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ESTABLISHING BEST BILLING PRACTICES THROUGH BILLING GUIDELINES: FOSTERING TRUST AND TRANSPARENCY ON LEGAL COSTS

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I. INTRODUCTION

Managing legal costs is always a concern for clients who need significant legal representation. The rise of legal auditing firms and the use of Billing Guidelines have provided law firms’ clients with a reliable and consistent process for validating and challenging legal fees, increasing transparency and communications with law firms and avoiding costly fee disputes. There is not a great deal of statutory or case law specifically concerning “best” billing practices outside of the fee dispute context; however, that context has provided us with some universally accepted standards for legal billing that should be incorporated into Billing Guidelines. Generally, this case law arises out of: (1) post-litigation fee-shifting statutes, where a prevailing party may recover only reasonable and necessary legal fees and expenses; and (2) what the courts interpret as “reasonable” fees and expenses in a legal invoice.¹

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This article conveys the best business practices between clients and their attorneys by outlining the current standards for best legal billing practices, and by reviewing the Billing Guidelines used to manage legal fees and expenses. Part II of this article outlines the current law on legal billing practices, specifically discussing categories of questionable billing and how to incorporate such concerns into Billing Guidelines. Part III offers further recommendations for drafting Billing Guidelines that conform to industry standards, and the best mechanisms for enforcing Guidelines and maintaining compliance.

II. BEST LEGAL BILLING PRACTICES

Professional ethics is a fundamental tenet of practicing law. The American Bar Association (ABA) and the bar associations of every state maintain and enforce rigorous ethical standards for attorneys, and require continuing legal education on ethics rules. Nonetheless, the public perception persists that attorneys are not always ethical. This sentiment arises partly from the belief that lawyers and law firms prioritize profits at the expense of their clients.

As a result, clients are prone to automatically question legal billing practices. Clients often complain of being met with resistance when they ask for timely invoices during the pendency of a matter, or for an explanation for the basis of the fees charged. The inability to promptly justify the amounts charged invites fee disputes and delays payment to the law firm. Lack of smart billing practices and failure to adhere to Billing Guidelines often leads to a “lose-lose” situation for all.

Attorney conduct should promote faith in the legal profession, and the best way for attorneys to garner faith, respect, and trust from their clients is through good communication throughout the duration of the attorney-client relationship. Moreover, ethical rules guiding attorney conduct should be followed as a matter of good business practice. Model Rule 1.4(a)(4) requires attorneys to “promptly comply with reasonable requests for information,” and Model Rule 1.4(b) provides that a lawyer must “explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” ABA Formal Opinion 379 clarifies that this principle applies to the basis on which legal fees will be calculated,
not just negotiations or litigation. Model Rule 1.5(b) provides that the scope of the representation and the basis and rate of fees charged should be communicated to the client before or shortly after the onset of representation. To ensure compliance with Rule 1.5(b), the relationship should begin with an engagement letter memorializing the client and law firm’s obligations to each other.

The use of Billing Guidelines as part of the engagement agreement has proven to be an essential tool to promote good communication, trust, and timely payments to law firms. Billing Guidelines are a codified set of billing standards outlining the client and law firm’s expectations for what kinds of work will be billed. Agreeing on these standards at the outset of the representation starts a healthy dialogue between the client and law firm about meeting each other’s expectations, as most Guidelines include different requirements and prohibitions.

All Billing Guidelines should include the parties’ understanding as to invoice timing and payment schedules, and the maximum allowable rates for lawyers, paralegals, and other legal staff. The client and law firm should specify the maximum allowable rate increases, and the firm should give the client timely notice of such rate increases. Guidelines should further identify specific billing practices that are required or prohibited. When drafting Billing Guidelines, we recommend addressing the categories of questionable billing practices outlined in Section II.B infra.

Throughout the representation, the law firm should keep a regular dialogue with the client about necessary work to avoid fee disputes. Otherwise, lack of communication leads to client mistrust and assertions that fees should be reduced. Any large expenditure, whether it is attending a meeting or conference, conducting extensive legal research, or drafting a substantial legal document, should be memorialized in writing to the client before the client receives the invoice.

Audits that are contemporaneous with invoicing provide an opportunity for the firm to demonstrate the value of their services, the reasonableness of their fees, and compliance with established Billing Guidelines. Thus, law firms with excellent adherence to Billing Guidelines appreciate the validation of their work and timely payments without client disputes. Third party auditors become a critical intermediary and independent neutral source to foster greater trust and professionalism. Legal auditors have been very suc-

6. MODEL RULES OF PROF’L CONDUCT r. 1.5(b) (AM. BAR ASS’N 2014) (“[T]he basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate.”).
cessful in helping clients and law firms avoid litigation and the attendant high costs to both parties.

This article provides direction on avoiding legal fee disputes through the implementation of Billing Guidelines that are fair to both the client and the law firm. In Section II.A we analyze the baseline factors considered by the judiciary in determining the reasonableness of legal fees, and in Section II.B we discuss specific questionable billing practices that should be avoided.

A. Factors Considered by the Judiciary to Determine the Reasonableness of Legal Fees: The Lodestar method and the Johnson 12 Factor Test

The benchmark for determining the reasonableness of legal fees in a case where a statute or other regulation provides for fee-shifting by a prevailing party is the Lodestar method.\(^7\) In the Lodestar method, the court multiplies how many hours it thinks is reasonable for the work performed by what it thinks is a reasonable hourly rate. The court determines a reasonable hourly rate by examining the prevailing rates within the law firm’s geographic area, and also adjusts the hourly rate based on any special circumstances of the case.\(^8\)

In addition to this imprecise calculation, many courts also appraise the reasonableness of a fee award using a twelve factor test set out by the Fifth Circuit in *Johnson v. Georgia Highway Express Inc.*\(^9\), which considers: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the level of skill required to perform the legal service properly; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the attorney’s customary hourly rate; (6) whether the fee is fixed or contingent; (7) the time limitations imposed by the client or the circumstances surrounding the case; (8) the amount involved in the case and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) the awards in similar cases.\(^10\) Model Rule

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9. See, e.g., Arbor Hill Concerned Citizens Ass’n v. City of Albany, 522 F.3d 182, 186 n.3 (2d Cir. 2008) (quoting *Johnson v. Georgia Highway Express Inc.*, 488 F.2d 714, 717–719 (5th Cir. 1974)).

1.5(a) and the professional conduct codes of every state later incorporated these factors.\textsuperscript{11} The fee applicant bears the burden of proving the reasonableness of the fees charged when disputed post-litigation.\textsuperscript{12} It is, therefore, in a law firm’s best interest to ensure the transparency of its invoices, and to comply with the best billing practices outlined in the following sections. Law firms should incorporate the twelve factors when setting their fees, and include them in their own Billing Guidelines, if they have them. This will demonstrate their desire to be fair, ethical, transparent, and perhaps more innovative than their law firm competitors. Moreover, both law firms and law firm clients must remain cognizant of and consider Sections II.B.1 through II.B.11 \textit{infra} in their Billing Guidelines.

