How to Increase Your Billable Hours

Without Getting Disbarred or Sued

BY PHIL AURBACH, ESQ.

Many law firms measure the value of their attorneys by the number of hours they bill. An attorney is a rising star if they bill more than 2,000 hours per year. Bringing in clients is good, but almost impossible for a new attorney. Research skills, courtroom skills, and rapport with clients are nice, but aren't as important as billable hours.

From the firm's perspective, the "billable hour metric" makes sense. Billable hours translate into money for rent, staff salaries and, of course, partner profits.

From an attorney's perspective, it may not feel great to have professionally become a fungible billing unit that, by the way, is competing against other fungible billing units on weekends and late nights for the rising-star designation.

The "billable hour metric" can, and should, be reframed into an "ethical metric" based on the attorney's ability to move a client's case forward, i.e., to work hard to move the client's case along and keep the client (and the supervising partner) informed about the progress of the case. Under this view, billing more than 2,000 hours sends the same message to the partners/shareholders:

a. This attorney cares enough about our clients to work hard moving the cases forward;
b. this attorney does not abandon a client just because it's 5 p.m.; and
c. this attorney is valuable to the firm.

However, make no mistake, an attorney's law license is not about the hours, it is about the ethical commitment. Hours that do not move a case forward will stand out for the wrong reason: overbilling. Nevada Rule of Professional Conduct Rule 1.5 governs fees. It basically states that it is unethical to charge or collect an unreasonable fee. There are many factors that go into a reasonable fee, but time and labor required to perform the legal service is one of the factors. Here are some tips to increase your value to the firm by focusing on the ethical metric.

How to Bill More Hours by Capturing More of Your Time

Here are some tips to move cases forward that will indirectly cause you to bill more than 2,000 hours a year:

- Record your time immediately. Most firms have software that allows attorneys to enter their time immediately. If you wait, you will probably forget who should be billed for the work you performed, and that time will be lost.
- Keep a list of your clients and their billing numbers on your desk. Compare your client list to the time you have already billed for the day to see if you did something for a client and forgot to write down your time.
- Send yourself a copy of emails that should be billed to the client. Sometimes you get involved in another project before you can bill the previous project. When that happens, include a word at the end of the subject line e.g., time, so at the end of the day you can search your inbox for the word "time" and it will refresh your memory of what should be billed in case you didn't get a chance to write down or enter your time as you completed that project.
- Skim through your email inbox and sent mail. Compare your email inbox and outbox to your time entries and your emails for the day to see if you missed something.
- Keep the client advised of the status of their case. To avoid billing entries that say, "Email partner re status" (which looks like you are generating time by telling the partner the status), send the partner who is responsible for the case a copy of status emails that you send to the client. In the beginning, a partner may want you to send rough drafts of status emails to them. When the partner has enough confidence in an attorney, the partner will say, "Stop sending all those to me. Only send such letters when something important happens." Usually, an attorney must practice law for two to three years before he or she knows how to differentiate what is important from what is not important.
- Four types of letters/emails that MUST be written to clients:

1. Confirmation letters/emails: There is a time for a telephone call and a time for a letter. Discuss alternatives with clients. Confirm their choices in an email and any contrary advice you may have given. Discuss personal and sincere efforts to get discovery from opposing counsel. Confirm the result in writing. Discuss settlement terms with opposing counsel. Confirm the bullet points in writing. Be honest; only confirm what was said.

> "Make no mistake, an attorney's law license is not about the hours, it is about the ethical commitment."

2. Cover letters/emails: A cover letter or a cover email explains to the client that the other side has sent a letter or email, sent written questions that must be answered, or sent requests that certain documents be produced. Do not just send a letter or an email to a client enclosing the documents. Explain in simple English what you are sending to the client, i.e., describe what it is, whether it is important or not and why.

   You should consider trying to answer the letter or questions and ask for the client's input. The client should get a copy of everything. This documentation gives the client an idea of the work that is being done on the case and its purpose. It is essential that you explain what you are enclosing. For example, "I have enclosed Interrogatories, which I have attempted to answer. Please complete the answers and send your changes back to me so I can review them and finalize the document. To avoid additional cost to you, I need to finalize them within 30 days. Otherwise, the opposing counsel will write letters and file motions asking that we be ordered to answer or lose the case. We are obligated to respond to opposing counsel and this increases the cost to you. Thus, I recommend we spend time to accurately answer these requests from opposing counsel."

