

7 Reasons Why Attorneys Lose Money

1) Irregular Billing Intervals

Neglected billing is one of the most common consequences of an overworked attorney. The fact of the matter is, billing takes a backseat to servicing client needs. Attorneys often have to choose between expediently working on cases or generating bills. If done correctly, billing procedures are lengthy. *Billing usually gets attention when one of two things occur: an attorney runs out of cash, or has a lot of extra time.* Since the latter is rare or non-existent, bills often get sent at irregular intervals. Unfortunately, this dynamic leads to a myriad of problems for an attorney such as: receiving primary income from retainers; continuing to work for clients that owe money (turning away new, potential paying clients); or wasting precious billable time responding to complaints stemming from billing issues. Consequently, irregular billing leads to significant lost revenues for attorneys.

Generating and sending bills to clients on a monthly basis can appreciably improve cash flow, because *clients that receive information about their account each month are...*

1. ...*in tune to what is going on with their case.* A timely and regular statement informing the client what is currently owed, including how much has been advanced to cover costs, is enlightening to both the client and attorney. Not only will it help clients understand what the attorney's time is costing them, but it will also help the attorney avoid advancing large sums over a long period of time, which might only be recoverable through legal action.
2. ...*more likely to pay* because the debt is consistently brought to their attention. This prevents added costs that are incurred when attorneys need to spend additional time and money on collection efforts. A monthly statement helps to avoid surprise when substantial fees have amounted and gives the client an opportunity to remunerate the attorney before interest begins to accrue.

2) Ineffective Capturing of Billable Hours

When billable hours are lost, so is money. Putting a system in place to capture all billable hours takes considerable effort, and in the long run will pay off substantially. There are three major areas where law firms typically lose billable time:

1. Using Billable Time to Bill

To consistently implement a monthly billing system, an attorney must have procedures in place to:

- capture all billable time in the office
- track and enter all costs and fees

Attorneys often have to choose between expediently working on cases or generating bills.



The more unorganized the billing procedures, the more time is wasted on billing, resulting in



According to Mike Folb, Managing Director at American Express Tax and Business Services, capturing time on a daily basis rather than a weekly basis will, on average, increase receivables by 11%.



Utilizing manual logs, pocket PC's, software programs or voice messaging are just a few examples



of tools to use to capture billable time.

These procedures obviously take time and involve many details such as, designing and using logs with dates, client names, case numbers to track postage, courier, copy, facsimile and long distance expenses. Implementing these procedures can be costly as well, due to the fact that an attorney may need to spend a substantial amount of money on hardware and software, not to mention additional employees. There are very few, if any, courses in law school that teach attorneys how to keep track of time and client expenses. Gathering information for billing purposes is, however, important to the survival of a law firm. It is imperative that effective systems are in place to make sure that all expenses and fees are documented whether the client is paying hourly rates, on a contingency basis or flat fees. *When an attorney, paralegal or secretary spends time on any part of the billing procedure, they are using time that can be billed, therefore, this translates into more lost revenues.* The more unorganized the billing procedures, the more time is wasted on billing, *resulting in fewer billable hours.*

2. Not Capturing Time Daily

When an attorney attempts to recreate all billable time, costs and fees at the end of the week, or even month, details are inevitably lost. Not to mention, there are ethical ramifications to this practice. According to Mike Folb, Managing Director at American Express Tax and Business Services, capturing time on a daily basis rather than a weekly basis will, on average, increase receivables by 11%. Taking the time to log billable time, costs and fees each day is an easy way to improve cash flow without having to take on more clients, simply because an attorney has had less time to forget the time, costs and fees (i.e., phone call in the car, courier to client, or long distance charges). A firm with ten attorneys missing just 10 minutes per day billing at \$150 an hour can lose \$78,000.00 a year in revenues. Utilizing manual logs, pocket PC's, software programs or voice messaging are just a few examples of tools to use to capture billable time.

