

# Agency Legal Services Bureau

## *Business Assessment Report*

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## Executive Summary

The following report summarizes a detailed study of Agency Legal Services Bureau (ALSB) business processes. The objectives of the study are to recommend ALSB service fees that are commensurate with costs and to identify potential business process improvements to enhance service efficiency and sustainability.

The study indicates current ALSB service fees do not cover the costs necessary to sustain operations. The study also indicates that while there are opportunities to enhance business processes and efficiency, the ALSB is effectively using available resources in a prudent manner.

The study involved meetings with ALSB management; a survey of and interviews with ALSB staff; review of financial data including expenditure reports, wages, and the service fee history; consultation with Department of Justice Centralized Services Division; and evaluation of legal billing best practices.

Study recommendations regarding ALSB business practices include, but are not limited to:

- Create a single method to bill time in a contemporaneous, non-repetitive manner that supports billing multilabel cases.
- When possible, direct case assignments so attorneys have caseloads with a balance of legal work that involves large blocks of productive (billable) time and work that requires smaller or more sporadic increments of time.
- Ensure attorneys properly delegate tasks when appropriate (e.g., data entry, conference reconciling,<sup>1</sup> organizing/scheduling, etc.). Attorneys state that paralegals with the proper training effectively provide this support and serve as a point of contact for clients.
- Ensure attorneys have access to (and/or understanding of) the tools needed to be productive during otherwise unproductive times in their day and the flexibility to work in different locations (laptop, docking station, etc.) and at different times.
- Update the current case management and billing system with a contemporary system that aligns with industry standards (e.g., the types of systems attorneys are trained to use in law school or that they have used in private practice) that includes adequate time and file management functionality. If this is not feasible, invest in a more valuable time tracking technology and arrange improved support from State Information Technology in enhancing the current system (e.g., document templates).
- Engage attorneys, paralegals, and administrative staff in collaborative discussions to develop working agreements to support productivity (i.e., what allows them to be productive, how they can help others be productive, how they can support the culture

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<sup>1</sup> One interviewee indicates conference reconciliations are important to ensure all billable time is captured and to ensure consistency in client billing.

of the office while maintaining productivity) and create a set of standards that meets as many of these objectives as possible.

- Publish a clearly articulated, reinforced, and consistently communicated standard for the monthly billable goal and how it is measured. Ensure the bureau culture supports staff in meeting this goal, provide incentives for attorneys consistently meeting or exceeding the goal, and provide data to support management intervention if the goal is not being met.

CMS recognizes that some of the recommendations may appear self-evident or may relate to areas that management has already addressed (e.g., communicating billable goals, technology for remote work, case assignment, etc.). However, the fact that these themes were brought forward by assessment participants indicates opportunities for continued improvement in these areas or continued or improved communication or reinforcement of standards and expectations in these areas.

Study recommendations regarding ALSB billing rates and practices include but are not limited to:

- Increase the billing rate for attorneys to \$121 per hour and the rate for paralegals to \$71 per hour for the next biennium.<sup>2</sup>
- Ensure service fee calculations include *all* overhead costs including management time, support staff time, non-billable time, etc. in addition to direct costs.
- Develop and propose a process for regular rate setting each biennium based on a cost assessment, staffing levels, and anticipated client utilization (e.g., processes used by other internal service funds). A proposed process and inputs are included in the DOJ-ALSD 10-year projection worksheet.xlsx provided in conjunction with this report.

The report concludes with suggestions for implementing the recommended business process improvements and for formulating a legislative proposal for rate increases for the coming biennium. Recommendations also include proposing a process whereby ALSB can conduct future periodic rate reviews and adjustments based on defined indicators.

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<sup>2</sup> This is a preliminary recommendation subject to further review and refinement with ALSB and Department of Justice Centralized Services Division.

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## I. Introduction and Background

### A. Introduction

Communication and Management Services, LLC (CMS) is pleased to present this report detailing the recent Agency Legal Services Bureau (ALSB) Business Assessment. Legal Services Division Administrator Melissa Schlichting and Agency Legal Services Bureau Chief John Melcher initiated the assessment in late 2019. The purpose of the assessment is to determine appropriate service fees that are commensurate with costs and to identify business process efficiencies.

