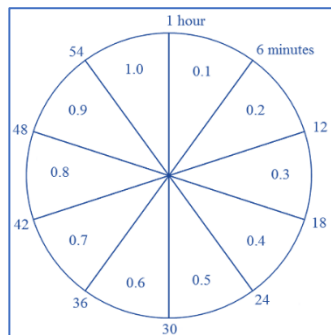


**Jessica L. Bilotta, Esq.**

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Ask any private attorney what he or she likes least about practicing law and having to record time in 0.1 increments would more than likely be number one. As a former litigator, I can speak firsthand about the drudgeries of billing time. Although it can be a tedious and time-consuming endeavor, it is not an intellectually difficult task, and is an essential part of the business of law.



Although there are many aspects to the art of recording billable time, there is arguably none more important than the billing narrative. It is crucial for attorneys to keep accurate and detailed time entries to help their clients understand the price and value of services rendered. When attorneys fail to clearly explain the tasks that were undertaken, all of the effort that they put in working for their clients may not be fully compensated. Worse yet, if a dispute over fees should occur or if the attorney-client relationship becomes acrimonious, inadequate time narratives can result in the loss of substantial legal fees, reputational harm, overbilling, fraud allegations, and malpractice claims.

Rule 1.5(a) of the Model Rules specifically addresses the reasonableness of fees, and provides in pertinent part: “A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses.” A body of caselaw has developed around the interpretation of Rule 1.5, stemming from when litigants demand legal fees as part of their damages claims. In order to determine the “reasonableness” of legal fees under Rule 1.5, courts generally consider the necessity of the task performed, the time and labor required to perform the task, and the requisite skill level required to perform the task properly. Insofar as courts look to these factors, so too should clients (or their law firms) when evaluating whether to pay (or send) a bill for legal services rendered. Completeness, accuracy, and clarity make a difference when it comes to billing by the hour. Without sufficient information to determine the necessity of a task performed, neither clients nor courts can assess whether it was performed by the right person, in an appropriate amount of time, and at a reasonable cost.

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Clarity and accountability in billing are paramount when it comes to understanding the tasks handled during each billable hour. Clients are increasingly pushing back on invoices that contain incomplete and vaguely worded narratives, such as “Communicate,” “Attention to,” “Prepare for and Attend,” or “Analysis/Strategy,” as violations of the ethics rules. As clients continue to find ways to keep costs down, good billing hygiene is crucial for a clear understanding of the price and value of services rendered. Transparency in fees will not only increase trust and strengthen client relationships, but will also prove invaluable in supporting a claim for reasonableness in the event of a fee dispute or disciplinary action.

The penalties for violating the Model Rules vary depending on the extent of the lawyer’s misconduct. Charging an unreasonable fee alone will not normally result in disciplinary action. Rather, the lawyer will simply have to return the fee or a portion of it. As recent case law has shown, courts have taken a hard line on exorbitant attorneys’ fees, going so far as to review invoices *line by line* to determine the legitimacy of the time entries. One of the most compelling examples of this hard line can be found in Clemens v. N.Y. Cent. Mut. Fire Ins. Co., 264 F. Supp. 3d 618 (M.D. Pa. 2017).

In Clemens, plaintiff's counsel sought \$946,526.43 in attorneys' fees and costs. The Court scrutinized each individual time entry and found that 86% of paralegal hours were too vague, excessive, duplicative, or unnecessary to be allowed. The Court cited several examples of such entries, which included vague descriptions like "file maintenance," "communicate," and "other." Entries regarding phone calls with no information as to the subject of the calls or the parties involved were also excluded, along with countless entries for administrative tasks in which the biller was considered overqualified, such as mailing, faxing, or filing documents. The Court further disallowed 84% of attorney hours on the basis that the entries were vague, redundant, excessive, or unnecessary, citing entries such as "attorney review" and "document preparation," with no further information as to what was being reviewed or prepared. The Court also pointed out several entries for conferences attended by each of the attorneys working on the case. Specifically, the Court stated that, even though such conferences may serve a purpose in cases involving multiple attorneys from the same firm, the case in question was not complex, and the firm failed to show the requisite necessity for said conferences.

### Court Findings

- Vague
- Redundant
- Excessive
- Duplicative
- Unnecessary

Finally, after careful review of individual time entries revealed that counsel billed over 20 hours per day – an "astonishing" 562 hours in total – on trial preparation, the Court stated, "[i]f counsel did nothing else for eight hours a day, every day, this would mean that counsel spent approximately 70 days doing nothing but preparing for the trial." The Court determined that such an exorbitant amount of time was unacceptable for a case that involved only one issue and five witnesses. Ironically, the Court also pointed out that despite the many hours billed in trial preparation, counsel was repeatedly reprimanded for being unprepared during the trial.

Ultimately, the Court denied plaintiff's counsel's petition and awarded no fees. The decision was later affirmed by the Third Circuit Court of Appeals, which held that the District Court had properly exercised its discretion to deny the fee request in its entirety and agreed with the District Court's ruling that the request was "grossly excessive." Clemens v. New York Cent. Mut. Fire Ins. Co., 903 F.3d 396 (3d Cir. 2018).

awarded no fees

This case highlights the importance of recording accurate time with constructive, informative, and easily understood entries. Indeed, had plaintiff's counsel kept more detailed time entries, it may have saved the firm from a complete award denial. The Clemens case and a multitude of cases like it send a clear message to lawyers that attention to detail when entering time is not only important – it is *critical*.