3. Not Properly Billing Staff's Time

Hourly billing has become the most common method of billing for many legal services. However, the escalating cost of legal representation has created a growing dissatisfaction with this billing method in recent years. Some believe hourly billing is not fair to clients because it does not encourage efficiency. In fact, critics advocate that hourly billing encourages excessive time on research, billing of associate training, and unnecessary busy work by associates under pressure from their firms to produce high billable hours. The Arizona State Bar says that hourly fees must be relative to the benefit conferred on the client by the representation. ***Nonetheless, the criticism of hourly rates has stimulated worthwhile innovation.*** New alternative billing methods have been emerging, such as Blended Hourly Rates, Contingency Based Fees, Fixed or Flat Fees, Premium Billing Arrangements, Retrospective Fees Based on Value, Discounted Hourly Rates, Task Based Fees, etc... It would be worth an attorney's time to research the advantages and disadvantages to each of these methods. And, regardless of which billing method an attorney chooses, properly analyzing and utilizing staff time is a necessity to ensure optimal revenues. Whether a firm is trying to determine the overall cost of a case to set future flat fees, or just trying to analyze staff productivity, tools need to be in place that track billed time throughout the office. A common mistake made by many attorneys and firms, is using a \$75.00 an hour billable employee to do work that would cost the firm \$10 - \$15 an hour for someone else to do (i.e., billing, secretarial work, etc...).

3) Business Inefficiency

Attorney productivity tracking is a key element of a profitable practice. It is important to execute a system that will provide detailed information about missing time and money for each attorney for each day, week, quarter or year. This will help to calculate the minimum hours needed to meet overhead, and help set billing goals for increased profits. These reports allow an attorney the ability to stay on top of the cash flow generated from each staff member. Lack of attention to this detail can cause severe lost revenues. These reports are typically generated by a software program, and it is important that any software program used in-house, has this capability.

There are some additional office procedures that should be addressed to save time and money. Such as, creating a uniform list of abbreviations, also known as work codes, for all timekeepers and billing entry staff. These are short two- to three-letter abbreviations for task phrases, document names and places. Save time by writing the abbreviations on timesheets. An example is "OP" for "opposing party." Most billing programs have a macro capability, and once abbreviations are set up, staff members can simply key in the abbreviation, hit the required key combination or space bar, and the abbreviation should expand to its full phrase. It is a great tool, which cuts down on typing errors, writing time and entry time. Also, there should be three items posted by each workstation:

- timesheets
- abbreviation/work code list
- alphabetical list of case names with file numbers, if applicable

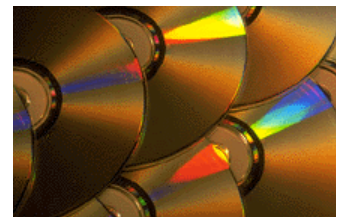
The combination of these items provides timekeepers with the information necessary to; have phrases available to them if they cannot find the words to write, and have the proper case name and file numbers available to make sure the data entry person places the time in the correct file. Attention to these small details will be reflected in revenues.

Setting up an efficient accounts payable system in the office will greatly increase efficiency and help with profitability. An accounts payable system should have some key things in place. For instance, receipts come in from vendors on a daily basis; these receipts should be filed alphabetically by the vendor name in a file box. As the bills come in through the mail, the receipts are pulled from the file box, the appropriate ones are pulled and attached to the bill. Please note all receipts should be marked at the time they arrive with any client matter they should be charged to, and in larger firms the approving attorney should initial and date receipts prior to being filed. When a bill is not due until the following month, have a system in place to track future bills. After checks are written and bills are paid, mark the receipts. Be sure to attach all receipts to check stubs.

Choose a software package that has Profit & Loss reports, Balance Sheets and Transaction reports that can be filtered to only print Client Costs Advanced bills paid during a report period. Also, to expedite other payable procedures, a software package should have the ability to memorize a payroll group of entries to include federal taxes, state taxes, local taxes, the employees' checks, and the possibly the payroll service charge. A memorized group is nothing more than a batch of several checks to enter, and as long as it is money coming out of the checking account, it can be entered as a check. This includes automatic payments, EFT's, insurance premiums, investment withdrawals, along with any other automatic withdrawals. It is also important to have a folder or file that represents costs that were incurred for clients and not yet paid, as well as bills received by a vendor for which another party has agreed to pay directly. Having a streamlined payable system means more money in the bank.