### B. Assessment Objectives and Methodology

The objectives of the assessment are to:

- Determine an appropriate billable rate for ALSB services to generate sufficient revenue to sustain the program in consideration of staffing and overhead costs.
- Identify business processes and functionality improvements to maximize service efficiency and sustainability.
- Develop a report recommending an appropriate billable rate and any process modifications or improvements identified during the assessment.

The business assessment process involved:

- Review of fiscal and human resource data (e.g., operating expenses, wages, leave and compensatory time accrual and usage, hours billed per employee, etc.).
- A comprehensive survey of ALSB staff conducted in December 2019.
- Individual interviews with ALSB staff conducted in January 2020.
- Consultation with the Department of Justice Centralized Services Division in April 2020.

The survey and personal interviews involved questions designed to gather information regarding ALSB billing practices and participant recommendations on potential improvements to ALSB business processes. The assessment process involved organizing the survey and interview responses into emerging themes and analyzing billable time vs. leave time from September 2018 – September 2019 to add quantitative data to the qualitative responses. The study also involved evaluating data from external resources (e.g., the billing practices of another internal service fund agency) and review of literature regarding legal billing and business practices.

## C. Information Sources

Following are information sources which are included as report attachments:

- ALSB Staff and Leadership Survey Summary (Appendix 1).
- ALSB Staff and Leadership Interviews Summary (Appendix 2).
- ALSB Analysis of Billable Time (Appendix 3).
  - Billable time vs. Leave time September 2018 – September 2019.
  - Three month rolling average & monthly average.
- Cost per hour analysis (Appendix 4).
  - FY 2017-2019 ALSB Cost – Personnel Services and Operating Expense.
  - Analysis of billable time (i.e., integration of Appendix 3).
- Average Billing Expectation Analysis (Appendix 5).
- Montana Operations Manual 2-0280.20 Working Capital Used for Budgetary and Rate Purposes (eff. 7/1/2009) (Appendix 6).

## II. Business Process Assessment

### A. Introduction

The assessment identified practices that support Agency Legal Services Bureau (ALSB) staff in effectively billing, including capturing all time worked, reducing or eliminating billing errors, and providing accurate task descriptions. The assessment findings from the survey (Survey Summary - Appendix 1) and interviews (Interviews Summary - Appendix 2) are organized into these key themes and summarized to combine similar concepts.

Each of the following themes includes a definition of what the participants stated (Issue), why it is important based on comments and ALSB data (Support), appropriate participant recommendations or external research related to the theme (Best Practices), and potential next steps (Recommendation).

### B. Time recording practices affect billable time capture

**Issue:** Most interviews and survey responses indicate that the time recording practices of attorneys and paralegals are inconsistent and contribute to duplicated efforts and uncertainty when billing time.

**Support:** Attorneys and paralegals shared that they are more confident in the accuracy of their time when they record their time and billing contemporaneously with performing the work. Attorneys who engage in this practice make a point to record their time as they complete tasks or engagements, or before they leave for the day, especially when working on multiple cases over a few hours. The attorneys typically use available software, which presents specific challenges detailed in the survey and interview responses attached (e.g., survey responses on pgs. 23-26, and interview responses on pgs. 27-30 regarding this topic).

Attorneys and paralegals report being cautious not to overbill for activities that the client may question, and/or that they do not clearly understand billing practices. Further detail regarding these statements is provided below. Some of the trepidation regarding billing appears to result from poor time tracking practices (if staff do not track their time contemporaneously, they tend to underestimate the time spent on activities) and a lack of confidence in the actual time required to complete a task.

**Best Practices:** Attorneys and paralegals state that when they have a standard process to track daily time that does not require duplication and provides an efficient way to record time while working on multiple projects during the same day, their time is more accurate. They also report more confidence in their billing and higher productivity.