3. Status letters/emails: At least once a month, write a letter telling the client what is happening, even if nothing is happening.
4. Crossroad letters/emails: Whenever possible, explain the alternatives in your status letter/email. Since NRPC Rule 1.5 requires written fee agreements, a client will seldom, if ever, claim to be surprised if you explain what you think the cost of your services is as you proceed. Crossroad emails are perfect for this purpose. Use the ACUP acronym to remember what goes in a crossroad email.
   a. the Alternatives from which the client must choose;
   b. the Cost of each alternative;
   c. the Upside and downside of each alternative, i.e., the risk and reward of each alternative; and
   d. the Probability of success of each alternative.

For example: "We could file a motion for summary judgment or wait for a trial setting. A motion for summary judgment explains to the judge that the case is so clear there is no need for a trial. We would be asking for an immediate decision in our favor. This will cost approximately $2,000 to $5,000. The probability of success is high on some parts of our case and medium on other parts, but it will force the other side to respond with facts and theories of their case. Even if we do not win this motion, the opposition to the motion will help us prepare for trial. If we wait for trial, you will save $2,000 to $5,000 by not filing a motion for summary judgment, but we may be surprised by an argument they bring up at trial. The riskier approach is to do nothing. This is a 'checkbook' issue that you need to decide. When can we discuss this in more detail?"

Billing Entry Tips

The more information you list in your billing entry, the better from the client's perspective. "Prepare for and appear at

CONTINUED ON PAGE 20

CONTINUED FROM PAGE 19

How to Increase Your Billable Hours
Without Getting Disbarred or Sued

hearing regarding … and draft order" is an example of a lot of information. It is called "block billing." i.e., when you combine time for preparing, appearing, and drafting. Some clients accept this approach, some don't. Some courts accept such wording in an application for fees, some don't – especially bankruptcy and other federal courts.

Always use this wording: Telephone call with client regarding ___. Although it doesn't necessarily help bills get paid, it makes it easier if you have to redact a bill because if you are applying for attorney's fees and you cannot disclose the content of your telephone call without violating the attorney-client privilege. It is easier to redact because everything after the word "regarding" will be blackened out.

Here is a tip when redacting. Do not send redacted material that has been redacted by a black marker. Always make a copy of the redacted material and send over a copy. If you send the original and if it is held up to the light, it is possible to see what was redacted and inadvertently disclose attorney-client communications like "Even though the foreclosure sale has occurred, will you create an assignment of the note and deed of trust and backdate it." Do you think this is unlikely? That happened in an actual case, and although the judge did not award sanctions because the disclosure of attorney/client communications was inadvertent, the bank lending officer did not want to be cross-examined on whether she had an original assignment prior to the foreclosure sale, so the bank dropped its $1.5 million deficiency case.

Do not change the amount of time you spend on a project if you think it should have been completed in less time. Write your actual time. Your supervising attorney will decide whether to reduce your time or the dollars that are billed to the client.

Do You Have Enough Work?

It is hard for the owners of a law firm to criticize an attorney for not billing enough time if the attorney has sent out emails asking for more work. On the other hand, if the attorney has taken on more work than he or she can handle, the attorney may violate NRPC Rule 1.1 that states that attorneys shall only take on as much work as they can competently handle. Ask for more work or just say "no" is often a tough decision for young attorneys. This decision requires attorneys to look ahead a week or two so they can effectively balance their workload. Only then can they make realistic decisions to accept the new work or decline it. One technique is to find out a little about the new project and its time constraints, then go to the supervising attorney for the work you know is coming and have a discussion, "Should I take the new work or not?"

PHIL AURBACH graduated from Western Kentucky University in 1973 in business administration with a finance emphasis. He then attended the University of San Diego School of Law and graduated in 1977 after serving as the research editor of the San Diego Law Review. He is one of the founders of Marquis Aurbach Coffing. He was admitted to practice in Nevada in September 1977. He enjoys contract law, commercial litigation, real estate law, partnership, and corporate dissolution, as well as mediating and arbitrating business disputes.