RECOMMENDATION FOR

Law Firm Timekeeping Best Practices

How to Reduce the Pain of Timekeeping, Improve Accuracy and Increase Billable Hours

By Todd Gerstein, CEO Smart WebParts LLC

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1.0 Introduction

Despite decades of research, countless “solutions” and the majority of managing partners hewing to (and preaching) the conventional wisdom, timekeeping continues to be a source of great pain to attorneys, and often a source of lost revenue to the firm.

This paper is our recommendation for law firm timekeeping best practices. It is based upon three decades of experience of working with AMLAW 100 and 200 firms on financial and technology issues, as well as from the insights we have gleaned from the Adam Smith Esq. & Smart WebParts Survey on Law Firm Timekeeping (Survey), which was completed in 2010.

The objectives of best practice timekeeping are to:

- Make timekeeping less time consuming
- Improve the accuracy of the entry
- Ensure all hours are booked
- Adhere to ABA standards

2.0 Time Entry Components

Every timekeeping transaction should include:

1. the date the work was performed,
2. the attorney or staff person performing the work,
3. the time spent on the activity, and
4. the detailed time description.

Additional fields may be needed for the time entry. The client may require additional fields such as phase, task and activity codes for billing purposes, and the firm may require fields such as location codes for business purposes.

Billing Increments and Rounding: Experienced consumers of legal services generally require that time be billed in increments of one-tenth (.10) hour. This means that time billed for a task should be rounded up to the nearest .10 hour, and that .10 hour will be billed for tasks that take less than 6 minutes. The
use of minimum billing increments greater than .10 hour (e.g., .25 hour) has been criticized as a practice that can lead to inflated hours.

**Time Descriptions:** Time descriptions should be sufficiently detailed to enable the recipient to identify the specific activity performed, the time spent on the activity and its purpose and relationship to the matter. Vague descriptions such as "receipt and review," "research," "strategy," "conference" and "trial preparation" are non-descriptive and should be avoided. The following examples demonstrate what a preferred description would look like for each of these categories.

- Entries for review should identify the specific item(s) reviewed and the purpose of the review (e.g., "Review plaintiff's medical records from Pacific Medical Center in preparation for deposition of Dr. Green").
- Entries for research should identify the particular issue(s) researched and the purpose of the research (e.g., "Research regarding statute of limitations on cause of action for breach of warranty in connection with preparation of motion for summary judgment").
- Entries for conferences should identify the participants in and the subject matter of the conference (e.g., "Telephone conference with plaintiff's attorney Carol Brown re settlement demand").
- Entries for the drafting or review of correspondence should identify the recipient or sender and the subject matter of the correspondence (e.g., "Review correspondence from Robert White, HR Director, re termination meeting").
- Entries for trial preparation should identify the specific activities performed (e.g., "Prepare outline for cross-examination of plaintiff in preparation for trial set for February 11, 2012").

### 3.0 Avoid Block Time Entries

Block time entries list a group of tasks in a block summary under a single time charge, rather than showing a description of each task and the actual time associated with it individually. For example, a timekeeper may list all of the tasks performed on a matter in a particular day in one time entry (e.g., "Draft settlement terms, conference with plaintiff's attorney re settlement, telephone call to Sally Green re status: 5.5 hours").

The use of block billing obscures the actual time spent on each task contained within such an entry. Block billing is a practice frowned upon by experienced consumers of legal services. Each task performed and the time associated with it should be entered as a separate transaction.
4.0 Book Non-Billable Time

If a law firm wants its lawyers to invest non-billable time in activities like marketing, business development, recruiting and firm administration, ways must be found to measure the effort. Non-billable matters should be set up for every category a firm wants to measure.

5.0 Time Expended for Hourly Bills

According to the American Bar Association Formal Opinion 93-379 Billing for Professional Fees, Disbursements and Other Expenses:

It goes without saying that a lawyer who has undertaken to bill on an hourly basis is never justified in charging a client for hours not actually expended. If a lawyer has agreed to charge the client on this basis and it turns out that the lawyer is particularly efficient in accomplishing a given result, it nonetheless will not be permissible to charge the client for more hours than were actually expended on the matter. When that basis for billing the client has been agreed to, the economies associated with the result must inure to the benefit of the client, not give rise to an opportunity to bill a client phantom hours. This is not to say that the lawyer who agreed to hourly compensation because of a particularly efficient or outstanding result, or because the lawyer was able to reuse prior work product on the client’s behalf. The point here is that fee enhancements cannot be accomplished simply by presenting the client with a statement reflecting more billable hours than were actually expended.

The ABA Committee on Ethics and Professional Responsibility has decided to address several practices that are the subject of frequent inquiry:

The first set of practices involves billing more than one client for the same hours spent. In one illustrative situation, a lawyer finds it possible to schedule court appearances for three clients on the same day. He spends a total of four hours at the courthouse, the amount of time he would have spent on behalf of each client had it not been for the fortuitous circumstance that all three cases were scheduled on the same day. May he bill each of the three clients, who otherwise understand that they will be billed on the basis of time spent, for the four hours he spent on them collectively? In another scenario, a lawyer is flying cross-country to attend a deposition on behalf of one client, expending travel time she would ordinarily bill to that client. If she decides not to watch the movie or read her novel, but to work instead on drafting a motion for another client, may she charge both clients, each of whom agreed to hourly billing, for the time during which she was traveling on behalf of one and drafting a document on behalf of the other? A third situation involves research on a particular topic for one client that later turns out to be relevant to an inquiry from a second client. May the firm bill the second client, who agreed to be
charged on the basis of time spent on his case, the same amount for the recycled work product that it charged the first client?....