An American Bar Association article by Michael S. LeBoff (2017)<sup>3</sup> supports daily time tracking saying, "All attorneys should be tracking their time contemporaneously and recording time every day. It is too difficult to try to recreate your week or month at the end of the billing cycle." This article also recommends recording all time spent working on a case and allowing the "billing attorney to decide what to pass on to the client." Record all time dedicated to a case for productivity tracking and client communication purposes, and bill clients appropriately, recognizing that less experienced attorneys and paralegals may take longer to complete a task (i.e., time that has been dedicated to that case and impacts productivity).

Two articles by Sally Kane (2019)<sup>4</sup> go deeper into recording time, saying that billed items should not have "vague and perfunctory terms like 'review and revision'" but rather more "thought provoking and thus time-consuming, tasks" such as "evaluate," "analyze," "assess" or "re-draft." Providing clear and descriptive billable items, including any time written-off, communicates value given to the client.

**Recommendation:** Create a single method to bill time in a contemporaneous, non-repetitive, manner that supports billing multilabel cases and inputting time at the end of each day. Although the current billing software may not be ideal for this recommendation, many software and app solutions can meet this goal.

### C. Types of legal work affect billable hours

**Issue:** Interviews and survey responses and our analysis of billed time show that the nature of the work associated with various types of legal practice has a significant impact on the productivity of attorneys and paralegals.

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<sup>3</sup> <https://www.americanbar.org/groups/litigation/committees/commercial-business/practice/2017/5-billing-tips-for-young-lawyers/>

<sup>4</sup> <https://www.thebalancecareers.com/common-legal-billing-mistakes-2164701>

**Support:** Attorneys state that work that requires large blocks of time (travel, trials, depositions, board meetings, hearings, motions, or other activities) support effective and complete billing (p.23). They state that during times of high billing (including times where they were earning compensatory or "comp" time), they had significant cases or deadlines, in which they would work weekends to prepare for hearings, travel, attending hearings, etc.

Attorneys state that during some of the times their billing fell below expectations, they were waiting on a decision from the court and were reluctant to accept new cases until the decision was made.

Paralegals state they are more productive when their attorneys have cases requiring intense activities. They state they are less productive when the co-counsel has support staff and there is less work for ALSB paralegals.

An analysis of the billable time vs. leave time from September 2018 – September 2019 reveals that the correlation of time available to work in a month (less weekends and holidays, and assuming 8 hours a day) was .2451 (.2907 excluding the Bureau Chief) compared to time billed in a month. This means that less than 25% of the time attorneys' billable hours reflect how much time is available to bill that month. This low correlation shows that the time available to work in a month is not the primary driver for productivity. This leaves a reasonable assumption that the primary driver for time billed in a month is highly correlated to the nature of the work required for cases worked that month.

**Recommendation:** When possible, assess the nature of work required by a new case to determine how it fits with a potential assignees' current work requirements. Perhaps incoming work that will not involve large blocks of productive (billable) time could be assigned to attorneys who otherwise have cases involving large blocks of productive time.

#### D. Delegating and workflow

**Issue:** Certain interviews and survey responses indicate work is inconsistently and ineffectively delegated from attorneys to paralegals or support staff and that more effective delegation in this regard would otherwise increase paralegal and support staff productivity. Lack of effective delegation to legal support staff may also present a barrier to attorneys accepting new cases.

**Support:** Attorneys state they require adequate and quality paralegals and administrative staff support to complete unbillable tasks for them to be more productive (pg. 23). Paralegals shared that when attorneys keep billable duties rather than delegating them, which may be appropriate in some cases, it prevents them, in part, from meeting billable goals (pg. 28). Paralegals also shared that when they work for three attorneys, compared to two, or if those attorneys are high performing, with several cases being worked, they are much more productive (pg. 28).

The analysis of billable time vs. leave time from September 2018 – September 2019 shows that attorneys averaged 103.3 hours a month of billable time compared to paralegals who averaged 64.2 hours (including only months that had billable time recorded). This means that on average, attorneys are billing only about 62% of their work time, and paralegals are only billing 38% of their work time when the goal is 66% for each.

**Best Practices:** An article by Sally Kane (2019) recommends that delegable tasks should be assigned to the appropriate level staff member so that attorneys are not billing for digesting depositions or performing routine research that could be accomplished by paralegals.

