

## Legal Ethics

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### Poor Timekeeping Practices Affect the Bottom Line

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From a client relations standpoint, poor timekeeping often leads to disputes about attorney's fees. These disputes take time and resources to resolve and will inevitably detract from an attorney's work on other legal and business matters. For lawyers or law firms that work closely with insurance carriers, poor timekeeping may lead to significant write-offs of attorney's fees, while a continued failure to comply with billing standards may draw the ire of the claims adjuster and lead to a loss of business from the carrier. Cost-benefit analysis aside, there are also ethical implications to poor timekeeping practices from a disciplinary standpoint. If the conduct is egregious (and especially if it is dishonest), it may result in the imposition of professional discipline.

#### Legal Ethics Considerations

There are two main ethical considerations when it comes to billing or timekeeping practices. First, Illinois Supreme Court Rule of Professional Conduct 1.5(a) prohibits lawyers from collecting unreasonable fees or expenses. There are eight (8) factors enumerated under Rule 1.5(a) that must be considered when determining the reasonableness of a fee:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed, contingent, or some type of retainer.

Ill. Sup. Ct. R. Prof'l Conduct, R 1.5(a).

Notably, in July 2023, the Illinois Supreme Court implemented significant amendments to Rules 1.5 and 1.15. Readers are encouraged to review those amendments and familiarize themselves with the changes to those two rules. For lawyers registered in Illinois, an interactive program (eligible for MCLE credit) provides a summary of the changes and can be found on the ARDC's Learning Portal: <https://pathlms.iardc.org/courses/55145>.

The second ethical consideration involves Illinois Supreme Court Rule of Professional Conduct 8.4(c) (Misconduct), which makes it professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. Importantly, intentionally false billing practices will amount to dishonest conduct in the view of the



Administrator of the Attorney Registration and Disciplinary Commission (“ARDC”), a branch of the Illinois Supreme Court that acts as the regulatory body for lawyers licensed to practice in the State of Illinois. Dishonest conduct (if the Administrator believes she can sustain her burden of clear and convincing proof) necessarily triggers an 8.4(c) charge from disciplinary authorities, which, if proved, will yield significantly higher sanctions.

### **Recent ARDC Disciplinary Actions Imposing Sanctions for Dishonest Billing Practices**

Illinois has seen a recent increase in dishonest billing practices that have resulted in formal discipline imposed by the ARDC. These sanctions range from suspensions from 60 days to one year, and are illustrated by the cases below:

- *In re Gerstetter*, 21 PR 50, M.R. 030922 (Sep 23, 2021)—The respondent was a young associate at Reed Smith who falsely billed 86.4 hours in two document review projects. She was suspended for 60 days for charging and collecting an unreasonable fee and knowingly creating billing entries which she knew exceeded the time she actually spent working on the matter. Her conduct was found to be in violation of Rules 1.5(a) and 8.4(c) of the Illinois Rules of Professional Conduct.
- *In re McDermott*, 19 PR 12, M.R. 30342 (May 18, 2020)—The respondent was a young associate at a law firm who recorded 14 billing entries in which she falsely claimed to have spent 21.9 hours analyzing medical records and preparing written summaries. Her hours were billed to the firm’s clients. While she was on vacation, the firm contacted Ms. McDermott about the purported summaries. She first claimed that the reports may have been stored on a personal device but resigned from the firm just days later and never returned. She was suspended for 60 days for violating Rule 8.4(c).
- *In re Hall*, 22 PR 77, M.R. 031560 (January 17, 2023)—The respondent had been licensed for less than two years at the time of misconduct and was an associate at Dentons, a large international firm. Between late 2020 and early 2021, he recorded a total of 277 hours related to a large document review project. Mr. Hall’s time entries indicated he had reviewed 425 documents when, in reality, he had only reviewed about 20. His misconduct was causally connected to generalized anxiety disorder, which he subsequently took steps to address. Mr. Hall was suspended for 60 days, which was stayed after 30 days, for violating Rule 8.4(c).
- *In re Paleczny*, 21 PR 51, M.R. 030940 (Sep 23, 2021)—Mr. Paleczny was an associate at Lewis Brisbois Bisgaard & Smith (“LBBS”) from the time he was first admitted to the Illinois Bar in November 2018 to February 2021. During that time, he falsely billed over 2,000 hours of time on a *pro bono* matter for an inmate. The firm immediately terminated Mr. Paleczny’s employment when his conduct came to light, though he initially denied any wrongdoing to members of the firm. In subsequent attempts to find employment, the respondent falsely told prospective employers that he was laid off because LBBS did not have enough work to support his continued employment. Mr. Paleczny was suspended for one year and required to complete an ARDC professionalism seminar.

