

# For The Defense™

dri

The magazine  
for defense,  
insurance  
and corporate  
counsel

March 2025

## Women in the Law & Life, Health and Disability

Including . . .

**Be a Better Biller in 2025:  
Say What You Mean  
and Mean What  
You Say**

Also in This  
Issue . . .

**The Ever-Evolving  
Landscape of  
“Deemed Denials”  
under ERISA**



**And More!**

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*For The Defense, March 2025, Vol. 67 Issue 3* (ISSN 0015-6884). Copyright ©2025, DRI. All rights reserved.

Published ten times per year by DRI, 222 South Riverside Plaza ~ Suite 1870, Chicago, Illinois 60606. Telephone: (312) 795-1101. Fax: (312) 795-0747.

Correspondence and manuscripts should be sent to the Director of Communications, *For The Defense*.

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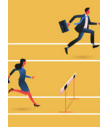


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## Be a Better Biller in 2025

By Azelie “Lea” Shelby

This article is not going to be a “pity party,” but rather an opportunity for insurance defense attorneys, individually and collectively, to efficiently capture and accurately record their billable time.



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# Say What You Mean and Mean What You Say

We begin with a lesson from all those amazing multi-tasking women we celebrate this month. Efficiency is key.

Let’s face it, billing is necessary because it is how most lawyers get paid. The irony is that billing can make you want to stop being a lawyer. Billing insurance defense clients can *really* make you want to stop being a lawyer. However, this article is not going to be a “pity party,” but rather an opportunity for insurance defense attorneys, individually and collectively, to efficiently capture and accurately record their billable time.

### Why do we love to hate billing?

As attorneys, we spend a lot of time thinking about potential solutions for our clients’ problems. Our thought patterns are not always easily recorded in six-minute increments. Often times I’ll be driving or in the middle of some personal errand when a solution will pop into my mind that can solve my biggest issue in a case. Can I bill for this?

Once, I accidentally billed my client for the task of developing a case strategy and the response rejecting my billing entry was as follows: “Strategizing or thinking about a file apart from the review, research, negotiations, discussions, etc., is considered non-billable activity. Strategizing is not billable even when performed in conjunction with an activity (including, but not limited to, preparation of a motion or legal research) that has been expressly approved by the claim professional.”

Reading this response, even years after it was received, still raises the hair on the back of my neck for all the obvious reasons. After much wasted emotional energy spent complaining, whining, and generally feel-

ing disrespected and not trusted, I came to see things in a different light.

The “good ole days” of handshake trust have slipped away. In the world we live in today, we find ourselves unable to trust the internet, social media, news outlets, politicians, government, and the list goes on and on. So, what is the answer? Transparency. What’s better than plain old transparency? Efficient and detailed transparency.

A review of any client’s billing guidelines reveals that it is transparency that our clients want, need and demand. As attorneys, we should and can provide that transparency in billing – and I’m here to give you insight on how to do that efficiently and accurately.

### Lessons learned.

Statistics tell us that as attorneys, we have not been successful at recording our billable time.

We are inundated with advertisements for “solutions” to billing. If you are like me, you also receive a lot of information on ways that my computer can run proprietary software with functionality to (1) remind me to use a timeclock during my workday to record my time; (2) tell me that when I send an email, I should also record my billing entry; (3) tell me that what I’ve written as my billing entry is not a sufficient description necessary to be paid for the work I’ve performed; (4) tell me that despite being at work all day, I’ve only billed a fraction of the time I’ve actually worked; (5) tell me that I have a task due or an event on my calendar so I should have a corresponding billing entry; and the list goes on.

While this information is certainly helpful, it does not address the root cause of why the statistics say for an 8-hour workday, the



utilization rate for 2024 was 37%. *The 2024 Legal Trends Report*, Clio <https://www.clio.com/resources/legal-trends/2024-report/>. The utilization rate measured for this statistic was the percentage of an eight-hour day that gets put towards billable work. *Id.* The same study found that of the 2.9 hours (37%) recorded as billable work, only 2.6 hours were invoiced to the client – this is the realization rate. This study defined this realization rate as 88% realization. *Id.* Finally, of the 2.6 hours invoiced to the client, only 2.3 hours were paid or collected by the attorney, which was the collection rate of 91%. *Id.*

Historically, the data measured from 2016 until 2024 demonstrates some improvement of billable time recorded from 28% in 2016 to 37% in 2024. *Id.* The realization rates had a similar pattern of increase measured as 75% in 2016 and 88% in 2024. *Id.* The collection rates moved from 86% in 2016 to 91% in 2024. *Id.*

This information demonstrates that some lawyers working for 8 hours per day are only recording about 1/3 of their time as billable. This statistic is disturbing and reflects that software is not the problem, the lawyer is.

#### **The time for time is now.**

Billing tasks have always been difficult; no one enjoys recording their workday in six-

minute increments each and every day. A recent article written by Rebecca Knight on January 30, 2025, and published by Harvard Business Review, cautions us that excessive or dismissive optimism is harmful, referring to this as toxic positivity. Rebecca Knight, *5 Signs Your Optimism Is Hurting Your Team*, (Jan. 30, 2025), [https://hbr.org/2025/01/5-signs-your-optimism-is-hurting-your-team?ab=at\\_art\\_art\\_pb\\_1x4\\_s03](https://hbr.org/2025/01/5-signs-your-optimism-is-hurting-your-team?ab=at_art_art_pb_1x4_s03). As experienced attorneys, we have a responsibility to mentor younger attorneys. Our younger attorneys have a responsibility to seek meaningful counsel from mentors in this difficult area of properly and efficiently billing clients for work performed. The exchange of information and encouragement should be realistic rather than including excessive or dismissive optimism. Being open about the challenges surrounding billing tasks can be a good way to reinforce that billing is not as impossible as some make it seem. Admittedly, billing is unlikely to be what you look forward to the most, but it also does not have to be so difficult that you procrastinate and ultimately make the process more difficult.