B. Questionable Billing Practices that Should Be Addressed When Creating Billing Guidelines

1. \textit{Description Issues}

a. Billing increments

Billing Guidelines should provide that attorneys will bill time to the nearest tenth of an hour, and any non-conforming time entries should be reduced to the nearest tenth.\textsuperscript{13} The practice of billing in quarter-hour increments presents an opportunity to overbill for relatively minor tasks, such as short phone calls, emails or drafting form documents. This can lead to inflation and distortion of the time expended.\textsuperscript{14} Accordingly, courts reject the practice of billing in quarter-hour increments in favor of billing in tenths of an hour.\textsuperscript{15} Unless the parties agree on a resolution, courts may make across-the-board reductions for the use of quarter-hour increments, or may reduce

\begin{footnotesize}
\begin{enumerate}
\item See \textsc{Model Rules of Prof’l Conduct r. 1.5(a)} (\textsc{Am. Bar Ass’n} 2014).
\item \textsc{Perdue}, 559 U.S. at 546 (finding that “there is a strong presumption that the lodestar [method] is sufficient,” and that the “party seeking fees has the burden of identifying a factor that the lodestar does not adequately take into account.”).
\item See, \textit{e.g.}, \textsc{Bell v. Prefix Inc.}, 784 F. Supp. 2d 778, 786 (E.D. Mich. 2011) (“\textit{I}t is appropriate and necessary to reduce such .25 increments by .15 hour to reflect tenth-hour billing.”); \textsc{Natale v. City of Hartford, No. CIV. H-86-928(AHN)}, 1989 WL 132542, at *2 (D. Conn. Sept. 12, 1989) (reducing all entries recorded at 0.25 to 0.1).
\item See \textsc{In re Price}, 143 B.R. 190, 194 (Bankr. N.D. Ill. 1992); \textsc{Wade v. Colaner, No. 06-3715-FLW}, 2010 WL 5479625, at *17 (D.N.J. Dec. 28, 2010).
\item See, \textit{e.g.}, \textsc{Welch v. Metro. Life Ins. Co.}, 480 F.3d 942, 950 (9th Cir. 2007) (upholding the district court’s reduction of hours for billing in quarter-hour increments).
\end{enumerate}
\end{footnotesize}
any such entries to the nearest tenth of an hour. While law firms may perceive billing in tenths of an hour as a nuisance, it really does promote better client trust that a charge is reasonable.

b. Vague billing entries

Billing Guidelines should include the requirement that all fee entries describe the tasks performed with specificity. This practice enables the client to understand why the attorney needed to perform the task. Additionally, the Billing Guidelines should include a provision that allows for fees to be reduced if the client is unable to determine with certainty the substance of the work performed. In other words, clients should only withhold their payment for work they claim to question until the law firm verifies the work performed, while paying the undisputed fees.

The case law is clear that billing records must be maintained with sufficient detail to allow the client and the courts to determine precisely what work was done by an attorney. Vague billing entries that lack detail as to the tasks performed, or billing entries that lack detail as to the subject of a conference or file review, do not allow for a determination of the basic reasonableness of the tasks performed or the time spent. Examples of vague billing entries include “hearing preparation,” “telephone conference with client,” “review documents,” or “legal research.” Courts routinely make across-the-board reductions for an abundance of vague entries. Law firms should

17. Grievson v. Rochester Psychiatric Ctr., 746 F. Supp. 2d 454, 465 (W.D.N.Y. 2010) (“[I]ndividual entries that include only vague and generic descriptions of the work performed do not provide an adequate basis upon which to evaluate the reasonableness of the time spent.”).
put themselves in the client’s shoes and should be able to understand the necessity of the time entry.

c. Block billing

Billing Guidelines should identify block billing as an impermissible practice, and should specify that such entries will not be paid until remedied. Block billing is the practice of combining numerous tasks into a single entry. This presents an opportunity for bill padding by obscuring the actual time spent on each task. In a properly structured legal invoice, every unrelated task warrants its own fee entry. Courts routinely reduce the size of legal fee awards because of block billing, which is done by either applying a set percentage decrease to the entire fee request, or by reducing all of the entries that are block billed.

In a contemporaneous legal audit, however, such entries may be remedied by having the timekeeping attorney break the entry down into its component tasks, with a separate time identified for each entry so that the billing narrative is transparent and accessible to the client. This remedial mechanism should be available to the timekeeping attorneys to prevent the client from instituting draconian cost cutting measures. Again, legal auditors are commonly asked to work with law firms to validate the time spent on substantive work when multiple tasks are bundled under one time entry.

2. Staffing

Once retained, a law firm should assign lawyers and legal professionals to the matter. The individuals should be identified on every invoice as: (1) junior or senior partner; (2) junior or senior associate; and/or (3) paralegal or


21. See, e.g., Harris v. Allstate Ins. Co., No. 07-8789, 2009 WL 86673, at *3 (E.D. La. Jan 12, 2009) (noting that the act of block billing impedes a court’s ability to determine the reasonableness of the hours spent on individual tasks and has served as the basis for reducing an award of attorney’s fees by a specific percentage).

22. See, e.g., Adusumelli v. Steiner, No. 08 Civ. 6932 (JMF), 2013 WL 1285260, at *4 (S.D.N.Y. Mar. 28, 2013) (“As a general matter, any attorney who seeks court-ordered compensation in this Circuit ‘must document the application with contemporaneous time records . . . specify[ing], for each attorney, the date, the hours expended, and the nature of the work done.’”) (quoting N.Y. State Ass’n for Retarded Children, Inc. v. Carey, 711 F.2d 1136, 1148 (2d Cir. 1983)); Green v. City of New York, No. CV 05-429, 2009 WL 3088419, at *6 (E.D.N.Y. Feb. 13, 2009) (“Across-the-board percentage cuts are routinely employed by courts to remedy such block billing.”).

clerk, and the hourly billing rate should be provided for each.\textsuperscript{24} Although the
individuals assigned to a matter may change over the course of the representa-
tion, the law firm should identify to the client all individuals who will be
billing on a file at the outset. Any major changes in staffing, including rate
increases, should be communicated to the client, and, ideally, approved by
the client \textit{before} any new professionals commence work on the case.