It is clear from cases like Clemens that vague and cursory entries such as "file maintenance," "communicate," and "other," as well as "attorney review" and "document preparation," often present the biggest concern for courts and clients; however, in many instances, the opposite can be just as problematic.

In a recent Legal Decoder Value Proposition Case Study, millions of invoice line item entries were reviewed and analyzed by Legal Decoder for compliance with billing guidelines and Rule 1.5. There were many examples of good time entries. There were also some time entries that could have been significantly improved. The narrative description below was from a partner at an Am Law 100 law firm with over 30 years of experience who billed 2.8 hours for the following work:

TITLE	DATE	TIME	RATE	AMOUNT	ORIGINAL TIME ENTRY	WHAT THE CLIENT PAID FOR...
Partner	3/18/2014	2.8	500	\$1,400.00	More work on the employee benefits aspects of the proposed acquisition, with special emphasis on those issues arising from the involvement of the ABC Employee Stock Ownership Plan, including: work on e-mail message to Mary Jones concerning conference call with John Smith and Tom Brown on 3/17/14, with special emphasis on the special right that ABC has granted the ESOP for a special "restorative payment" for certain participants," receipt and review of e-mail message from John Smith regarding the Agreement Relating to Covenants After the Merger, Amendment Number 1 to the ESOP and the disclosure Schedule Insert for Section 5.01(r) of the Stock Purchase Agreement; receipt and review of e-mail message from Jane Cruise at White and Green along with an updated version of the draft Merger Agreement; prepare for and participate in conference call with legal counsel for ABC and the ESOP Trustee and discussion of possible technical problems with the proposed special "Restorative Payment" to the ESOP and alternative language for the proposed description of the proposed special "Restorative Payment" in the Merger Agreement; receipt and review of responsive follow up telephone conference with John Smith and Tom Brown regarding same; receipt and review of three additional e-mail messages from John Smith regarding proposed changes to the Post-Closing Agreement regarding the ESOP, the Merger Agreement and the disclosure concerning the proposed "restorative payment" in the ESOP; additional telephone conferences with Mary Jones regarding all of the above.	5 emails, 1 client call, 1 recap call and 1 call with opposing counsel

Names have been changed to protect confidentiality, but the substance of this excerpt was left intact. It clearly demonstrates that there is indeed an art to billing time. Rather than being too concise in his time entry, this particular attorney was overly verbose, adding unnecessary words and information to make the task appear far more complex than it was. In this entry, 239 words were used to describe five emails, one client call, one recap call and one call with opposing counsel. When evaluated in the context of Rule 1.5, it is logical to conclude that this type of billing practice would be deemed unreasonable by both clients and courts.

To be clear, I am not suggesting that law firms routinely inflate bills to preserve their bottom line, as I believe that there are far fewer examples of law firm greed than law firm inadvertence when it comes to billing time. However, as the saying goes, the road to hell is paved with good intentions, and the intent behind the billing entry is irrelevant if the narrative does not meet the requisite standards of Rule 1.5's reasonableness of fees requirement.

So, what can law firms and their clients do to improve their billing hygiene and ensure that time entries are compliant with the Model Rules? Although there is no one size fits all answer, there are a few small steps that lawyers can take that can yield significant benefits. The first is better training. I think most

lawyers would agree that law school taught us little to nothing about the actual practice of law, and even less about the business of law, including billing time. Thus, the burden of providing practical training to new associates shifts to law firms. Unfortunately, law firms are so focused on meeting billable hour requirements that carving out time to train and/or participate in training is nearly impossible. Still, offering all legal professionals (both new and experienced) training on proper billing practices is worth the investment. After all, what good is billing time that will end up being reduced, discounted, or outright rejected by clients or the courts for failing to meet the requisite standards?

The second lies in the role of the managing partner and/or general counsel. There is often a deep disconnect between the professionals who are billing for legal work and those who are watching the costs add up. Those tasked with overseeing the quality of time entries often lack the time, incentive, experience, or tools to bridge the disconnect to ensure that professional fees are reasonable. The best way to overcome this disconnect is for the managing partner or general counsel to assume a more proactive role in the time-billing process. Managing partners and general counsel must clearly communicate requirements and expectations to those performing and billing for legal tasks from the outset, and continue to monitor their compliance throughout the entirety of every engagement. By taking a more proactive role in the process, a managing partner or general counsel can instill good billing habits from the start, thereby preventing fee disputes, disciplinary action, or Clemens-like disasters.



To assist in successfully implementing these changes, law firms and their clients can benefit from intelligently developed data analytics tools, such as Legal Decoder’s Legal Spend Analysis (LSA) platform, which quickly and critically analyzes legal spend and invoice data. LSA can help law firms and clients monitor invoices line by line to ensure that each entry is compliant with both the Model Rules, as well as any billing guidelines specified by a particular client.

The LSA Compliance Engine uses its proprietary rule set, which includes 46 unique flags, to highlight a professional firm’s compliance with the ABA Model Rules of Professional Conduct. In addition, the LSA dashboards identify discrepancies and problematic charges at the firm level, or by invoice, or by individual timekeeper, which leads to better billing hygiene. Good billing hygiene is crucial to understanding of the price and value of services rendered and received. Equally as important, it affords a legal professional the ability to mine data in a meaningful way to inform the predictability and certainty of future legal expenses.

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In conclusion, although billing time may remain one of the least enjoyable aspects of practicing law, as this article suggests, there are certainly ways in which lawyers can make it a less onerous and ultimately more profitable task. Better training and clear communication regarding time narratives can make a significant difference in law firm billing hygiene and can go a long way toward preventing costly consequences. As long as the billable hour economic model is here to stay, crafting good narratives is good business.