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I Know You Hate Keeping Time Sheets, but Even in the New Era You Must Still Do So and Here's Why

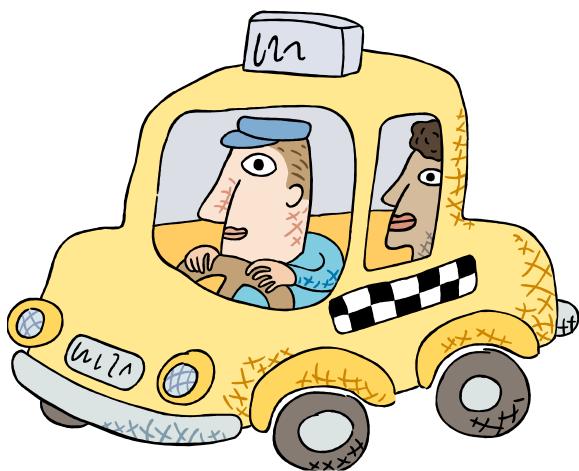
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Some time ago, I [wrote](#) that even in the era of alternative fee arrangements and value billing, it remained essential for lawyers to record time. I've been asked to revisit the issue and still come to the same conclusion, perhaps even more forcibly. There are myriad reasons that compel this conclusion.

First, despite the continued

proliferation of AFA's and value billing arrangements, the American Bar Association Model Rules of Professional Responsibility does not specifically permit for pure value billing. Accordingly, well informed lawyers must be exceedingly careful in drafting their AFA agreements so as to meet the Model Rules. But, even in a carefully drafted AFA, with both parties negotiating in good faith, [some courts have continued to hold](#) that fixed fees are unethical and

unenforceable, requiring a plaintiff law firm suing a client to prove the value of its services based on the hours actually billed.



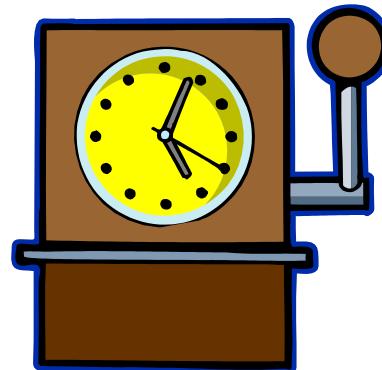
Sure, as others observed the old model of the client getting in your cab and all that you were concerned with was that the meter is running, but the taxi driver didn't really care where you're going no longer applies. In the old days, it was just about getting your fare. Today, you need to be far more concerned about where your client is going, but you need to keep that meter ticking away for a variety of reasons, not all of which relates to collecting your fare at the end of the ride.

Just yesterday, the Delaware Chancery Court, in a derivative case in which plaintiffs' counsel obtained a judgment of some \$375,000,000,000, the court awarded plaintiffs' counsel total fees of \$285,000,000 (no, those are not typos). The fee award came to a staggering \$35,000 an hour. Defense counsel argued for fees of less than \$14,000,000. Clearly, the battleground was neither the plaintiffs' counsel's customary and hourly fees nor the amount of hours billed to the case. But, in order for these plaintiffs to celebrate a huge payday, they were required to submit a written application, which included details

of its hourly billing. Similar rules exist in every bankruptcy court in the nation, which approves every fee application for every professional, save for those rare instances for which the court previously approved either a fixed or contingent fee.

In a case decided just last May, noted New York attorney Thomas Puccio successfully prosecuted a class action on behalf of New York City police entitled *Scott v City of New York* officers and thereafter filed a fee application for some \$2,000,000, based on reconstructed time records. Puccio's award was knocked down to \$515,000, The reason: Puccio and his colleagues did not keep detailed contemporaneous time in derogation of Second Circuit rules which provide:

“All applications for attorney's fees, whether submitted by profit-making or non-profit lawyers, for any work done after the date of this opinion should *normally* be disallowed unless accompanied by contemporaneous time records indicating, for each attorney, the date, the hours expended, and the nature of the work done.”



As one commentator on this case observed:

“This issue arises because the lawyer

for New York City police officers, who successfully sued New York City for overtime violations, sought over \$2 million in attorneys' fees. He submitted a 96-page attachment to the fee motion reflecting more than 2,000 hours of work. But these were not contemporaneous records. The lawyer acknowledged that "the entries were prepared instead 'by my office working with outside paralegal assistance under my general supervision'" and that "the paralegals based the entries on 'an extensive database of incoming emails maintained by my law firm in a computer folder.'" In other words, the time records in support of the fee application were prepared after the case ended, not contemporaneously. The time entries were also riddled with errors and mistakes."

The simple point is not that keeping accurate, detailed and timely time records is not simply the gold standard, it remains the only standard. Yes, virtually every lawyer abhors the notion of justifying his or her daily existence in twelve minute increments, and, yes, we all now know we sell valuable services not hours, time accurate, detailed and timely record keeping still remains with us.

But, there is more.

We have also recently learned essential the need to engage in project management, particularly in AFA engagements. Project management requires maintain GANT, PERT or similar charts, identifying critical paths and projections of the time necessary for each player to reach each critical path. Each player must also provide estimates as to when he or she will reach each critical path. No project manager

can effectively carry out his or her responsibilities without tracking in real time the time expended by each player. And at the end of the day, in order to measure the profitability of the project and the efficiency of each player, an analysis of the time expended is a vital, indeed, essential tool. Lessons learned in the required *post mortm* of every completed project leads to more informed decisions on future pricing. Indeed, many RFP's require law firms to describe their project management programs. Some clients also require that the project management software be available to the client on an extranet.



Time management is also an essential tool for risk management. In a recently well publicized case, a counsel at a large law firm was arrested for allegedly defalcating with many millions of dollars of client escrow funds. While all of the facts are not in, it appears that the alleged perpetrator was handling work for some regular firm clients, not recording their time and privately charging the clients for his work. These moonlighting activities ultimately apparently required the alleged perpetrator to deposit funds in an escrow account. Since the matter was not recorded on the firm's records, the young lawyer apparently went across the street and opened an escrow account *in the firm's name* and he was the sole signatory. The funds in this escrow account seem to have disappeared,

with the law firm being the subject of claims for the funds as well as a failure to adequately supervise the alleged miscreant. It may well be that if this lawyer's time charges were more carefully monitored, the entire problem may well have been avoided.

While you cannot always foil a determined and clever thief, requiring lawyers to account for all of their time, including non-billable time does serve as a deterrent. Yes, banks with security cameras and guards stationed on the banking floor do get robbed. But, some number of thefts are deterred.

Finally, I have long advocated that [finders, minders and grinders all need to be equitably compensated.](#) In this more perfect world, lawyers who make contributions to the firm by entertaining clients, blogging, attending conferences, speaking at seminars, writing important articles, as well as those lawyers who toil away at pure client services or engage in the thankless task of managing the enterprise, are entitled to compensation for their efforts. These efforts shouldn't be simply recalled anecdotally, but recorded on a timely basis.

So you're still incredibly annoyed about recording your time in twelve minutes increments, I am afraid you're just going to keep sucking it up. You're probably equally annoyed about developing creative methods of pain and pleasure to assure timely compliance with time keeping requirements, but that annoyance is not quite going away

either.



As they say, there's an app for that: A wide variety of timekeeping programs allow a timekeeper to toggle on and off at his or her computer time working on client matters. And for the road warrior, there are IPad, IPHONE and Android apps that you can also toggle on or off and the information is downloaded to your mainframe or your cloud.

[The Law Firm of the Twenty-first Century](#) isn't your granddaddy's law firm. But it still requires detailed, accurate and timely time keeping of all of your activities.

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