Matters are commonly staffed by a senior associate or partner, a junior
associate, and a paralegal in order to ensure that a professional with the ap-
propriate level of skill will be available for any given task. When a court or
legal auditor examines invoices, it may recommend invoice reductions
where a firm has allocated more legal professionals to a matter or task than
is reasonably necessary to complete the task efficiently and professionally.
This is especially true where the subject of the litigation is not complex.
There are two main categories of overstaffing where it is inappropriate to
bill to a client: (1) the use of multiple attorneys to staff routine conferences,
depositions, and hearings, and (2) the use of excessive numbers of profes-
sionals to complete basic legal tasks.

\begin{itemize}
  \item Multiple attorneys at routine depositions, conferences, and
  hearings

  Billing Guidelines should indicate that the client will compensate only
  one attorney for attendance at routine hearings, depositions, and confer-
  ences, unless the client approves the presence of multiple attorneys. Time
  billed for the presence of two or more attorneys at routine conferences, dep-
  ositions, or hearings may constitute overstaffing and bill padding.\textsuperscript{25} In such
circumstances, courts may reduce such excessive charges when determining
\end{itemize}

\textsuperscript{24} Howard M. Tollin & Tammy Feman, \textit{Litigation Management: What Legal Defense

\textsuperscript{25} See, e.g., Hart v. Bourque, 798 F.2d 519, 523 (1st Cir. 1986) (“Further duplication of
effort is observable by dual attendance at motion hearings, no matter how inconsequential.
This may have been good experience for the onlooker; it did not advance the case.”); Santia-
go v. Mun. of Adjuntas, 741 F. Supp. 2d 364, 374 (D.P.R. 2010) (“[T]he Court finds that the
presence of one attorney at the status conference of same date would have sufficed.”), \textit{vacat-
ed and remanded sub nom}. Torres-Santiago v. Mun. of Adjuntas, 693 F.3d 230 (1st Cir.
(finding that the attendance of three attorneys at a court conference is excessive); Riker v.
Distillery, No. 2:08-cv-00450-MCE-JFM, 2009 WL 4269466, at *3 (E.D. Cal. Nov. 25,
2009) (“The court agrees it is not reasonable for Defendants to pay for the presence of two
attorneys at such activities [depositions, settlement conferences, etc.] given the relatively
straightforward nature of this ADA case.”); Ragin v. Harry Macklowe Real Estate Co., 870 F.
Supp. 510, 521 (S.D.N.Y. 1994) (“Many duplicative efforts remain in this record . . . examples
include multiple senior attorneys at depositions and at conferences with first year associ-
ates regarding discovery issues.”).
fee awards, unless the excess attorneys can show that their presence directly contributed to advancing the case.

b. Overstaffing routine tasks

A client should seek to include a specific provision in their Billing Guidelines, setting out the maximum number of compensable legal personnel for a given task. Overstaffing occurs when a firm assigns excessive legal staff to work on the same assignment, resulting in duplicative and unnecessary charges. Such charges are inefficient and may represent a way for the firm to churn out duplicative and unreasonable hours. With so many different types of necessary legal tasks, each with a varying level of difficulty, it is impossible for courts to set a bright line rule on the number of attorneys allowed to work on a task; however, there is some guidance available for clients attempting to set specific Billing Guidelines for their retained law firm. For instance, it is common for courts to find that three or more attorneys billing for a single task represents “overlawyering.” The decision of

26. See, e.g., Hart, 798 F.2d at 523 (1st Cir. 1986) (stating that “the time for two or three lawyers in a courtroom or conference, when one would do, may obviously be discounted”) (quoting King v. Greenblatt, 560 F.2d 1024, 1027 (1st Cir. 1977)); Norkunas v. Brossi Bros. Ltd. P’ship., No. 10-11949-MBB, 2012 WL 772047, at *4–5 (D. Mass. Mar. 7, 2012) (reducing hours of a second attorney whose presence at hearings and meetings was unnecessary); Retained Realty, Inc. v. Spitzer, 643 F. Supp. 2d 228, 241 (D. Conn. 2009) (reducing fees where multiple attorneys billed time for the same conference); Anglo-Danish Fibre Indus. v. Columbian Rope Co., No. 01-2133-GV, 2003 WL 223082, at *7 (D. Tenn. Jan. 28, 2003) (“More than two attorneys’ hours in a meeting, call or conference are non-compensable.”); J.E.V. v. K.V., 45 A.3d 1001, 1012 (N.J. Ct. App. Div. 2012) (“[The Judge] deducted $5,625 from the counsel fees . . . because the situation only warranted one attorney when two were present.”).

27. See, e.g., In re Teraforce Tech. Corp., 347 B.R. 838, 858 (Bankr. N.D. Tex. 2006) (“Professionals should be prepared to explain the need for more than one professional or paraprofessional from the same firm at the same court hearing, deposition, or meeting.”); In re New Boston Coke Corp., 299 B.R. 432, 445 (Bankr. E.D. Mich. 2003) (“[T]hese situations where more than one attorney attends a hearing or conference, there must be a showing that each attorney contributed to the hearing or conference.”).

28. ABA Comm’n on Ethics & Prof’l Responsibility, Formal Op. 379 (1993) (“[O]verstaffing a project for the purpose of churning out hours is also not properly considered ‘earning’ one’s fees.”).

29. See, e.g., Poy v. Boutselis, 352 F.3d 479, 490 (1st Cir. 2003) (“In short, the district court must weigh and consider the claim of overstaffing, using its intimate knowledge of the case, and make specific findings thereon.”).

what constitutes overlawyering, however, is fact-specific, depending on the complexity of the matter and the amount of time required by the task.

Therefore, the client, whose interests are the subject of the litigation, should consult with the law firm as to the appropriate number of legal personnel who may be compensated for a task. This begins with the designation of the legal team, discussed supra, which by its nature should limit concerns about overstaffing. For example, some Billing Guidelines state that if more than two timekeepers bill for performing a task on a given day, then timekeeper charges by those additional individuals will be disallowed unless approved by the client. However, Billing Guidelines must be flexible enough to account for the necessity of extra personnel for more complex tasks. In such instances, the law firm should seek the client’s prior approval for the additional staffing requirements. Having a general rule in place reduces the likelihood of overstaffing by ensuring that the law firm is consciously considering necessary staff allocations. Clients and their legal auditing representatives often question why multiple attorneys are needed to bill for the same task at the same time. Requiring prior approval before multiple attorneys can work on the same task ensures that the lines of communication between client and law firm are open throughout the engagement.

c. Attorneys billing for paralegal tasks

Billing Guidelines should specify that tasks only requiring the legal judgment of a paralegal will be paid at a paralegal rate, regardless of who performs them. In the context of efficient staffing practices, courts have held that attorneys should not be compensated at a high hourly rate for work that could, and reasonably should, have been performed by less qualified attorneys, paralegals, or clerical staff.31 As noted supra, in determining a reason-

fees where four attorneys billed extended time on narrow, non-complex issues for which two attorneys would have sufficed); Bell v. Prefix, Inc., 784 F. Supp. 2d 778, 787 (E.D. Mich. 2011) (“[I]t is not reasonable to consistently bill a party for two attorneys to do the same work/review each other’s work.”); Wabasha v. Solem, 580 F. Supp. 448 (D.S.D. 1984) (reducing hours where plaintiffs failed to show that three lawyers were necessary to try the case).