Regardless of which billing method an attorney chooses, properly analyzing and utilizing staff's time is a necessity to ensure optimal revenues.



Choosing the correct software package will greatly increase office efficiency.



According to the an article published by the Florida State Bar Association, “A License to Steal” (September, 1999) , attorneys that were interviewed across the nation agreed that “the high cost of law services is becoming out of reach financially for many Americans.”



4) Inadequate Customer Relations

It is imperative that clients understand the principles that are applied to setting the fees that are charged to them. If they understand the rationale behind the charges, they will better appreciate the legal services rendered for them and the efforts to keep the charges reasonable. Effective communication with a client will help solve this problem, however, the moment of truth is when the client opens a bill and scrutinizes the items and charges on it. There is a science to building a positive relationship with clients. Understanding and utilizing this science will dramatically improve customer relations and reduce time wasted responding to billing disputes. According to the an article published by the Florida State Bar Association, “A License to Steal” (September, 1999) , attorneys that were interviewed across the nation agreed that “the high cost of law services is becoming out of reach financially for many Americans.” The article calls to reform billing practices with the objective of satisfying clients, not of making a profit. Ultimately if an attorney has systems in place to improve client relationships and office efficiency, both goals can be accomplished.... satisfy clients, make profit. Here are some tips to improve your client relationships:

Design and Implement “Payer Friendly” Bills

1. Include Subject Matter.

Include the content of phone calls, conference, letter, legal research, etc. Don't stop at “Telephone conference with Jane Doe;” continue to write “regarding...” and include the subject of the conversation.

2. Use Verbs to Convey Action.

The services provided are the actions performed on the clients' cases. Let them know what is being done by using descriptive words like **prepare, develop, create, edit, organize, negotiate, summarize and analyze.**

3. Write in Present Tense.

Attorneys should convey to a client that they are presently involved in the case, not that they were involved last month or sometime in the past, but now. All entries on the bill will have a date on them, so the client can see when the work was done. However, the psychological ramifications of writing in the present tense will help to suggest that the attorney is involved in the case on a more personal level.

4. Spell Out All Words.

Every word on a bill should be fully spelled out. This enhances the readability of the bill and keeps any guesswork on the client's part down to a minimum.

5. Capitalization.

When creating bills, an attorney should not use the caps lock key. Capitalizing makes an item appear more formal than other words in the sentence. If the first letter of each word is capitalized, it will not appear relaxed, and a bill should be written as relaxed as possible. Utilizing standard punctuation rules will create the effect of normal speech when read aloud, where capitalization creates a more harsh tone.

6. Consistency.

If more than one person in an office enters time, whether entering their own descriptions into a billing program or writing them for someone else to enter, make sure that all parties know the house entry format for bills so descriptions can be entered consistently by all. If bills have the same format from one entry to the next, the overall uniformity will cut down on editing time on the part of all who review, edit and print the statements.

Implement reduced rates for routine or non-intensive time.

Clients will appreciate when attorneys reduce their hourly rates for services which require their presence, but not their intense concentration. Such services include travel time and waiting time where the time lapse in rendering such service is significant (at least 20 minutes). Building client trust will build a client base. Attorneys and firms that do not take the time to build this trust ultimately, in the end, lose money.

Take steps to implement technology to better serve clients.

Computer-aided legal research saves clients money, since the research takes less lawyer/paralegal time and will sometimes turn up more useful information than a search through books. Although these searches represent additional costs (such as on-line charges), these costs, as they are incurred for a particular client, can be passed on to the client, particularly if the benefits are explained to the client ahead of time. As with any type of charge, it is important for clients to understand the value of the work that is being billed.