**Recommendation:** The attorneys recommend delegating tasks when they can, such as data entry, conference reconciling,<sup>5</sup> and other non-billable tasks, as well as, time organizing/scheduling, and printing (pg. 24). They state that paralegals with the proper training can perform investigations, conduct records research, contact clients, create a summary of records, pull relevant dates and issues, perform citing, etc., as well as drafting initial stipulations and answering questions about cases while being the main point of contact with clients (pg. 29).

Additionally, the attorneys recommend introducing an additional lower billing rate for some work performed by paralegals and work performed by administrative staff to capture the lower level work that benefits clients (pg. 25), increase overall billing, and ensure proper reimbursement for operational costs. This offers the benefit of increasing their productivity while saving a higher rate for the clients for suitable work.

#### E. Technology influences efficiency positively

**Issue:** Interviews and survey responses indicate attorneys feel they do not always have the tools or flexibility necessary to be productive during "waiting" times.

**Support:** Some of the attorneys shared that there are times when they are not in the office and waiting for a meeting, court time, or other activity, and they do not have the means to be productive while waiting (pg. 28). They expressed appreciation for tools required to work remotely.

**Recommendation:** The attorneys appreciate access to the tools needed to be productive during otherwise unproductive times in their day and would like to enhance the flexibility to work in different locations (pgs. 23 & 28). These tools include a laptop, docking station, etc., and the flexibility in their daily schedule.

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<sup>5</sup> One interviewee indicates conference reconciliations are important to ensure all billable time is captured and to ensure consistency in client billing.

#### F. Technology influences efficiency negatively

**Issue:** Interviews and survey responses indicate deficiencies in the billing software or lack of support to correct software issues create additional steps to complete a task or result in long wait periods for solutions. Also, inconsistent document management, such as using case names compared to case numbers creates inefficiencies in researching information for external requests or searching the archive for information.

**Support:** Staff shared that the current software works fine for tasks involving chunks of time (e.g., briefing), but not for client counseling, phone calls, emails, etc. A few interviewees stated, "software with multiple client time tracking, research, and file management is how we are trained in law school (pgs. 28 & 29)." Participants also state document management is an issue in the N drive because we do not have version control, which is problematic when there is turnover or people come into or go out of a case (pg. 29).

**Recommendation:** The staff recommends replacing CMS with a billing system that includes adequate time and file management functionality. An attorney also recommended creating a brief bank like the Tom Bowe library. If changing CMS is not likely or is a long-term project, recommendations include investing in a more valuable time tracking technology as soon as possible and getting improved support from State Information Technology in improving the system (e.g., document templates).

#### G. Working a consistent/predictable schedule

**Issue:** Interviews and Survey responses indicated not all staff have a strategy to work a consistent/predictable schedule free from distractions and multiple transitions.

**Support:** Attorneys indicated that they are more productive when they can work a consistent/predictable schedule free from distractions and multilabel transitions (pg. 27). They shared that their productivity is negatively impacted by unpredictable or unanticipated work, questions about bills, assisting other attorneys, etc. (pg. 28). Some said they are more productive when they can start and end work at consistent times, being able to work with the door closed, and saving emails and phone calls for blocks of time. Overall, staff shared that there needs to be a balance for office socializing and informal stop-ins, which are still an important part of the work environment but need to be reduced during productive times of the day.

**Recommendation:** Have a group discussion with the attorneys, paralegals, and administrative staff to create working agreements about productivity. Invite the team to share what allows them to be productive, how they can help others be productive, and how they can focus on the social culture of the office. As a part of this conversation, create a set of standards to meet as many needs as possible. Also, create clarity about the expectations of when to start and end work.

#### H. Communication about the billable goals and metrics

**Issue:** Some interviews and survey responses perceive that the expectations for billable hours (i.e., what types of activities should be billed) are unclear, and staff makes a choice, not to bill activities that may be billable because of their understanding of the policy/standard.