31. See, e.g., Halderman ex rel. Halderman v. Pennhurst State Sch. & Hosp., 49 F.3d 939, 942 (3d Cir. 1995) (court decrying “the wasteful use of highly skilled and highly priced talent for matters easily delegable to non-professionals.”) (quoting Ursic v. Bethlehem Mines, 719 F.2d 670, 677 (3d Cir.1983); Prandini v. Nat’l Tea Co., 557 F.2d 1015, 1020 (3d Cir.1977)); In re 900 Corp., 327 B.R. 585, 596 (Bankr. N.D. Tex. 2005) (reducing legal fees relating to a simple motion in which 61% of the time was billed by partners, and noting that “[t]he time expended to correct what should have been a relatively simple administrative problem between affiliates, and the experience level of the professionals used, is not reasonable.”); In re Poseidon Pools of Am., Inc., 180 B.R. 718, 749 (Bankr. E.D.N.Y. 1995) (holding that attorneys cannot charge their normal hourly rate for services that could be completed by a paralegal or secretary); In re Taylor, 100 B.R. 42, 45 (Bankr. D. Colo. 1989) (“Attorneys
able hourly rate for attorney services, the court may take into account the novelty and difficulty of the legal question, and the legal skill required to perform the task.\textsuperscript{32} For example, a junior associate should be assigned time-consuming tasks such as legal research, preliminary drafting of motions or briefs, document review, and deposition attendance, and a senior attorney should perform quality reviews of their work. This practice should encourage less time billed at the highest rates.\textsuperscript{33} Further, there are some legal tasks that are more reasonably performed by a paralegal than by an attorney. Examples include drafting form notices and certificates, tracking and logging evidence, monitoring electronic court databases, creating case chronologies, redacting documents, investigating the parties to the case online, and compiling evidence and statistics.\textsuperscript{34}

\begin{itemize}
\item \textit{In re Malden Mills, Inc.}, 42 B.R. 476, 481 (Bankr. D. Mass. 1984) (attorneys charging a high hourly rate should delegate tasks that do not require their “particular expertise”).
\item \textit{In re Huffman}, No. 12–00177–NPO, 2014 WL 1767694, at *11 (Bankr. S.D. Miss. May 2, 2014) “Legal tasks that require an attorney’s skill should be distinguished from tasks that could be accomplished from a paralegal or other clerical staff. ‘[The] dollar value [of work performed] is not enhanced just because a lawyer does it.’”
\item \textit{In re Huffman}, No. 12–00177–NPO, 2014 WL 1767694, at *11 (Bankr. S.D. Miss. May 2, 2014) “Legal tasks that require an attorney’s skill should be distinguished from tasks that could be accomplished from a paralegal or other clerical staff. ‘[The] dollar value [of work performed] is not enhanced just because a lawyer does it.’” \textit{Id.} (quoting \textit{Johnson v. Ga. Highway Express, Inc.}, 488 F.2d 714, 717 (5th Cir. 1974)).
\item \textit{Universal Drilling Co. v. Newpark Drilling Fluids, LLC}, 2011 WL 715961, at *4 (D. Colo. Feb. 22, 2011) (“The Court lauds the economies that can be obtained by delegating the bulk of litigation responsibilities to associate attorneys, and recognizes that the limited oversight and guidance of more senior attorneys to provide supervision and review of such work may be appropriately billed as well.”)
\item \textit{J4 Promotions, Inc. v. Splash Dogs}, 2010 WL 2162901, at *7 (S.D. Ohio May 25, 2010) (“[D]elegating some of the legal research and initial drafting to an associate whose billing rate was significantly lower than [attorney’s] would likely have resulted in substantial savings.”)
\item \textit{Deininger & Wingfield, P.A. v. I.R.S.}, 2009 WL 3047576, at *2 (E.D. Ark. Sept. 18, 2009) ("An unusually high level of skill was not required. The case could have been handled by one young attorney capable of performing legal research and writing briefs.")
\item \textit{Spicer v. Chicago Bd. Options Exch., Inc.}, 844 F. Supp. 1226, 1246–47 (N.D. Ill. 1993) (reducing attorneys’ fees because the client was billed for a large portion of the work at a higher, partner’s rate rather than at an associate’s rate. “[W]e disagree with the proposition that the legal issues involved were so complex that further delegation of work to associates, or even paralegals, was not possible . . . [and] expect delegation of work to associates and paralegals wherever possible.”)
\item \textit{Chavez v. Netflix, Inc.}, 162 Cal. App. 4th 43, 64 (Cal. App. 2008) (upholding a reduction in the lodestar of $308,000 “for activities such as document review that could have been done by attorneys or paralegals with lesser expertise than the firm’s partners.”)
\item \textit{Carroll v. Sanderson Farms, Inc.}, 2014 WL 549380, at *11 (S.D. Tex. Feb. 11, 2014) (“[I]nvestigation, clerical work, compilation of facts and statistics and other work which can often be accomplished by non-lawyers, but which a lawyer may do because he has no other help available . . . may command a lesser rate. Its dollar value is not enhanced just because a lawyer does it.”)
\item \textit{Tatum v. City of New York}, 2010 WL 334975, at *9 (S.D.N.Y. Jan. 28, 2010) (finding that preparing affidavits of service, monitoring a case’s progress on ECF, and reviewing and updating a waiver of service is paralegal work and will not be reimbursed at attorney rates)
\item T.B. v. Mount Laurel Bd. of Educ., 2012 WL 1079088, at *4 (D.N.J. Mar. 30, 2012) (“Paralegal work, if performed by an attorney, can be billed only at
In reviewing legal bills for a fee award, courts will typically reduce the fees of overqualified professionals to the level of skill deemed reasonable for the task billed. In practice, this means that a partner’s rate may be reduced to an associate’s rate, and an associate’s rate may be reduced to a paralegal’s rate.

Legal billing auditors provide helpful guidance to clients and their law firms about efficient staffing, to promote the prompt payment of legal bills. A client conducting its own legal audits should have lawyers check their legal bills for efficient staffing. It should be noted that smaller law firms, especially solo practitioners, often do not employ every level of legal professional, such as paralegals. In such cases, the client and law firm should come to an agreement as to the reduced rates that an attorney should charge for performing work that otherwise would be considered a task for a paralegal.

d. Billing for clerical, secretarial, and administrative tasks

Clients seeking to manage their legal costs should include in their Billing Guidelines that clerical, secretarial, or administrative tasks will not be paid, and can add a list of tasks that fit these criteria. Most courts agree that clerical and secretarial work should be subsumed in a law firm’s overhead costs and should not be charged to the client, even at a paralegal rate. \[35\]

Tasks for which courts have denied fees entirely on this basis include: (1) filing and service of court papers; (2) organizing, formatting, copying, scanning.

35. See, e.g., Missouri v. Jenkins, 491 U.S. 274, 288 n.10 (1989) (“Of course, purely clerical or secretarial tasks should not be billed at a paralegal rate, regardless of who performs them.”); Dotson v. City of Syracuse, 2011 WL 817499, at *26 (N.D.N.Y. Mar. 2, 2011) (“Clerical tasks such as organizing case files and preparing documents for mailing are not compensable.”); Tucker v. City of New York, 704 F. Supp. 2d 347, 356 (S.D.N.Y. 2010) (“A further problem is found in a number of entries that reflect attorneys performing work that can be done by a clerical person or at most a paralegal. This includes such work as the copying and mailing of pleadings or other documents, the Bates-stamping of documents, the filing of papers, and the service of pleadings.”); New York Life Ins. Co. v. Hassan, 2010 WL 3070091, at *3 (W.D.N.Y. Aug. 4, 2010) (stating that “2.4 hours for ‘docketing’ and research into ‘reporting requirements for court payment’ will be ‘disregard[ed] . . . because they describe tasks of only a clerical nature’”; Disabled Patriots of Am., Inc. v. Niagara Grp. Hotels, LLC, 688 F. Supp. 2d 216, 228 (W.D.N.Y. 2010) (stating that a “$225 charge to open/close file is part of general office overhead that is compensated through attorneys’ fees”); In re Poseidon Pools of Am., Inc., 180 B.R. 718, 745 (Bankr. E.D.N.Y. 1995) (reducing the fee award to exclude services that were clerical in nature).
ning, downloading, faxing or mailing documents; (3) Bates-stamping; (4) scheduling; and (5) updating calendars and dockets. The test for whether a task should be compensated at a paralegal rate or absorbed into the overhead of the law firm is whether the task required the legal skill or judgment of a paraprofessional or attorney.