5) The Dynamics of Collections

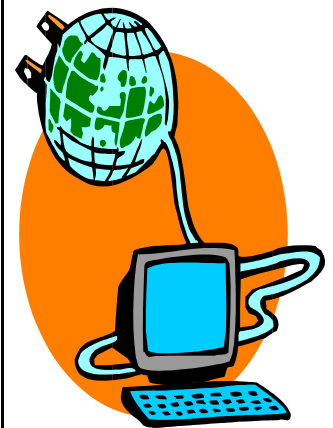
Attorneys lose money collecting on past due accounts for a variety of reasons. First, there is a great deal of perceived risk in contacting a past due client within 2 years for fear of a bar complaint. Many attorneys wait until after the 2 years to even begin collection process. It is a well-known fact that as an account ages, the likelihood of collecting decreases exponentially. In addition, there is usually no time for the attorney or staff to spend collecting on past due accounts. The old adage, “nobody has ever sued for not receiving a bill” is true. An attorney must place collecting money on a lower priority than getting a motion filed, or responding to an opposing party’s actions. In addition, collecting can be an extremely unpleasant task. It takes practice, training, focus, follow-up and skip tracing knowledge.

Traditional collection agencies offer a variety of risk to a lawyer. Most collection agencies immediately report past due accounts to some type of credit reporting agency. This is an accepted practice for debtors such as credit cards companies, banks, department stores, etc. However, the amount a client owes an attorney can be considered privileged information. According to Arizona State Bar Opinion 94-11, “Under [Ethics] Rules 1.6 and 1.8, client confidences may be disclosed only after consultation and consent, thus a lawyer may only give information to a credit reporting agency or engage a collection agency that uses a collection reporting agency when the lawyer has the prior consent of the client.”

Additionally, attorneys have little or no control of the type of contact, verbal or written, that a collection agency uses to collect past due accounts. Traditional collection agencies tend to favor intimidation and implied threats as a means to collect. Although this type of “hardcore” collection practice is accepted by the average business, lawyers are held to a higher standard. According to Arizona State Bar Opinion 94-11, “the lawyer is responsible for assuring that the collection agency exercises the same ethical integrity that the lawyer must.” Most collection agency employees are not familiar with the Rules of Professional Conduct.



Often times attorneys do not know all of the facets of a particular job (i.e., billing) - so how can they teach someone else how to do it?



Many technologies, products and services use the new ASP model, and unfortunately, the legal profession as a whole is unaware of its existence and benefits.



Without careful consideration, a firm can get bogged down with human resource problems and not only lose billable time, but have to spend additional money to fix the problems.

Obviously the best way to avoid these problems is to be proactive. An attorney can maximize the recovery of receivables and minimize the number of past due accounts by implementing some of the following ideas:

- After 30 days past due, take immediate action to find out why a client is not paying
- Consider rewarding clients who pay early
- Keep accurate client contact information
- Withdraw from cases where the client does not pay (when appropriate)
- Consider revising the fee agreement to address the following issues: interest, collection fees, collection procedures, mandatory arbitration before filing a bar complaint.

6) Human Resource Problems

The tremendous amount of time, energy and money that is spent on hiring, training, managing and maintaining a staff of qualified people is substantial. Inattention to the tiniest of details can lead to higher turnover, lowered productivity and more lost revenues. Effectively handling human resource problems requires some proactive thought and procedures. Even a sole practitioner needs employees. The more systems that an attorney can put into place to handle employees without having to spend too much of his/her own time, the more profitable a firm will be.

For instance, payroll details such as check printing, signing, stuffing and tax filing need to be organized and flowing in order to maximize billable hours. Organizing employee data, compensation levels, work history and skills tracking is important as well. Having this information at a moment's notice is important if problems occur with unemployment claims, employee evaluations or Workman's Compensation filings. Another human resource issue that usually lacks attention from attorneys is tracking employee costs (i.e., benefits, staff training, workman's compensation and management costs). Without careful consideration, a firm can get bogged down with human resource problems and not only lose billable time, but have to spend additional money to fix the problems.