**Support:** Attorneys shared that they do not understand how the 112 hours of billable time works when they take a vacation or in months with several holiday days (pg. 28). Paralegals and administrative staff shared that they do not include billable activities (that are billable in other firms) because of their understanding of the policy/billing standard (pg. 30). Vacation and leave were repeatedly mentioned in the survey to justify low billing hours for a given month. Some participants indicate they perceive that the 112 hours per month target does not consider holidays, vacations, and other leave (pg. 28).

An analysis of the billable time vs. leave time from September 2018 – September 2019 revealed that there is consistently a dip in billable hours in the months during and following a 40 hour or more vacation. Attorneys and paralegals both shared that billable time drops during months with vacations (pg. 28). Attorneys shared that when they take vacation, they take on less work because they want to allow time for their time away. Therefore, it takes until approximately the third month after the vacation for their billable hours to rebound (Attachment DOJ-ALSD 10-year projection worksheet - Real Three-Month Rolling Average).

On March 12, 2020, the administrator indicated the monthly 112 billable hour expectation is measured using a three-month average. However, the staff participants did not indicate awareness of this measurement period during the earlier interviews and surveys.

**Recommendation:** Create a standard or policy that clearly explains the billable hour expectation, how it is measured (e.g., using a three-month average), and how using vacation time impacts the billable hour expectation, with examples. Also, create agency-specific standards or policies, or update any informal rules to outline activities that are billable, and which are not for paralegals and administrative staff. Based on discussions with leadership, it appears management has communicated these standards in the past, but having a clearly articulated, reinforced, and consistently communicated standard will support staff in meeting this goal, and set the stage for incentives for attorneys consistently meeting or exceed the goal and management intervention if the goal is not being met.

#### I. Productivity standard – billable time expectations

**Issue:** Evaluation of staff billing histories indicate that several staff members are not meeting the productivity goal of 112 billable hours per month. Review of financial data indicates bureau revenue is not currently covering costs. The data indicates raising the billable goal to 120 hours a month alone will not solve this issue. As mentioning in the preceding section, several staff are unclear on the method used to measure the billable

goal, and participants indicate there are no incentives for meeting the goal or consequences for failure to meet the goal.

**Support:** Attorneys consistently shared that they know the billable goal of 112 hours per month, but no one shared the methodology behind how their success is measured or how they are held accountable this goal. From the assessment, it is unclear whether the 112 billable hours a month is based on an average per year or a rolling average over three months.

The analysis of Billable time vs. Leave time from September 2018 – September 2019 shows that attorneys averaged 100.41 hours a month of billable time (excluding the outliers of the Bureau Chief and a top-performing attorney). This means the remaining eight attorneys are not billing an average of 112.59 hours per month, which is the estimated time available based on the analysis is Appendix 5.

**Recommendation:** Create a single standard of how management measures the monthly billing expectation and ensure this standard is clearly communicated to all staff. This standard should be used in the goal setting and performance management processes to support attainment of billable hour expectations.

**Average Hour Billable Expectation Analysis:** Analysis of the Billable time vs. Leave time from September 2018 – September 2019 shows that attorneys averaged 103.3 hours a month at \$106 per hour of billable time, including the Bureau Chief. Paralegals averaged 64.24 hours a month at \$62 per hour, which equals \$1,436,315 of revenue. Whereas, if 112 a month was the average for attorneys and paralegals<sup>6</sup>, income would equal \$1,733,808. (Assuming a headcount of 8 attorneys, 1 bureau chief at 60%, 5 paralegals, 1 legal secretary as in FY 2018.)

Table 1 below shows the actual hours and revenue for FY 2018 compared to revenue if all staff billed 112 hours per month.

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<sup>6</sup> This is based on the assumption the standard for paralegals is 112 hours per month, which should be verified by leadership.