3. Charging for Training and Research

Billing Guidelines should specify that clients will not pay for the training of inexperienced attorneys, or for bringing new attorneys up to speed on an existing case. A law firm’s client is not obligated to pay for the training of new attorneys, nor for the time spent by an attorney new to a case to be brought “up to speed” on the subject matter of the litigation. In practice,

36. See, e.g., Brown v. Mustang Sally’s Spirits & Grill, Inc., No. 12-CV-529S, 2013 WL 5295655, at *5 (W.D.N.Y. Sept. 18, 2013) (“A review of the billing records reveals an assortment of hours billed as non-clerical that nonetheless involve administrative tasks such as ECF filing, preparation of documents for filing, formatting of tables of contents and authorities, and compilation of costs.”); Tucker, 704 F. Supp. 2d at 356; In re Beenblossom, No. BK10-40335-TJM, 2010 WL 2710417, at *4 (Bankr. D. Neb. July 7, 2010) (holding that requested fees such as “file setup,” “scanning” and “setting up appointments” were clerical in nature and not billable); Jimenez v. Paw-Paw’s Camper City, Inc., No. Civ.A. 00-1756, 2002 WL 257691, at *23 (E.D. La. Feb. 22, 2002) (reducing attorneys’ fees for clerical work such as “copying, faxing, loading files, labeling exhibits, mailing, filing pleadings, calling court reporters and process servers, serving a subpoena, delivering documents and pulling files”);


37. See, e.g., Haisley v. Sedgwick Claims Mgmt. Servs., No. 08–1463, 2011 WL 4565494, at *17 (W.D. Pa. Sept. 29, 2011) (finding that some, or part, of the time entries required legal expertise and thus compensable at the normal rate charged by the attorney, but others were partly clerical in nature and thus not compensable); Hardy v. City of Tupelo, Civ. No. 1:08–CV–28–SA–JAD, 2010 WL 730314, at *7 (N.D. Miss. Feb. 25, 2010) (“It is appropriate for the court to distinguish between legal work and work which can be accomplished by non-lawyers.”); Jordan v. CCH, Inc., 230 F. Supp. 2d 603, 612 (E.D. Pa. 2002) (excluding hours from fee petition that did not require attorney’s legal knowledge or training).

38. See Tollin, supra note 24, at 531 (“The insurance company should not be obligated to pay for time spent on training or general improvement of legal skills—such as computer training, training a recent graduate, or educating untrained personnel or learning basic law.”); Praseuth v. Rubbermaid, Inc., 406 F.3d 1245, 1258 (10th Cir. 2005) (“Time spent reading background material designed to familiarize an attorney with an area of law is presumptively unreasonable.”); In re New Boston Coke Corp., 299 B.R. 342, 445 (Bankr. E.D. Mich. 2003) (“Generally, holding an intra-office conference for the purpose of training attorneys is not compensable.”).

39. See Tollin, supra note 24, at 531 (“The insurance company should not be obligated to pay for time spent . . . educating people on the case to ‘get up to speed,’ or to replace prior personnel.”).
this means that certain hours of a summer associate or of a first year associate may not be billable to the client.\textsuperscript{40} In addition, the amount of time billed by inexperienced attorneys may be reduced to the reasonable amount of time expected to be expended on the same task by a more senior associate.\textsuperscript{41} Even when an attorney has significant experience, there may still be a learning curve where he or she begins work on a case that is already in progress. A fee award may thereafter be reduced if excessive hours are billed for that attorney to learn the details of the case or of the area of law.\textsuperscript{42} Similarly, courts have reduced fees where extensive time is spent on legal research into basic legal principles, or where extensive time is spent on straightforward litigation.\textsuperscript{43}

Additionally, clients may set limits on the amount of legal research time that will be paid without prior authorization. Clients may also question charges for research on basic points of law, such as the elements of a particular cause of action in which the firm specializes. Regular communication between the client and law firm about necessary research and the role of new or junior attorneys will foster trust, loyalty, and a mutually beneficial relationship.

\textsuperscript{40} See Mostly Memories, Inc. v. For Your Ease Only, Inc., 594 F. Supp. 2d 931, 937 (N.D. Ill. 2009) (reducing hours expended by summer associate observing court proceedings); Terrydale Liquidating Tr. v. Barness, No. 82 Civ. 7920 (LBS), 1987 WL 9694, at *4 (S.D.N.Y. Apr. 15, 1987) (law firms may not bill for summer associates attending depositions or trials).


\textsuperscript{42} See, e.g., Gastineau v. Wright, 592 F.3d 747 (7th Cir. 2010) (rate reduction where “a substantial portion of the hours billed were to compensate [the attorney] for learning this area of the law”); Lasswell v. City of Johnston City, 436 F. Supp. 2d 974, 982 (S.D. Ill. 2006) (discounting charges for attorney bringing co-counsel “up to speed” on case); Ware v. ABB Air Preheater, Inc., 91-CV-37S, 1995 WL 574464, at *8 (W.D.N.Y. Sept. 28, 1995) (reducing entries for “getting up to speed” by 60%); Pierce v. F.R. Tripler & Co., 770 F. Supp. 118, 122 (S.D.N.Y. 1991), (holding that a client was not responsible for the time required to familiarize the second chair with the case), aff’d in part, rev’d in part, 955 F.2d 820 (2d Cir. 1992); In re Valley Historic Ltd. P’ship, 307 B.R. 508, 516 (Bankr. E.D. Va. 2003) (“Clients expect attorneys to research their case, but they do not expect to pay for their attorney’s legal education.”).

4. Billing for Travel Time

Billing Guidelines should specify what kinds of travel will be compensated, taking into account the distance traveled, the method of travel, and whether work is performed while traveling. Courts are remarkably consistent in holding that a law firm’s client should not pay the attorney’s full hourly rate for time spent traveling, unless the attorney can demonstrate that work was performed while traveling. Typically, courts will award an attorney fifty percent of the usual hourly rate for pure travel time.

It should be noted, however, that this rule only applies to long distance travel performed on the client’s behalf, not to travel within an attorney’s local area. The time spent travelling locally (such as between the firm’s offices and the courthouse) should be subsumed into the cost of doing business. It is reasonable for a client to dispute charges for travel within the attorney’s locale.