In addressing the hypotheticals regarding (a) simultaneous appearance on behalf of three clients, (b) the airplane flight on behalf of one client while working on another client’s matters and (c) recycled work product, it is helpful to consider these questions, not from the perspective of what a client could be forced to pay, but rather from the perspective of what the lawyer actually earned. A lawyer who spends four hours of time on behalf of three clients has not earned twelve billable hours. A lawyer who flies for six hours for one client, while working for five hours on behalf of another, has not earned eleven billable hours. A lawyer who is able to reuse old work product has not re-earned the hours previously billed and compensated when the work product was first generated. Rather than looking to profit from the fortuity of coincidental scheduling, the desire to get work done rather than watch a movie, or the luck of being asked the identical question twice, the lawyer who has agreed to bill solely on the basis of time spent is obliged to pass the benefits of these economies on to the client. The practice of billing several clients for the same time or work product, since it results in the earning of an unreasonable fee, therefore is contrary to the mandate of the Model Rules.

**Recommendation for Phantom Hours:** If you are not able to bill the hour, it is still important to book the hour into the timekeeping system with a no charge designation. You might want to present the entry to the client on the bill to indicate work was done on their behalf but not billed. The sad, unavoidable fact is that double booking and double billing of the hour is almost impossible for the consumer to discover. The practice is unfair, dishonest and wrong, and is a contributing factor to the negative public opinion of the legal profession.

## 6.0 Due Dates for Time Sheets

How often should firm administration require attorneys and other timekeepers to submit their timesheets? There are only two viable options: (1) timesheets are due daily, or (2) timesheets are due weekly (except for the last week of the month, when they are due by the close of business on the next working day).

Policies that extend beyond a week--bi-weekly or monthly due dates--invite sloppy timekeeping behavior and should be avoided by the firm. According to the Survey: (1) 34% of respondents reported that their firms request timesheets daily, (2) 44% do so twice a week or weekly, and (3) 22% expect timesheets monthly or twice a month.

The Survey further calculated timekeeper compliance for different policies. For a daily policy, compliance equaled 77%, and for a weekly policy, compliance equaled 91%.
**Recommendation**: A weekly due date policy. It is not our intent to discourage contemporaneous timekeeping by not recommending a daily policy, but rather to implement a policy that is: (1) suitable for the requirements of a monthly billing cycle, (2) acceptable to all timekeepers, and (3) where the odds are high for compliance.

### 7.0 Timekeeper Behavior

Historically, the conventional wisdom and best practice was to recommend that timekeeping be done as events happen, otherwise known as contemporaneous timekeeping. Experts argued that if you didn’t keep your time this way, you would leak time, as it would be impossible to remember what you did in the past, with more lost the longer you waited.

The Survey asked the question: “How would you describe your timekeeping behavior?” The answers were surprising. Just 38% of the respondents indicated “Contemporaneous – Enter time promptly as it happens” whereas 60% indicated “Reconstructive – Enter time at the end of the day or days later by looking at emails, phone logs and appointments to recreate my day.” Only 2% of the respondents reported “Collaborative – Work with an assistant to prepare my time.” It seems that no matter how hard the industry has tried to convince timekeepers to keep time contemporaneously, it has not achieved a high success rate.

**Recommendation**: Encourage contemporaneous behavior (because conventional wisdom is correct), but do not force the issue with a daily due date policy. Since it is almost impossible to change a timekeeper’s behavior, the firm must find a way to support multiple behaviors in order to achieve the objectives of: (1) making timekeeping less time consuming, (2) improving the accuracy of the entry, and (3) ensuring all hours are booked.

### 8.0 Technology

The Survey yielded results that exposed many inefficiencies and challenges in law firm timekeeping that are best addressed with technology. Between leaked time and the opportunity cost of an inefficient time entry process, there is significant economic incentive for the firm to investigate how technology can improve the situation.

Till now, firms utilized time entry systems that were either independent systems or embedded in their time and billing system. These systems were designed for the contemporaneous timekeeper to facilitate efficient time entry. Even though they are used by the reconstructionist to enter time, they did not help this group meet the best practice objectives.

Time capture software is another option, which most law firms have not implemented. Time capture is the class of software that reconstructionists need to help them prepare complete and accurate timesheets. Essentially, time capture works by making sense of time-related data based on timestamps.
generated by system software. Its objective is to provide the user with a journal of everything they did that day, which jogs the timekeeper’s memory so that they can book complete and accurate time entries.

Process-wise, automated time capture replaces the reconstructionist’s manual efforts—saving them time and effort. Users also find automated time capture provides a better and more detailed report than what could be constructed manually. For the contemporaneous timekeeper, time capture provides the user with a “safety net” at the end of the day to check to see if anything is missing from their timesheet submission.

**Recommendation:** The firm should offer its timekeeper population both time capture and time entry software technology. It is not necessary that both systems come from the same software supplier, but (if possible) it is advantageous. Understandably, it is a major undertaking to replace a legacy time entry only system with a system that provides both time capture and entry functions. If the firm does not want to undertake that challenge, the first priority should be to implement an independent time capture program.

**9.0 Conclusion**

Based on our research and understanding of the problem, we have found that these best practice recommendations can significantly benefit most firms. Indeed, not only can it improve the working lives of your attorneys, but it can plug costly time leaks. Of course, before implementing change and allocating resources, you need to know where your firm is falling short.

With that in mind, we recommend that you survey your timekeeper population to discover their behaviors and challenges. Attempt to quantify the combined costs of leakage and the opportunity cost of an inefficient timekeeping process. If these expenses are sizable—and chances are they will be on a cumulative basis—you might want to see what measures you can take to cut them down.

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