**Table 1: FY 2018 Actual Hours Compared to 112 Hours**

Position	Actual Hours and Revenue FY 2018			FY 2018 Hours and Revenue Based on 112 Hours per Month All Staff		
	FY 2018	Jul-Jun		FY 2018	Jul-Jun	
	Hours	Revenue		Hours	Revenue	
Attorney	1,416	\$150,096		1,344	\$142,464	
Attorney	1,258	\$133,369		1,344	\$142,464	
Attorney	1,295	\$137,249		1,344	\$142,464	
Attorney	1,886	\$199,948		1,344	\$142,464	
Attorney	1,302	\$138,044		1,344	\$142,464	
Bureau Chief	846	\$89,665		888	\$94,128	
Attorney	878	\$93,095		1,344	\$142,464	
Attorney	1,281	\$135,765		1,344	\$142,464	
Attorney	997	\$105,735	\$1,182,965	1,344	\$142,464	\$1,233,840
Paralegal	1,223	\$75,820		1,344	\$83,328	
Paralegal	535	\$33,195		1,344	\$83,328	
Paralegal	1,007	\$62,409		1,344	\$83,328	
Paralegal	15	\$936		1,344	\$83,328	
Paralegal	183	\$11,346		1,344	\$83,328	
Paralegal	1,123	\$69,645	\$253,351	1,344	\$83,328	\$499,968
<b>Total Revenue</b>			<b>\$1,436,315</b>	<b>Total Revenue</b>		<b>\$1,733,808</b>

*Special Note: This analysis calculates revenue in the month they are counted as a billed hour and will differ from financials, which derives revenue in the month it is received from the client.*

An increase to 112 hours billed per month by attorneys and paralegals (i.e., all staff consistently meeting the target) would increase revenue by approximately \$297,492 a year. Using actual financial and headcount numbers from FY 2018, this increase in hours billed would cover the total expenses and contribute to the department's cash reserves goal of \$297,492.

Table 2 below shows the Actual FY 2018 Costs and Revenue compared to the costs and revenue if all staff worked 112 hours per month. This analysis assumes that since costs are based on salaries and overhead expenses, which are typically fixed, they would likely not fluctuate much under either scenario. Revenue varies significantly based on hours billed. The table includes the following figures:

- "Personnel" is Personal Services and includes actual wages plus leave, comp time, and employee benefits. A complete list and amounts are provided in Appendix 4.
- "Expense" is Operating Expenses and includes supplies and materials, communications, travel, rent, repair and maintenance, and other expenses. A complete list and amounts are provided in Appendix 4.
- Table 2 also includes a "Pass Through," which is the actual amount billed to clients in FY 2018 and is used as a deduction below.

Table 2: FY 2018 Costs and Revenue: Actual Compared to 112 Hours/Month All Staff

Actual FY 2018 Costs and Revenue		FY 2018 Costs and Revenue Based on 112 Hours Per Month All Staff	
FY 2018	Actual Costs		If 112 Avg Billed
Personnel	\$ 1,428,163	Personnel	\$ 1,428,163
Expense	\$ 275,902	Expense	\$ 275,902
Total Cost	\$ 1,704,066	Total Cost	\$ 1,704,066
<b>Revenue</b>	<b>\$ 1,436,315</b>	<b>Revenue</b>	<b>\$ 1,733,808</b>
Pass Through	\$ 100,635	Pass Through	\$ 100,635
Total Revenue	\$ 1,536,950	Total Revenue	\$ 1,763,323
<b>Total</b>	<b>\$ (167,115)</b>	<b>Total</b>	<b>\$ 130,377</b>

Further information regarding billing rates is included in the following section III.

### III. Agency Legal Services Billing Rates

#### A. Introduction

The assessment also involved recommending ALSB service fees that cover costs. The assessment indicates current ALSB service fees are not sufficient to sustain operations. The analysis findings from September 2018 – September 2019 Business Assessment Analysis of Billable Time (Appendix 3) and Cost Per Hour Analysis (Appendix 4) provide insights into why the current billing rate is not sustainable.

#### B. Current fees Agency Legal Services Bureau Rate Increase History

Since 1999, increases to ALSB's billable rate have averaged 8.10% per increase (ranging from as little as .5% to 13.4%). The increase periods are irregular, with some periods between increases being as short as one year, and other periods being as long as four years. In contrast, the Consumer Price Index (CPI) increased steadily over the period. The state also saw regular state employee (legislative) wage increases throughout the period.

