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Paralegals and Billable Hours Requirements

The financial well-being of a law firm depends to a great extent on how many billable hours are generated by the firm's employees. Non-billable time ultimately cuts into the firm's profits. Therefore, the more billable hours a paralegal generates, the better the chances to negotiate a higher salary. At least, that's the plan!

?? Market Rates for Paralegals ??

The courts recognize the value of paralegal professional services.

In Missouri v. Jenkins,¹ the United States Supreme Court held that in setting a reasonable attorney's fee, a legal fee may include a charge for paralegal services at "market rates" rather than "actual cost" to the attorneys. With this decision, the Supreme Court recognized that **our time and expertise are worth more than simply the salary that paralegals are paid.**

How is this market rate determined? The market rate is the typical charge for a person of comparable education and experience performing a certain level of task in a specific area of law and geographic locale.²

According to recent surveys, in 2011, the market rates for paralegals increased or remained the same, ranging from \$135 an hour for a Paralegal Clerk up to a median of \$245 for Paralegal Managers.³

For more accurate local information, and to make sure that your law firm bills your time competitively, check with your local paralegal association to see if it conducts similar surveys.

?? Billing and Clerical Tasks ??

For the Supreme Court, "[o]f course, purely clerical or secretarial tasks should not be billed at a paralegal rate, regardless of who performs them."⁴

A number of other court decisions have addressed the criteria to be used in evaluating whether paralegal services should be compensated.

Some requirements include that:

- **the services performed must be legal in nature rather than clerical** - most of the case law around the country suggests that "ministerial tasks" (typing, file organization, document preparation, searching or filing documents on PACER, etc.) performed by a professional or paraprofessional should not be allowed as a separate charge because it is

- part of the office overhead, which should already be built into the counsel's hourly rate,⁵
- **the fee statement must specify in detail the qualifications of the person performing the service** to demonstrate that the paralegal is qualified by education, training or work to perform the assigned work, and
 - **evidence that the work performed by the paralegal would have had to be performed by the attorney at a higher rate.**⁶

?? The Pressure to Generate Billable Hours ??

Law firms generally tell their paralegals how many hours they are expected to produce and the consequences of not being able to meet that number.

Depending on the firm, a paralegal may be expected to generate between 800 and 2,000 billable hours per year.

For paralegals close to the 1,800/2,000 billable hours per year threshold, and allowing for vacation time and holidays, this equates to at least 37 billable hours per work week.

Thus, assuming that a paralegal works 40 hours a week, only 2.5 hours per week are left for non-billable activities like interoffice meetings, performance reviews, coffee breaks, organization of work, training, informal exchanges with others in the office, and everything else that needs to be done!

That probably explains why most paralegals do not like billing requirements, especially when many firms utilize a system where paralegals do ALL their own secretarial work, such as printing envelopes, photocopying, and metering at the postage machine!

?? Billable Hours Requirements and Paralegal Morale ??

Over the last thirty years, the billable hours expectations have dramatically increased and this situation can be identified as a key culprit responsible for paralegal dissatisfaction./>

Excessive billable hours requirements create a kind of **?time famine?** for legal professionals, in many cases making it difficult to achieve a healthy work-life balance.

This situation can also impact the quality of work and undermine the ability to provide the quality of service that clients deserve. To be excellent professionals, paralegals need enough time to maintain mental sharpness, critical thinking, and possibly a level of creativity.

Thus, being present at the office sixty hours a week to meet billable hours requirements can greatly affect a paralegal's ability to produce good value and effectiveness for each hour spent at work.

Excessive billable hours requirements can also in part explain the decline of the mentoring culture. When faced with tremendous pressure to bill hours, it is difficult to devote time to ?non-revenue? producing activities, such as training, supervision, and pro bono service!

?? Ethical questions for paralegals??

It is well known that pressure to produce billable hours increases the **temptation to keep hours or income up by overworking files, overstating the amount of work actually performed, or failing to complete work in the most efficient manner.**

That is why **paralegal associations have created strong codes of ethics addressing these issues.**

For example, NFPA Ethical Consideration 1.2(c) requires paralegals to "ensure that all timekeeping and billing records prepared by the paralegal are thorough, accurate, honest and complete." Furthermore, paralegals must not knowingly engage in fraudulent billing practices, such as inflation of hours billed, misrepresentation of tasks performed, or submission of fraudulent reimbursement requests.⁷

?? The Billable Hour Under Fire ??

With the economic crisis, **clients have put pressure on law firms to reduce costs and reconsider their billing practices.** More and more often, clients are asking for flat fee arrangements rather than paying by the billable hour.

It has been suggested that **changes could also involve eliminating high minimum billing requirements as a way to communicate to clients that firm managers value quality over quantity and revenue.** In the long run, such a move could impress new clients and solidify relationships with existing clients.

Another modest step can be to provide full credit in terms of a billable-hour equivalent for pro bono work, mentoring, or training activities up to a certain limit.

Such initiatives would positively change firm culture and directly address dissatisfaction and other problems created by the hours derby, since probably *the future is not in time sheets?*⁸

¹ 491 U.S. 274 (1989).

² See NFPA Informal Ethics and Disciplinary Opinion No. 95-4.

³ LM/IPMA Survey Annual Compensation Survey for Paralegals/Legal Assistants and Managers, 2011 Edition.

⁴ *Missouri v. Jenkins*, 491 U.S. 274, 288 n.10 (1989).

⁵ See eg *In re Dimas, LLC*, 357 B.R. 563, 577 (Bankr. N.D. Calif. 2006).

⁶ Comment to Guideline 8 - ABA Model Guidelines for the utilization of paralegal services.

⁷ NFPA Ethical Consideration 1.2(d).

⁸ Perter D. Zeughauser, *The New New Math*, Am. Law., Mar. 2000, at 17.

For more information:

The Paralegal Blog, [Paralegal Billing](#).

Cathy Heath, RP, [Billing Paralegal Time](#).

The Empowered Paralegal, [Distinguishing Clerical and Professional Tasks](#).

Susan Saab Fortney, *Soul for Sale: An Empirical Study of Associate Satisfaction, Law Firm Culture, and the Effects of Billable Hour Requirements*, 69 UMKC L. Rev. 239, 273-275 (2000).

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