



By Sally J. Schmidt

Heat, Humidity and Billing Statements

When the thermometer reaches 95 degrees and the air is so heavy you can hardly breathe, we Minnesotans have a saying: "It's not the heat, it's the humidity." Having suffered through many of those oppressive days, I have a feeling the heat has something to do with it, too. But after being in Phoenix one June when the mercury topped 110 degrees and it wasn't that uncomfortable, I started to believe there was something to this heat and humidity association.

In a way, it reminds me of a similar relationship when it comes to lawyers' bills. After conducting hundreds of interviews with law firms' clients, I've concluded that, in many cases, it's not the amount of time billed, it's the way the time is described.

Don't get me wrong; the amounts on invoices can cause problems, too, particularly involving disbursements. Clients focus on disbursements because they are easier to value than an hour of the lawyer's time. Clients can

For the past 10 years, Sally J. Schmidt, president of Schmidt Marketing, Inc., 1601 East Highway 13, Suite 106, Burnsville, Minnesota 55337, has provided market research, marketing training and marketing consulting services for nearly 200 law firms throughout the U.S. and internationally. She has an MBA in marketing and was a founder and the first president of the National Law Firm Marketing Association.



evaluate whether a document was needed quickly enough to justify an overnight delivery charge or how much it costs to receive an incoming fax. If there is careless billing of disbursements, clients conclude the fees must be similarly inflated.

But beyond disbursements, it is often the language—not the number of hours on the bill—that produces an unhappy client. Generally, time entries that clients pay grudgingly or not at all fall into two categories: unacceptable and objectionable.

Unacceptable entries are items outlined in a client's billing guidelines that will not be paid, e.g., staff overtime or attorney travel time. Guidelines also may be imposed on things like the number of people attending a deposition or how many hours of research can be conducted without prior approval. If you bill things that are unacceptable, you are guaranteed to have write-offs.

Objectionable billing language may not be prohibited or even addressed in client guidelines but is certain to raise red flags. My experience shows the most common complaints involve: *interoffice conferences* (clients don't want to pay to have you talk to one another); *research* (someone billing \$150/hour should know these things); *five-minute phone calls* ("nickel and diming"); and *review of file* (bringing another attorney up to speed because of a lack of continuity). Lawyers may perceive value in these activities; clients often do not.

So what can you do to avoid problems with your bills? I have outlined four basic principles, along with some specific tips for your consideration:

1. Identify and manage clients' expectations regarding billing.

- Initiate discussions with clients about the firm's billing policies and

protocol, particularly regarding potential problem spots like attorney travel time, travel expenses, copies, etc.

- Ask clients about specific billing requests with which they expect you to comply.

- Make sure everyone in the firm adheres by circulating the client's information to everyone involved in the client's matters, including associates, paralegals, secretaries and the billing department, and reinforce it periodically.

- When new people are assigned to a client's matters, route a copy of the guidelines immediately.

2. Use the invoice to explain what has been done on the client's behalf and build value for your services.

- Eliminate passive language and objectionable phrases from your entries.

- Focus on what you're doing ("Develop strategy for litigation"), not how you're doing it ("Review of documents").

- Reference people and matters ("Telephone conference with Joe Smith to discuss acquisition of office park property").

- Let clients select customized invoice formats.

- Include a cover letter to explain a good result or highlight nonbillable services the client received (e.g., an in-house workshop).

- Send the work product (e.g., a research summary memo) before you bill for it.

3. Use good judgment.

- Put yourself in the client's shoes. Would you be willing to pay the entry? Some things should be considered an investment or a cost of doing business.

- Review every bill carefully; do not assume the computer can bill for you.

- Teach associates about billing and get them involved in the process.

4. Remember, the best way to avoid problems is to communicate continually with the client throughout the matter.

- Ask the client for input on how fees and expenses might be reduced.

- Never send a bill that you hold your breath and hope to get paid. Clients hate surprises! Call the client

Con't on page 62