The periods and amounts of increases resulted in the ALSB being underfunded for some periods. For example, a November 2012 Legislative Audit Division report states that "The fees charged by ALSB during fiscal years 2011 and 2012 did not cover all of the costs of providing the services as required by state law." The report states that "Hourly rates for attorneys and investigators were increased for the 2011 biennium to \$93 and \$53, respectively. Based on our analysis and the increasing negative fund balance, this increase was not sufficient to correct the shortfall. As part of the budget preparation for the 2013 biennium, department personnel determined the ALSB's rates needed to be raised to \$105 for attorneys and \$63 for investigators. However, the rate increases were not approved by the Governor's Office, and the rates remained at the 2011 levels. The department

continued to seek rate increases and proposed a \$5.00 an hour increase for both attorneys and investigators for the 2015 biennium. Still, only a \$2.50 an hour increase was approved for submission with the Governor's budget."

The ALSB was successful in implementing a meaningful increase effective July 1, 2015. This increase resulted in excess reserves allowing the ALSB to offer critical training to attorneys and to buy needed equipment. The Bureau also returned excess revenue to clients by providing discounts (in early to mid-2017).

Table 3 on the following page shows ALSB's attorney rate billing history from July 1, 1999, to the present. The table shows the increases expressed as both an hourly rate and a percentage. The table also includes corresponding increases in the Consumer Price Index (CPI) and State Employee Executive Branch legislative increases during the periods.

**Table 3: ALSB Attorney Billing Rate History**

Period	Hourly Billing Rate	\$ Increase (from period to period)	% Increase (from period to period)	CPI West Increase (during the period)	State Employee Pay Increases (during the period)
July 1, 1999 to June 30, 2001	\$62.00			7.4%	5.0%
July 1, 2001 to June 30, 2003	\$70.00	\$8.00	12.9%	3.4%	7.0%
July 1, 2003 to June 30, 2006	\$71.80	\$1.80	2.6%	9.6%	5.0%
July 1, 2006 to June 30, 2007	\$74.00	\$2.20	3.1%	2.9%	3.8%
July 1, 2007 to June 30, 2009	\$84.00	\$10.00	13.5%	3.4%	7.8%
July 1, 2009 to June 30, 2013	\$93.00	\$9.00	10.7%	7.6%	3.6%
July 1, 2013 to June 30, 2015	\$93.50	\$0.50	0.5%	3.4%	5.0%
July 1, 2015 to present (Jan. 2020)	\$106.00	\$12.50	13.4%	11.0%	5.4%

C. [Determination of expense vs. billable rate](#)

**Issue:** The assessment indicates there is an opportunity to develop a more rigorous and consistent method for determining expenses associated with operating the ALSB and for determining an appropriate billable rate for attorneys, paralegals, and possibly support staff to cover all costs and maintain an appropriate internal service fund reserve.

**Support:** The assessment indicates there has not been a recent break-even analysis to determine ALSB service fees. Current justification for raising the billable rate focuses on the fact that it has not been done since 2015. The assessment indicates there are additional data points that justify the increase, and that these data points can be used in the future to ensure internal service fund fees and charges for services are commensurate with costs.

The assessment also indicates that regular analysis of costs and revenue in relation to service fees could result in more regular, predictable, and incremental increases, which may make it easier for ALSB to manage its internal service fund and easier for client agencies to budget for periodic increases.

**Analysis:** Using the Personnel Services and Operating Expense from FY 2018 for eight attorneys and five paralegals, one legal secretary, and one bureau chief, the Table 4 on the following page shows the cost per hour using the actual hours billed in 2018 (attorneys 10,425 hours and paralegals 4,086 hours). Table 5 shows the cost per hour if both attorneys and paralegals billed an average of 112 hours per month (Appendix 4).

The tables include the following figures:

- “Revenue” represents the hourly rate billed to clients for each service category.
- “Personal Service Cost” includes actual wages plus leave, comp time, and employee benefits. A complete list and amounts are provided in Appendix 4. Personal Services Cost represents total personnel services cost divided by total billed time.
- “Operating Expense” includes supplies and materials, communications, travel, rent, repair and maintenance, and other expenses. A complete list and amounts are provided in Appendix 4. Operating Expense represents total operating expense divided by total headcount of attorneys and paralegals.
- “Cost per hour” is Personal Services Cost plus Operating Expense.
- “Revenue per hour” is hourly billable rate minus cost per hour.