5. Billing for Long Days

Billing Guidelines should establish the maximum number of hours in a day for which the client agrees to compensate a single timekeeper without prior approval or an explanation as to why the greater number of hours was reasonable and necessary. Similarly, billing a higher rate for overtime hours or weekends should not be compensable unless agreed upon in the Billing Guidelines or by the client prior to the charge. In the course of an ordinary day, an attorney will engage in a substantial number of activities that are not compensable by the client. Therefore, when a timekeeper bills for a large


45. Supra footnote 44.


number of hours in a day, the lawyer will often be subject to greater scrutiny. Although the maximum number of compensable hours is a case-specific inquiry in the context of a fee award, court precedent suggests that twelve to fourteen hours a day is a reasonable amount, and any hours over that should be disallowed.48

6. Billing for Billing

Billing Guidelines should contain a prohibition on time spent maintaining time records, preparing bills, responding to legal bill audits, reviewing outside vendor invoices, paying outside vendor invoices, or a discussion of any legal bills with an individual.49 Invoicing and these related activities should be viewed as overhead costs for the firm. Some clients may agree to pay for time spent analyzing or verifying third-party invoices, but, again, this should be discussed ahead of time and detailed in the Billing Guidelines. Billing Guidelines should also address if the Client will pay for time spent creating and revising budgets, and if so, if there will be a cap on the time allowed.

7. Billing for Excessive Time

Billing Guidelines should include a procedure for promptly addressing perceived excessive billing entries. Billing excessive hours for a task is clearly prohibited, but it can be difficult to detect. Attorneys have an ethical obligation to exercise proper billing judgment by writing off any hours that

cept in unusual circumstances it is not realistic for an attorney to bill in excess of six to seven hours per day . . . While it is certainly possible that an attorney could bill ten-, nineteen- or twenty-hour days, it is unlikely that all of that billed time is compensable.”). 48. See, e.g., Life Ins. Co. of N. Am. v. Simpson, No. 08-2446-STA, 2010 U.S. Dist. LEXIS 91282, at *9 (W.D. Tex. Sept. 1, 2010) (“The Court finds that a reasonable award of fees should be based on no more than twelve (12) hours of attorney time.”); Shesko v. City of Coatesville, No. Civ.A. 01–CV–6780, 2004 WL 1918783, at *4 (E.D. Pa. Aug. 26, 2004) (“For any day that [the attorney] billed more than 12 hours, we will reduce the hours billed to 12 hours.”); Cohen v. Brown Univ., No. 92-197, 2001 U.S. Dist. LEXIS 22438, at *50 n.23 (D.R.I. Aug. 10, 2001) (“The Court will, however, disallow hours exceeding 15 in any one day.”).

are excessive, unproductive, or unnecessary before sending an invoice to a client.\(^{50}\) In determining fee awards, courts will routinely reduce the number of hours billed for routine or relatively simple tasks.\(^{51}\) For example, hours have been reduced where attorneys: (1) charged for preparing for short conferences;\(^{52}\) (2) spent extraordinary amounts of time on pleadings and briefs;\(^{53}\) (3) participated in excessive conferences;\(^{54}\) and (4) conducted excessive legal research, especially where the attorney or firm was an expert in that area of law.\(^{55}\) Unfortunately, the term ‘excessive time’ cannot be defined with precision but the legal auditor can evaluate the work product and be keenly aware of the specific areas where bill padding occurs, such as when a large amount of time is spent on routine tasks, basic research, simple legal documents, and conference preparation.

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52. See, e.g., Nkihtaqmikon, 723 F.Supp. 2d at 289 (“The total attorney time for preparation for, participations in, and debriefing on a two-minute telephone conference is 7 hours. Again, on their face, these charges are wholly unacceptable and excessive.”).
53. See, e.g., Santiago v. Mun. of Adjuntas, 741 F. Supp. 2d 364, 375 (D.P.R. 2010) (150 hours were excessive to spend drafting a summary judgment motion); In re Poseidon Pools of Am., Inc., 180 B.R. 718, 741 (Bankr. E.D.N.Y. 1995) (holding excessive revisions to documents as not compensable because the attorney failed “to negate the obvious possibility that such a plethora of revisions was necessitated by a level of competency less than that reflected by [his] billing rates”); Ellis v. Varney, No. 9801397, 2005 WL 1009634, at *5–6 (Mass. Super. Ct. Mar. 22, 2005) (reducing attorneys’ fees for spending excessive time on tasks, such as spending “in excess of 46 hours, and possibly as much as 69 hours” on “preparation of motions for summary judgment and for a preliminary injunction, 24 hours spent in preparation for argument on those motions, and 7.5 hours spent by counsel on the day of the argument itself”); In re Coffey’s Case, 880 A.2d 403, 411–12 (N.H. 2005) (finding Rules of Professional Conduct violations where attorney billed 225 hours to write a brief).
8. Billing for Overhead Expenses

Billing Guidelines should include a list of permissible and impermissible expenses that the client will pay for, including a cap on the expenses associated with out-of-town travel. Expenses associated with the overhead cost of maintaining a law office should not be passed on to the client because those costs are subsumed into a firm’s hourly rates. Such overhead costs may include, but are not limited to: (1) rent and taxes; (2) the cost of maintaining a law library; (3) the cost of subscriptions to legal research databases such as Westlaw and LexisNexis; (4) the cost of phone services; (5) the cost for scanning and faxing services; (6) the cost for a conference room; (7) the cost for office supplies; (8) the cost for postage services; (9) the cost for messenger services; and (10) the cost for travel and meals within the firm. Law firms may have a client agree to certain charges that are extraordinary based on a particular matter.

In addition to overhead expenses that should not be charged, the client may also dispute excessive or unreasonable litigation costs. Courts have


57. See, e.g., Buffington v. PEC Mgmt. II, LLP, No. 1:11-cv-229 Erie, 2014 WL 670854, at *10 (W.D. Pa. Feb. 20, 2014) (“We do not find late night meals outside of the litigation time-period to be a reasonable cost of litigation. Such expenses could be attributable to time-management issues for which the Defendant should not be penalized.”); Scott v. Amarillo Heart Grp., LLP, No. 2:12-CV-112-J, 2013 WL 4441533, at *2 (N.D. Tex. Aug. 20, 2013) (“Nevertheless, costs for travel, parking, postage, on-line legal research, and supplies are not allowed. Reimbursement for those costs is not permitted by 28 U.S.C. § 1920, and postage, research and supplies are properly considered part of the overhead of running a litigation practice.”); McDermott v. Town of Windham, 221 F. Supp. 2d 32, 35 (D. Me. 2002) (excluding Westlaw charges from billing); In re of Pothoven, 84 B.R. 579, 586 (Bankr. S.D. Iowa 1988) (“Charges which are part of the cost of operating overhead are not properly chargeable to the bankruptcy estate. Overhead expenses typically include rent, insurance, taxes, utilities, secretarial and clerical pay, library, computer costs, office supplies, local telephone charges, meals, and local travel.”); Evans v. Lorillard Tobacco Co., No. SUCV200402840, 2011 WL 7090715, at *6 (Mass. Super. Ct. Dec. 2, 2011) (“This court treats the following expenses as unrecoverable overhead: (1) $16,686.05 for copying; (2) $2,074.20 for delivery and postage; (3) $511.96 for meals; and (4) $538.00 for parking.”); In re Lasdon, No. 703-1993, 2011 WL 4375062, at *7 (N.Y. Sur. Ct. Aug. 23, 2011) (“Costs normally considered part of office overhead, such as photocopying, local transportation and facsimile charges, should not be ‘reimbursed.’”).
routinely disallowed or reduced charges for out-of-town travel expenses such as luxury hotels, first-class airfare, and expensive meals.\textsuperscript{58}

Billing Guidelines should require receipts for all allowable expenses over an agreed upon amount. Courts have occasionally reduced awards for costs that are unaccompanied by such supporting documentation.\textsuperscript{59} All permissible costs of litigation, such as court fees and deposition transcripts, should only be charged to the client at the actual cost, and should be accompanied by receipts or invoices.

