



Litigation Practice Tip - October 2020

Keeping Good Attorney Time Records

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Everything you always wanted (or should have wanted) to know
about keeping good attorney time records

Question 1: “Why should I care about time records or, for that matter, attorneys’ fees? I obviously didn’t get into legal services for the money, and I get the same salary, no matter what.”

Two main reasons:

1. your program is under-funded, and court-awarded attorneys’ fees can help needed growth or prevent lay-offs; and
2. the prospect of having to pay your program’s fees as well as their own serves as a strong incentive for your opponents to settle cases, or to prevent them from harming your clients in the first place.

Attorneys’ fees, in short, level the playing field. If you don’t believe me, believe Newt Gingrich.^[1] One of the first things his Congress did in 1995 was to hamstring LSC-funded programs by prohibiting them from recovering statutory fees. When a friendlier Congress took over in 2009, it immediately recognized the importance of fees by lifting that restriction.

We all need to care about keeping good time records because if we don’t a court will either deny fees or greatly reduce the award. Another way to look at it is if you don’t keep good time records you are effectively making a charitable contribution to the worst landlords and most callous bureaucrats. And while I am not a tax expert, I don’t think the IRS is going to recognize the contribution as deductible.

^[1] For younger readers, Google him or tune in to Fox News.

Question 2: “So how do I keep good records?”

Glad you asked. Here are some things you and your office should do:

- Start keeping time as soon as an idea for a case arises, even if you don’t yet have a formal attorney-client agreement, or even a client. Follow the rules for drafting good time records below, even if you think the project won’t result in a case, because you

- can't predict the future. Reasonable pre-complaint time is compensable. Just give the case a generic name you will remember.
- Record your time immediately after you do something, or at least at the end of the day.
 - Record time in six-minute (.1 hour) increments. There are still some big firms whose clients will pay them when they record time in quarter-hour increments, but the courts won't buy it. For example, if you spend 30 minutes on a task, that's .5 hours, not .3.
 - Keep time in a computerized system with appropriate back-up or cloud capabilities. It's not helpful if you record time in your calendar, diary, or on your palm of your hand, especially if you lose those objects or diligently follow the CDC hand-washing guidelines.

Question 3: "What goes into acceptable attorney time records?" Here are some overriding principles.

Include enough detail so that the court can evaluate the reasonableness of the hours claimed. This means:

- the date you performed;
- a description of the activity in sufficient detail;
- and the time it took you.

The description is the only challenging part. Think basic sentence structure; you need a subject and an object, sometimes two objects. Merely saying "Legal research" is not good enough. "Legal research re opposition to summary judgment motion" is much better. Similarly, "telephone call" or even "telephone call with opposing counsel" won't do it. Much better would be "telephone call with opposing counsel re state's failure to produce administrative record." *Exception:* if the conversation is with your client, in my opinion best to skip the subject matter of the conversation for fear of waiving attorney-client privilege.

<i>Don't do this</i>	<i>Do this instead</i>
Research	Legal research re opening brief on appeal
Telephone call with opposing counsel	Telephone call with opposing counsel re state's failure to produce administrative record.

Avoid or minimize "block billing," which is combining multiple tasks into one lump sum time entry. This is not always easy to do, especially if you are involved in a multi-task project, such as trial preparation or preparation of a motion with a dozen declarations. Some attorneys, when unable to avoid block billing completely, go back and estimate how long each task took.

<i>Don't do this</i>	<i>Do this instead</i>
3.1 hours: TC w/prospective declarant re expert declaration; Draft opposition to summary judgment motion; TC w/co-counsel re procedural issue	0.3 hours: TC w/prospective declarant re expert declaration 2.7 hours: Draft opposition to summary judgment motion 0.1 hours: TC w/co-counsel re procedural issue

Question 4: "Is there anything that should *not* go into time records?"

Yes.:

- Avoid recording purely clerical tasks, such as photocopying, filing a document, making exhibit tabs, etc
- Avoid privileged or confidential material, such as your advice to a client, or what a client may have told you. To some extent, all your time records represent work product since they reveal what you're working on, which reflects your thoughts on the case. So fight any attempt to discover your records until the merits of the case are over. And some matters should remain confidential even after a case is over, such as whom you unsuccessfully approached about testimony or a declaration. For example, I write "tc w/prospective declarant" rather than naming that person.
- Avoid inappropriate or disparaging commentary. Pretend opposing counsel is looking over one shoulder and the judge over the other, so edit yourself as you write your entries. When you file your fee motion, it's permissible to redact or rewrite some of your entries, but don't count on that happening. So avoid items such as "tc w/opposing counsel (what a jerk!)" or "review judge's ridiculous tentative."
- Avoid grouping your case time with your other work. Attorney time should be recorded separately from time you keep on grants. Some grants expect you to account for every minute of an eight-hour day, pretending that none of us day-dreams, chats with office mates, etc. In contrast, attorney time recorded should be time really spent on a case

	<i>Don't do this</i>	<i>Do this instead</i>
<u>Admin tasks</u>	0.5 hours: Photocopying, 0.1 hours: Filing a document, 0.3 hours: Making exhibit tabs, etc 0.2 hours: Printing and postage for letter	0.0 hours = Omit administrative tasks
<u>Privileged & Confidential</u>	TC w/ Bob Newman about writing a declaration iso fee motion	TC w/ prospective declarant about writing a declaration iso fee motion
<u>Inappropriate commentary.</u>	TC w/ opposing counsel re: demurrer meet & confer (what a liar!)	TC w/ opposing counsel re: demurrer meet and confer
	Review judge's <i>ridiculous</i> tentative decision	Review tentative decision on PI motion
	Email to co-counsel who STILL owe me their edits on the brief draft	Email to co-counsel recapping research and mapping strategy plan

Have more questions about time records? Western Center is available to answer any questions you might have about time records or any other aspect of attorneys' fees.

For questions or advice, please reach out to Richard Rothschild at rrothschild@wclp.org.



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