All of the above disciplinary cases were filed within the last several years, signaling the ARDC’s willingness to not only prosecute allegations of improper timekeeping but also to seek significant sanctions if the fee-related misconduct was coupled with dishonesty.



## California State Bar Offers Guidance on Billing Best Practices

In 2016, the California State Bar published an “Arbitration Advisory” (2016-02) which analyzes attorney billing issues in the context of mandatory fee arbitrations. The advisory opinion, written through the lens of an arbitrator who is assessing time entries, is universally applicable and a particularly helpful resource in implementing diligent billing practices.

For instance, the Advisory stresses the importance of contemporaneous billing, since arbitrators are more likely to closely scrutinize fees in circumstances where the lawyer has reconstructed billable time by reviewing their file after the fact and ascribing a time entry to each document. The reason for this is because the longer the time period between when a task was performed and when the time entry is recorded, the greater the probability that the entry will be inaccurate. With respect to billing practices in larger firms, the following points are noteworthy:

- A partner should review and edit pre-bills to ensure their accuracy, and any evidence that pre-bills were adjusted upwards should be examined carefully;
- When evaluating the specificity of time entries, it is not the format but the information provided about each discrete task that is important; and
- Staffing (and simultaneous billing) on a particular matter is a factual analysis determined by the complexity or significance of the case.

The Advisory also discusses evaluating the work a lawyer produced against the hours claimed, document reviews (propriety determined by number of pages and complexity), block billing and its potential for camouflaging non-compensable tasks and inflating a lawyer’s billable time, billing for recycled work (a lawyer re-earned the hours previously billed for the creation of the original document and cannot add additional hours to a client bill for revising an in-house document absent client disclosure and agreement), and how to properly bill for administrative tasks, among others. The reader is encouraged to consult the full advisory opinion (see [www.calbar.ca.gov/portals/0/documents/mfa/2016/2016-02\\_Bill-Padding\\_r.pdf](http://www.calbar.ca.gov/portals/0/documents/mfa/2016/2016-02_Bill-Padding_r.pdf)) for a comprehensive analysis of the propriety of various billing practices.

## Conclusion

In sum, the usual tenets, such as contemporaneous record keeping and adherence to client billing requirements, along with ethical and efficient billing are worth repeating here. The risk of liability and harm to a lawyer’s professional reputation and license simply cannot be ignored. In the shoes of a legal services consumer, a detailed breakdown of a lawyer’s time entries justifying why certain tasks warranted the time that they consumed will go a long way in ensuring a strong and mutually-satisfactory attorney-client relationship.

## About the Author

**Michael Zhang** is an associate with *Hinshaw & Culbertson LLP*, where he represents lawyers in legal malpractice and disciplinary matters. He also represents a variety of other professionals in civil litigation and provides ethics counseling and risk management services to attorneys and law firms. Prior to joining Hinshaw, Mr. Zhang was a Senior Litigation



Counsel as the Attorney Registration and Disciplinary Commission (“ARDC”), where he was responsible for investigating and prosecuting charges of attorney misconduct. Mr. Zhang is a first-generation immigrant. His family immigrated from China to Canada. He received his B.A from the University of Calgary and his J.D. from Chicago-Kent College of Law. He previously served as Chair of the Chicago Bar Association’s Professional Responsibility Committee and was an inaugural member of the ARDC’s Equal Justice Rules Committee. He is currently serves as an appointed special advisor to the American Bar Association’s Standing Committee on Professional Regulation.

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