Billing Guidelines should also address if photocopies will be reimbursed, and if so, at what rate. A typical reasonable rate charged is ten cents per page or less.\textsuperscript{60} Photocopies are sometimes held to be non-reimbursable overhead costs. However, clients may choose to reimburse the law firm for photocopy jobs necessary to the litigation. In this case, the client should set a limit on the rate per page at which such jobs will be compensated.

\section*{III. DRAFTING AND ENFORCING LEGAL BILLING GUIDELINES}

Clients and law firms seek to utilize Billing Guidelines for many good reasons. First, by providing a clear basis as to how fees and expenses will be charged, Billing Guidelines make a client feel that there are reasonable parameters the law firm follows. This cultivates trust and transparency from

\textsuperscript{58} See, e.g., Mach. Maint. Inc. v. Generac Power Sys., Inc., No. 4:12-cv-793-JCH, 2014 WL 1725833, at *6 (E.D. Miss. Apr. 29, 2014) (reducing travel expenses, identifying “stays at a luxury hotel in Milwaukee and for a dinner at Ruth’s Chris in Nashville” as “unreasonable charges”); Signature Flight Support Corp. v. Landow Aviation Ltd. P’ship, 730 F. Supp. 2d 513, 529 (E.D. Va. 2010) (reducing an award of costs related to hotel accommodations by $6,400 finding that $305 per night was “unnecessary”); see also \textit{In re North}, 59 F.3d 184, 195 (D.C. Cir. 1995) (“[W]e must ask, ‘Was this trip necessary?’ and ‘Was a trip this expensive necessary?’”).\textsuperscript{59} See, e.g., Todaro v. Siegel, Fenchel & Peddy, PC., 697 F. Supp. 2d 395, 402–03 (E.D.N.Y. 2010) (excluding copying charges from a fee award because there was “insufficient detail”); Disabled Patriots of Am, Inc. v. Niagara Grp. Hotels, LLC, 688 F. Supp. 2d 216, 228 (W.D.N.Y. 2010) (“[C]ourts in this Circuit have declined to consider expense requests not supported by documentation.”); Imbeault v. Rick’s Cabaret Int’l Inc., No. 08 Civ. 5458 (GEL), 2009 WL 2482134, at *12 (S.D.N.Y. Aug. 13, 2009) (“Imbeault’s failure to properly itemize and document these expenses results in their exclusion.”); Domestic Loan & Inv. Bank v. Ernst, 1999 WL 33224365, at *3 (Conn. Super. Ct. July 28, 1999) (“Lastly, on account of defendant’s failure to sufficiently explain to the court how he arrived at such figures, the court also deducts the costs for photocopying, delivery services, transportation, postage, computerized legal research, and professional service.”).\textsuperscript{60} See, e.g., Williams v. R.W. Cannon, Inc., 657 F. Supp. 2d 1302, 1316 (S.D. Fla. 2009) (reducing photocopy costs from $0.25 per page to $0.10 per page); \textit{In re Media Vision Tech.}, 913 F. Supp. 1362, 1368 (N.D. Cal. 1996) (reducing photocopy charges of $0.25 per page to $0.08 per page to reflect the average price charged at most commercial copy shops); Baker v. Bd. of Supervisors of Fairfax Cty., No. 102465, 1993 WL 946221, at *4 (Va. Cir. Ct. Sept. 2, 1993) (reducing copying charges from $0.20 per page to $0.10 per page).
the outset of representation. Second, Billing Guidelines stimulate communication between the law firm and client, helping justify the reasonableness of tasks performed and the charges incurred. With the resulting trust and good communication, law firms will recover a greater percentage of their bill on a timely basis.

Due to increased trust and communication, Billing Guidelines significantly reduce the likelihood of a fee dispute. When clients are not confident that the bills they are paying are for necessary legal work at a reasonable cost, the client may become adversarial with the law firm. Client mistrust often leads to unnecessary stress for both parties, which can result in a withdrawal of representation by the law firm and non-payment of legal fees by the client. These fee disputes often lead to an external audit, and a legal auditing firm will then use its own Billing Guidelines to determine necessity and reasonableness. The standard Billing Guidelines used by legal auditors will not reflect general understandings between the law firm and the client, and are not specific to the area of law practiced, nor the special circumstances involved in the specific case. Therefore, it is prudent for law firms and clients to agree on Billing Guidelines before any fee dispute arises.

While corporate clients are the ones who typically draft Billing Guidelines, law firms should not be passive partners in this enterprise. Law firms should draft their own Billing Guidelines, incorporating best billing practices into them and the engagement letter that they send to their clients. Law firms striving to have bills that are above scrutiny may consider a few different ways to proactively advise clients that they are aware of their ethical obligations and have the clients’ best interests in mind. The law firm may also consider drafting a manual for its attorneys on best billing practices. At a minimum, law firms should require their attorneys to take a class on ethical billing practices.

Effective working relationships are important to successfully handling legal matters. The relationship between a law firm and a client should be a partnership based on mutual trust and confidence. When the client and the law firm have both written standards and a mutual understanding of what is expected, it paves the way for a successful and valuable long-term relationship based on trust and transparency.

A. Structuring the Billing Guidelines

Throughout this article we have provided guidance on incorporating the best possible billing practices into the Billing Guidelines to foster trust, transparency, and positive communication. While we recommend that all of the categories of ethical billing standards addressed here be incorporated

61. See discussion supra Part II.
into Billing Guidelines, we encourage some negotiation and customization based on specific client and law firm concerns. The exact parameters of what is required may differ depending on the size of the client, the amount of legal work contemplated, and the nature of the industry in which the client operates. Overall, the goal in adopting Billing Guidelines should be clarity and precision, so that the retained law firm has a thorough understanding of what is expected by the client, and at what rate services will be paid.