7) Too much overhead

It is understandable how an attorney or firm may feel pressure to have an oversized office with extravagant furniture and expensive law libraries. It is necessary in order to attract high dollar clients. The result, however, is that fees may need to be excessive in order to meet overhead. With higher fees, attorneys out price themselves to clients with simpler matters. In the long run, this translates into lost revenues. One obvious way for a firm to cut overhead is to work out of modest facilities. However, since image is important, there are other ways for attorneys to cut their costs.

According to Massachusetts Bar Opinion 89-3, "It is well known among the general population that some ... personnel may be used on a(n) ... ad hoc basis and therefore will not be regular employees of the lawyer. In appropriate cases, use of such personnel can result in greater efficiency for the lawyer and cost savings for the client." What does this mean?

Outsourcing is an option for attorneys.

So what is outsourcing? It has been defined as the contracting for services other than a company's core competency. Outsourcing is a term which has been catching on during the last five or so years. Although its definition is difficult to find in a standard dictionary, for those who consult with law firms, it's a familiar term and offers an extremely effective way to cut the costs of delivering services while maintaining, if not improving, the quality of those services. An IBM Global study talked to 1,000 executives, and 95 percent of them said they planned to increase outsourcing in the next five years. Industry Week found that 40 percent of executives planned to increase the outsourcing of specialized functions. A study from the market research firm, *Input*, predicted that Information Technology outsourcing will more than triple in five years. This outsourcing trend will continue in law firms for several reasons:

1. Client service demands that firms exceed, not just meet, client expectations. How can an attorney be a legal expert and 100% focused on everything else?
2. Maintaining comprehensive software requires constant research and cash flow. How much money is lost if a software program is outdated, slow or not used properly?
3. Often times an attorney doesn't know all of the facets of a particular job (i.e., billing, collections, bookkeeping) - so how can he/she teach someone how to do it?
4. Law practice continues to become more and more specialized - is an attorney's time better spent focused on his/her specialty or managing different areas of the firm?
5. The annual cost of an employee today is enormous when the total compensation package is considered; the risk and the downside can be equally as great.
6. Employers fear the ramifications of hiring the wrong person. How can an attorney fire the individual if they don't work out? What happens if they get sued?
7. Advertising, interviewing, hiring and training are extremely time consuming. How does an attorney find time to do those tasks and meet clients' needs at the same time?

Even for those law firms that are large enough to have a human resources professional, the "people game" has become a tricky one. Employee loyalty is at an all time low. The average time to hire a new employee is one month, and depending on the complexity of the position, it is generally six months before the new employee is fully functional. When attorneys outsource, they relieve themselves of these problems because the person is not their employee.

Questions an attorney should ponder when considering outsourcing vs. hiring employees:

1. Is it a task or project of a specific duration?
2. Is it a specific group of tasks (such as some billing functions) which, if they were done by an outside party, rather than an employee, would relieve an attorney or key staff of administrative tasks and thus free-up time for client matters?
3. Is there an actual job description at this time? Would it be helpful to develop the job description with an expert who has inside knowledge of what the task or series of tasks will entail?
4. Are employee management issues interfering with client work?

If attorneys answer "yes" to any of these questions, then they could be candidates for outsourcing. While outsourcing is not the answer for every job in a law firm, it is increasingly becoming an alternative. Outsourcing shifts an attorney's focus from managing *resources* to managing *results*.

Traditional internal sourcing is *resource* oriented. An attorney or firm sets out, by design, to acquire and manage *resources*. This means hiring and training people and then developing and implementing standard operating procedures. It also means designing and striving for continuous improvement in the processes that shape how these *resources* are employed. As a result, a lot of an attorney's time and attention, not to mention capital, is dominated by *resource* management.

