware of the work on the bill, send a substantive letter first and then follow it up with the bill.
- Do not charge your client for questions about the bill.
- Consider not charging your client for copies or messenger services.
- Ask your client about the amount of detail that he or she desires in the statement. On occasion, a client might not want the reader of the bill to know litigation details.



LOW BONO OR PRO BONO BILLING

Lawyers are often called upon to do favors for existing clients, friends or family, and many times with an expectation that services would be at a discount or done *pro bono*. One of the risks of doing these favors is that the recipient is not aware of the value of your time when you do these favors.

Consider sending a discounted bill for work done for friends, relatives or needy client to prove subtle point. Show all time that you expended on the task, the value of those tasks and the amount discounted. Send a “no bill” bill if you are discounting the services completely.

- E.g.:
Professional services:
Speeding traffic ticket; court appearance . . . \$350 (less courtesy discount (\$350))

AMOUNT DUE

- 0 -

See Appendix #10, Time and Billing Checklist



LSBA FEE DISPUTE ARBITRATION PROGRAM

What if my client is not paying me?

When a payment is late, act as soon as possible and be direct. Remind them to adhere to payment schedule to continue receiving legal services. It's important to resolve nonpayment issues as soon as they arise. If you have to part ways with client for nonpayment, part ways before bill gets too high.

If you cannot resolve slow or no payment issues, consider the LSBA's Fee Dispute Arbitration Program. Since 1993, LSBA's Attorney Fee Dispute Arbitration Program has brought 1000s of fee disputes to resolution as alternative to court as a service to its Members. It is quick, confidential, inexpensive, informal and final.

The mission of the program is "to give timely, reasonable, and final resolution of disputes over fee issues between clients and their lawyers as well as disputes between lawyers with their fellow attorneys outside of the civil court system through the use of arbitration."

The program is voluntary and requires the consent of all parties to proceed.

The costs are minimal. All disputes over \$10,000 will cost each party \$100. If under \$10,000 and between a lay person and an attorney, the cost is \$50. Attorney v. attorney disputes are \$100 each. The arbitrators resolving the dispute serve voluntarily and at no cost. If an attorney-attorney matter is particularly time consuming, arbitrators will charge nominal fee.

The LSBA maintains a statewide pool of arbitrators who are your colleagues from around the state. The layperson serving panels have prior experience with the Disciplinary Board or like organizations. All arbitrators receive training to arbitrate attorney fees.

The only issue resolved in the program is the reasonableness of attorney fees. These issues are not resolved during the LSBA's fee dispute arbitration process:

- Will not address malpractice claims.
- Will not resolve whether there was misconduct.
- Will not review the sufficiency of your work, settlement or judgment.

A fee dispute arbitration will not preclude a disciplinary complaint, but if the complaint is based on a claim of excessive fees (almost all are), arbitration will resolve this claim. The Louisiana Attorney Disciplinary Board would retain jurisdiction over misconduct claims not involving fees. Disciplinary counsel may recommend to an attorney to submit dispute matter to LSBA's arbitration program in lieu of disciplinary action.

The LSBA's arbitration proceedings are confidential. While the fact of the arbitration can be shared with Disciplinary Counsel, file materials and result are not absent a subpoena.

The best matters for the LSBA's fee dispute arbitration are disputes that are:

- Document light
- Not requiring discovery (or very little)
- Not requiring many witnesses, particularly those requiring subpoena
- Not pending before another tribunal

Generally, the LSBA will not accept matter if issue of attorney fees is in front of another tribunal. If you have intervened in suit for your fee, LSBA will not accept matter for arbitration without court order allowing it, and even then, all parties have to agree.

At all times, under Program Rule 3, the "LSBA has the right to refuse any application for arbitration without assigning any reason therefore." This may happen:

- if party refuses to submit entire fee dispute
- if parties disagree on whether matter is ripe
- if matter is document intensive, or requires much discovery, or is particularly complicated
- If dispute does not concern attorney fees
- If dispute does not concern attorney-client relationship

The LSBA arbitration process will result in binding final arbitration. Arbitration rulings are executory and would require court intervention, if no compliance.

The LSBA encourages you to work out differences with your client before coming to arbitration. If you think that discussing arbitration with your client will help, do so. If client communication is not feasible, file your petition to arbitrate with the fee, and staff will contact your client to encourage him or her to arbitrate. We will answer any questions that they may have about process.

For more information about the program and for the petition to arbitrate, visit the Lawyer Fee Dispute Resolution webpage on the LSBA website.