With respect to the organization of the Billing Guidelines, we recommend beginning with the designation of a legal team and efficient staffing expectations. Billing Guidelines should state that paralegal tasks should be performed at paralegal rates and that secretarial work will not be charged.\(^{62}\) This provision typically appears in proximity to the section comprising the structure of the legal team. Billing Guidelines generally mandate billing in increments of tenths of an hour, with entries that specify what tasks were performed, and that each task should be billed in its own entry.\(^{63}\) In addition, there should be stated allowances on payment for travel time,\(^{64}\) multiple attorneys attending meetings,\(^{65}\) the number of hours that may be billed in a day,\(^{66}\) and appropriate expense charges, including specific allowable and prohibited charges, such as clerical tasks\(^{67}\) or overhead expense items.\(^{68}\) Itemized lists of prohibited charges may be included in appendices.

**B. Methods of Enforcing the Billing Guidelines**

Billing Guidelines may provide for periodic or contemporaneous audits to confirm compliance. These can be done in-house by the client’s attorneys, or may be performed by an outside company specializing in legal auditing. For larger clients, independent legal auditors are often used to facilitate and validate a productive attorney-client relationship by confirming adherence to the agreed upon Billing Guidelines.

Professional bill reviewers will have performed legal audits across a variety of industries and jurisdictions, and will have worked with clients and law firms of all sizes. This breadth of perspective confers a benefit to the client by reducing the time the client must spend developing techniques for negotiating with law firms, and by validating charges as reasonable and necessary. Additionally, professional reviewers are familiar with certain common procedures for enforcing compliance with Billing Guidelines. For ex-

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62. See discussion supra Sections II.B.2.c, II.B.2.d.
63. See discussion supra Sections II.B.1.a, II.B.1.c.
64. See discussion supra Section II.B.4.
65. See discussion supra Section II.B.2.a.
66. See discussion supra Section II.B.5.
67. See discussion supra Section II.B.2.d.
68. See discussion supra Section II.B.8.
ample, Billing Guidelines should include prohibitions on vague and block billed entries, but such charges should not be completely disallowed. Rather, payment should be subject to a dispute process in which the law firm is given the opportunity to supplement the offending entries to avoid any reductions. Similarly, where a client has opted to require receipts for litigation costs over a certain amount, the bill reviewer will ask the law firm for missing receipts during the audit process.

Billing Guidelines that clearly lay out enforcement and reduction mechanisms will enhance attorney-client communication and timely payments when clients believe the law firm is billing fairly and ethically. If a reduction is inevitable due to the nature of the impermissible billing practice, the extent of the reduction will be clear from the Billing Guidelines. For example, entries recorded in quarter hour increments should be impermissible, and reduced to the nearest tenth of an hour, not removed entirely. Similarly, an attorney performing a task for which he is overqualified should have his time reduced entirely if the task is clerical, but if the task does require a low level of legal judgment, the rate should be reduced to that of a paralegal. Further, where an attorney has billed an excessive number of hours for a task, only those hours above what is deemed necessary for the task should be reduced. Similarly, if there is a restriction on the number of hours that may be billed in a day, only the hours above the maximum should be reduced.

C. The Role of Electronic Billing Platforms

Traditionally, law firms manually compiled their time records into invoices, and clients who wished to run analytic reports on their legal costs would re-enter the data into spreadsheets. Legal audits were performed by painstaking review of hundreds of pages of billing entries.

Today, a variety of electronic billing systems exist to facilitate this process for the client, law firm, and legal auditors. In addition, these systems also generate reports that provide a client’s big picture legal spending across all matters. Law firms can input timekeepers and rates prior to the first invoice, and upload receipts along with the corresponding invoice. Clients seeking to implement Billing Guidelines and audits find e-billing systems to be easy and efficient for analytical purposes. For example, an e-billing system catches basic errors, such as duplicate entries, incorrect rates for timekeepers, and erroneous expenses (like photocopies). Systems can be pro-

69. See supra notes 17–23 and accompanying text.
70. See supra notes 13–16 and accompanying text.
71. See supra notes 31–37 and accompanying text.
72. See supra notes 50–55 and accompanying text.
73. See supra notes 47–48 and accompanying text.
grammed to flag and reduce specifically prohibited charges with keywords such as “Westlaw” or “postage,” or to identify billing increments greater than tenths-of-an-hour.

However, these e-billing systems cannot replace a thorough human review. Many of the practices discussed in this article, such as block billing, vagueness, reasonableness, or the determination of the level of skill required for a task, are too nuanced to be discerned by even the most sophisticated e-billing system. Professional legal auditors are also familiar with several different areas of law, and most are attorneys. Using an experienced bill analyst in conjunction with an e-billing system ensures that the reviewer understands the nature and value of attorney services, and can readily determine both the reasonableness of the invoice and compliance with Billing Guidelines. Good e-billing systems make a reviewer’s job easier because they do not have to expend time on catching human errors like duplication of entries on a first level review, and can instead focus on higher level analysis.

D. Long-Term Benefits of Enforcing Billing Guidelines Effectively

The billing practices and suggested criteria for reasonableness outlined in this article were developed from both first-hand experience in legal bill auditing and case law generally arising from attorneys’ fee applications. Where a fee dispute cannot be resolved, the goal of a legal audit is the evaluation of already invoiced fees and costs to determine the reasonable amount of acceptable charges. When a client performs a legal fee audit after a dispute, the client’s trust in the firm is typically already damaged, and the client believes that the law firm is overbilling.

The value of consistent and concurrent legal auditing prior to any fee dispute, in contrast, is educating law firms on better billing practices, and validating law firms’ compliance with Billing Guidelines. Ongoing contemporaneous audits promote clients’ trust through transparency as to the necessity and reasonableness of the legal fees being charged. The implementation of Billing Guidelines and periodic audits results in more efficient staffing—fewer attorneys will be used to attend routine hearings and depositions, and paralegals and legal secretaries will be used to perform tasks that are not appropriate for a lawyer to charge his or her typical hourly rate for.

Clients who begin to implement periodic or ongoing audits typically experience legal fee reductions over the course of the first year of auditing as law firms become educated on acceptable structure and content. Subsequent regular spot checks prevent backsliding, and clients are likely to see their savings continue for the duration of the representation. While a reduction in the amount of block or vague billing in a law firm’s invoices may not translate into hard deductions, greater compliance increases invoice transparency and reduces the perception of bill padding. Overall, the audit pro-
cess aids in positive communications between law firms and clients, and almost always improves the attorney-client relationship.

IV. CONCLUSION

Billing Guidelines are a framework on which law firms and clients structure their relationship. Therefore, it is important for both clients and law firms to have a clear understanding of the legal precedent and industry standards for good billing practices. This article summarizes the standards for best billing practices identified by the judiciary, and provides assistance in the structuring and content of Billing Guidelines.

We suggest that clients use the principles identified in this article to negotiate Billing Guidelines with their law firms. Additionally, we recommend that law firms create their own version of Billing Guidelines as a tool for both educating their attorneys on best billing practices, and in marketing for new and existing clients. As such, the law firm will be demonstrating to their clients that they seek to be innovative, proactive, honest, and transparent. We also recommend contemporaneous or periodic audits, which validate compliance with Billing Guidelines and ensure clarity on acceptable billing practices. This will undoubtedly strengthen the attorney-client relationship further by fostering trust, transparency, fairness, and open communication. When both parties feel that they on the same page about what is expected, a “win-win” situation is created for all.