



PRACTICAL TIPS

How to Prove an Attorney's Reasonable Hourly Fee

Savvy lawyers consult various published matrices when preparing a fee application to submit to a judge.

BY GERALD G. KNAPTON | NOVEMBER 5, 2015

What is a reasonable hourly rate for a lawyer's time? The question is no idle inquiry, especially for litigants who advocate—and judges who must adjudicate—how much to award in a given case. In recent years, three key information sources have proven helpful in determining the issue. They are the Laffey Matrix, the Real Rate Report, and the Legal Billing Report.

LAFFEY MATRIX

The Laffey Matrix—which derives its name from a seminal case, *Laffey v. Northwest Airlines, Inc.* (572 F. Supp. 354 (D.D.C. 1983), *aff'd in part, rev'd in part* on other grounds, 746 F.2d 4 (D.C. Cir. 1984), cert. denied, 472 U.S. 1021 (1985))—is a free resource published each year by the U.S. Attorney's office for the District of Columbia. It offers tiered rates for lawyers, differentiated according to their years of experience. The matrix is available at (www.justice.gov/usao/dc/divisions/civil.html).

The Laffey rates are accepted in Washington, D.C.–area courts as one factor to consider when setting fees. Some courts in other areas also use them, although often the courts are required to make adjustments to take the cost of a local lawyer's time into account. One simple way to do that is to use federal wage data (available at (www.bls.gov/oes)) to establish, say, San Francisco's 8 percent higher average wage for lawyers compared to that for the District of Columbia. (*Garnes v. Barnhardt* (2006 WL 249522 at *7 (N.D. Cal.); see also *Chanel, Inc. v. Doan*, 2007 WL 781976 (N.D. Cal.); and *Syers Properties III, Inc. v. Rankin*, 226 Cal. App. 4th 691, 702 (2014).)

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REAL RATE REPORT

Another useful source is a commercially prepared report of actual rates that have been paid by real clients. Called the Real Rate Report, it is published by Wolters Kluwer, an information, software, and related corporate legal-services company (www.wkelmsolutions.com). The report was first released in 2012 and has been updated and improved several times since then.

The data used for the 2014 Real Rate Report (the most recent available) includes more than \$16.2 billion in fees billed and paid through TyMetrix for legal services in the United States during the seven-year period of 2007 through 2013. It includes fees paid by 90 companies to more than 5,600 law firms and more than 206,000 timekeepers, and it covers approximately 141,000 partners and associates spread across more than 350 U.S. metropolitan areas.

The rate data in the report is presented in a variety of ways: high-level data cuts, industry analysis, and practice-area analysis, among others. Rates by timekeeper category are supplied for 59 cities. In-depth data for ten large cities has been mapped to twelve separate practice areas, such as Labor and Employment and Corporate, for example. Data is also parsed based on the size of the firm.

Like the Laffey Matrix before it, the Real Rate Report has been accepted by many courts. (See *Hicks v. Toys 'R Us-Delaware, Inc.*, 2014 WL 4670896 at *1 (C.D. Cal.)) But note that some courts have chosen not to rely on this reference in cases involving noncorporate clients and specific practice areas that have not been surveyed. (See *Johnson v. Wayside Property, Inc.*, 2014 WL 6634324 at *7 (E.D. Cal.) (court declined to rely on the Real Rate Report in disability case litigated for noncorporate client).)

LEGAL BILLING REPORT

A third reliable source comes from Thomson Reuters, which several times a year compiles hourly rates from bankruptcy court filings by case and timekeeper. It used to be known as Westlaw Court Express but is now called the Legal Billing Report. Each report has two sections. One is sorted

by region/law firm, and the other is by billing rate/region. This is the most granular of reports, including the names of timekeepers, law firms, and the case names and numbers of the matters.

As with the other sources, only some courts accept these rates (*Stonebrae, L.P. v. Toll Bros.*, 2011 WL 1334444 at *14 (N.D. Cal. Apr. 7, 2011)); see also *Pegoraro v. Marrero*, 2013 WL 55829 (S.D.N.Y.)). Other judges question their use in the absence of proper foundational facts, such as comparative data for similar practice areas and similar geographic regions (see *Cotton v. City of Eureka*, 889 F. Supp. 2d 1154, 1169 (N.D. Cal. 2012)).

In any fee application, it is crucial for attorneys to document the hours spent on the matter as well as the appropriateness of the rate to be applied. Though counsel of record, and opining experts, can of course state their views regarding hourly rates in the community, nothing is more convincing than an objective study of actual rates conducted by a third party. In that vein, these three resources can be helpful when evaluating a request for attorneys fees in the abstract, but also invaluable when making a presentation to the court or negotiating with opposing counsel.

SNAPSHOT OF RATES

| Experience (years) | Laffey: D.C. | Laffey: S.F. | Laffey: L.A. | Real Rate Report |
|-----------------------|--------------|--------------|--------------|------------------|
| 20+ | \$520 | \$562 | \$541 | \$645 |
| 11-19 | \$460 | \$497 | \$478 | \$575 |
| 8-10 | \$370 | \$400 | \$385 | \$364 |
| 4-7 | \$300 | \$324 | \$312 | \$204 |
| 1-3 | \$255 | \$275 | \$265 | \$192 |
| Paralegals/law clerks | \$150 | \$156 | \$140 | \$166 |

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