Another common pitfall in billing is underselling the value of your time. When our clients ask us to perform a task, it is appropriate to bill the client for the time it takes us to perform that task. Imposter

syndrome and self-doubt can creep into this process and result in the decision to reduce the time recorded due to feelings that the task should not have taken so long to complete. At times there are circumstances where this might be appropriate; however, the better practice is to record the time it actually took to perform the task in a clear manner that conveys to the client what was done and why. Oftentimes, describing the task in terms of the individual elements results in better capturing of the time spent than a general description of the task with a single large entry of time. This is another opportunity for supervising attorneys to provide important guidance that builds the confidence of other attorneys.

After seeking input from numerous attorneys at various stages of their legal careers, there seems to be a trend that the partners supervising these attorneys are unable to give them workable solutions. This is frustrating for many lawyers who enjoy practicing law in the realm of insurance defense but cannot meet their billable hour goals due to lack of training and/or simply just not successfully recording the work performed and the time spent on same. The result is that attorneys are losing interest in the field of insurance defense due to billable hours.

## The solution is you.

The role of AI in the legal industry is compelling. However, AI is not a solution for improving a lawyer's ability to accurately record billable time. Ethics and professionalism rules require lawyers to bill time for work performed, not work AI thinks you performed. The Model Rules of Professional Conduct, specifically Model Rule 8.4(c), prohibit engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. Rule 1.5 states that lawyers shall not make an agreement for, charge or collect an "unreasonable" fee or expense. In short, lawyers cannot shift responsibility for a billing description to AI without risk of violation of Rules 1.5 and 8.4.

Better advice for lawyers seeking to improve efficiency and proficiency in recording their work is to daily and accurately record time in a transparent manner. While this may sound like an obvious solution, it's easier said than done. A better plan is to address specifically how this can be accomplished.

## Say what you mean and mean what you say.

Good old-fashioned discipline is most important. Many attorneys procrastinate recording billable time because it just takes too long to figure out what to say. There is an honest and very real desire to be transparent in the work they've performed, but words fail them, and they would rather just not record time that is too difficult to describe.

As you determine what you should say to describe work you've performed, start with the client's billing guidelines. It can feel discouraging to read a long list of tasks that will not be paid but must be done when defending a case for an insurance defense client. Set that aside and instead read the guidelines with an eye for what information the client is seeking. From there, you can construct significantly more complete descriptions that will satisfy your client and are more likely to be paid in full.

Negative reinforcement is a real problem and ultimately does not facilitate compliance with a law firm's billing requirements and applicable client billing guidelines. Proprietary software can reinforce the inability to describe work performed by using preset acceptable software limits,

when sending an alert to the user. Many find this is not especially helpful and only negatively reinforces the fact that the user is unable to find the words to properly describe the work. Negative reinforcement opens the door for procrastination to sneak in and sabotage those with the best intentions.

Also, it is common for lawyers to attempt to keep track of work performed that still needs to be recorded in various ways (post it notes, legal pads, notebooks, cell phone apps, spreadsheets, etc.) believing they will return to it and have some sort of billing description epiphany just in time for their deadline to submit all billing for the relevant billing period. The result is many lawyers simply do not ultimately record all billable time because it's just too time consuming.

Once you've identified the information your client needs in each billing description, approach that with a mindset toward efficiency. By looking very closely at the work you've performed, you can subdivide billing entries into smaller sections that are more specific. For example, instead of writing "Draft Motion for Summary Judgment", you could divide your billing entries in the same way you divide your pleading. This is an easy way to achieve both transparency and efficiency because you simply borrow the titles and subtitles you used in your pleading. Using this model, you might write "Draft Statement of Uncontested Facts necessary for Memorandum in Support of Motion for Summary Judgment" and record the time it actually took you to prepare that portion of the pleading.

Another solution that reinforces efficiency is looking for opportunities to use a similar description you might have used in the past when performing a similar work task. This helps to avoid delay in recording the work you've done by having a description handy. Some case management software and/or billing software systems allow for this – if you do, then take advantage of the automation provided.

When formulating your billing description, it is prudent to be mindful of keeping confidential client information just that—confidential. The scope of this article does not include an analysis of consideration to be given to obligations to maintain client confidentiality and/or privilege; nor does

it include an analysis of non-disclosure of attorney work product.

Once you understand what to say in your billing description, you will procrastinate less in recording your billable time. Ultimately, by making it easier to record your time, you make it more likely that you will record your time. With statistics reflecting that attorneys on average are only recording 37% of billable time in an eight-hour workday, there is significant opportunity to better capture and record work performed for clients to the benefit of the attorney and the firm.

**Negative reinforcement is a real problem and ultimately does not facilitate compliance with a law firm's billing requirements and applicable client billing guidelines.**

## Efficiency is key.

The ultimate benefit to adopting a positive framework of efficiency is quite possibly the improvement of your entire work culture. We know that creating a positive work culture where individuals have clear instruction and a defined achievable pathway to success fosters longevity and loyalty. This results in attracting lawyers of the highest caliber to our respective firms to ultimately provide higher quality legal work for our clients.

A little transparency serves both attorneys and their clients in rebuilding trust. Efficiency goes a long way in creating a healthy and positive work culture where lawyers can focus on the substantive work rather than drowning in frustrating and tedious billing descriptions.