Outsourcing profoundly changes this dynamic. When firms outsource, their focus shifts away from managing *resources* and toward defining *results*; and forming a relationship with an outside firm that has the expertise to produce these *results*. After all, it's now the outside firm, not the attorney, that's making the resource investment. The provider is also assuming the responsibility for managing these resources. It can easily be argued that most, if not all, of outsourcing's benefits actually come from this *resource* to *results* shift. When operating costs are reduced, it's because of the specialized knowledge and economies of scale of the provider's resources. When capital costs are reduced, it's because the provider is making those capital investments, not the customer. Similarly, when speed and flexibility are enhanced it is because it's faster and less expensive to leverage another firm's existing resources than it is to build it from scratch.

Law firms could lower overhead by outsourcing any or all of the following functions:

- Time and Billing
- Collections (There are collection services that can be used by lawyers. The service must know the common billing related reasons that cause bar complaints. They must not automatically report past due clients to a credit reporting agency. All of their employees must be trained on the Rules of Professional Conduct)
- Secretarial or Legal assistant work
- Human Resource Services such as: cafeteria plan or other retirement plan tax returns; all payroll details
- Accounting Services such as: year-end tax returns; annual financial statements and audits; Accounts Payables
- Document Generation
- Conflict of Interest Searches
- Paralegal, Law Library and Research
- Maintenance of trust accounts and databases
- Court or administrative correspondence
- Marketing

Another major source of drained revenues for law firms is the need for comprehensive software programs and their continuous upgrades. At one point in history it was not necessary to have the most up-to-date software packages in a firm due to the fact that there was less competition. However, today there are many attorneys competing for the same customer. Law firms that are more efficient and cutting edge are likely to attract more customers. A new alternative is the ASP. This stands for "application service provider". According to the article, National Survey Shows Lawyers' Increasing Use of Technology Not Yet Keeping Pace with Clients Requests, published by the University of Florida Fredric G. Levin College of Law, "the primary concept of ASP is that one "rents" software applications over the Internet on a subscription basis, rather than having to invest heavy capital up-front". The article also states that the "ASP delivers software applications to the desktop using high-speed Internet connections and an industry standard Web browser. Computer industry developers, integrators and consultants are providing technologies, products and services using the new ASP model", and unfortunately, the legal profession as a whole is unaware of its existence and benefits. "Respondents who are familiar with ASP, however, indicate main benefits of using such a system include low initial cost, and low technology investment for a firm or sole practitioner," the article continues.

Because, it is prohibitively expensive and risky for smaller companies (and start-ups) to install a network, maintain the system, train staff, and provide accessible technical support, ASP's are a great tool. The cycle of upgrades and compatibility issues are endless, and in some cases, crippling. In the ASP model, the Application Service Provider pays for keeping the software up-to-date and in working order, and the business only has to pay a monthly subscription fee.

What to know about your ASP

1. Find out if the application is stored on a dedicated server. If so, this will prevent your application from being bogged down by other traffic.
2. Know your ASP. Find out about its track record regarding security, reliability and scalability. Will it be able to keep up with your growth?
3. Find out how your ASP manages data backup and recovery. Does it back up files on a daily basis?
4. Find out if you need to meet any hardware or software requirements in order to use the ASP effectively.
5. Learn who will be providing your technical support. When will it be available? Know how the ASP will manage upgrades, and how this might affect your business.
6. What happens when your Internet connection goes down? Will there be customer support and access to your data?

For an attorney, handing over a part of the business to someone else can be a little nerve-wracking ... and partnering up with the wrong ASP can be disastrous. However, finding the RIGHT ASP isn't too hard if an attorney knows what to look for; and the increased savings and efficiency could just be what is needed to get an edge on the competition.

Some tips that will make outsourcing a positive and profitable experience are:

1. When entering into any outsourcing agreement, whether it is with a resource or application service provider, it is critical to draw up a good agreement.
2. Manage the outsourcing. Relationships of any kind take work every single day. When it comes to outsourcing, attorneys should be sure to communicate needs, concerns and changes.
3. Educating senior management and defining the limits and control of the outsourcing activities are musts.
4. Utilize outsourcing to help minimize the risk of an audit. The *Wall Street Journal* reported that legal auditing is one of the fastest growing offshoots of the legal profession.