The revenue deficit in Table 5 is lower than Table 4 because attorneys and paralegals have more billable hours among which to spread the cost of Personal Services and Operating Expenses.

**Table 4: Attorney and Paralegal Costs per Hour for Actual Hours Billed in FY 2018**

<b>Cost FY 2018 Per billed hour</b>	Revenue	Personnel Service Cost	Operating Expense	Cost Per Hour	Revenue Per Hour
Attorney	\$112	\$106.69	\$23.06	\$129.75	<b>-\$23.75</b>
Paralegal	\$62	\$62.95	\$23.06	\$86.01	<b>-\$24.01</b>

Table 4 illustrates that the current revenue, based on the current hourly rates for service and the actual hours billed by employees is not sufficient to cover costs. The current hourly rate falls significantly below the cost for providing service.

**Table 5: Attorney and Paralegal Costs per Hour if Each Billed an Average of 112 in a Year**

<b>Cost FY 2018 If 112 HR Avg</b>	Revenue	Personnel Service Cost	Operating Expense Cost	Cost Per Hour	Revenue Per Hour
Attorney	\$112	\$95.56	\$23.06	\$118.62	<b>-\$12.62</b>
Paralegal	\$62	\$31.90	\$23.06	\$54.96	<b>\$7.04</b>

Table 5 illustrates that even if staff were billing, on an overall average, 112 hours per month, the hourly rate is still insufficient to cover the cost of providing attorney services. The analysis indicates that current revenue shortfalls result from two factors: 1) employees are not consistently billing 112 hours per month, and 2) the current rates for attorneys and paralegals are insufficient to cover ALSB costs. The analysis also indicates that even if all ALSB staff were billing 112 hours per month, the hourly rate for attorneys is still insufficient to cover costs.

**Recommendation:** The assessment indicates that the ALSB, in conjunction with the Department of Justice Centralized Services Division should develop a rigorous and consistent method for determining expenses associated with operating the ALSB and for determining an appropriate billable rate for attorneys, paralegals, and possibly support staff.

In forming this method, the ALSB should consider the following recommendations to ensure all expenses associated with operating ALSB are considered in the rate recommendation:

- Conduct a break-even analysis to determine the price charged per billable hour based on variable cost per billable hour, and fixed cost allocation.
- Move 60% of the Bureau Chief's salary to overhead because they are only able to bill 40% of their time.
- Include legal secretary and any other administrative or supervision staff wages and other costs in the overall expenses to provide a more accurate overhead allocation.
- Ensure all expenses, including attorney training, non-billable time (e.g., for meetings and administrative tasks), and turnover costs (e.g., training, recruitment, selection, etc.) are consider in addition to direct costs when determining billable rates.
- Develop and propose a process for regular rate setting each biennium based on a cost assessment, staffing levels, and anticipated client utilization (e.g., processes used by other internal service funds).
- Update the hourly cost of an attorney for consideration of a new billable rate.

The method and process should include consideration of the requirements in Montana Operations Manual 2-0280.20, Working Capital Used for Budgetary and Rate Purposes (Appendix 6), and the need to maintain adequate reserves to support operations.

Additional recommendations regarding the process and mechanism for regular fee review is provided in the following Section D.

D. The mechanism for regular fee review

Following is a suggested mechanism for conducting a break-even analysis. This method can be used in conjunction with the 10-year projection worksheet provided with this report.

The traditional formula for a break-even analysis is: Variable cost per billable hour and fixed cost allocation divided by total billing goal for the total headcount (i.e., full-time equivalent or FTE) equals the cost per billable hour.

The calculation would be completed separately for attorneys and paralegals.

<p>Formula</p> <p>(goals for hours billed/annual personnel services cost)          + (goals for hours billed/annual operating expense)          = Total cost per hour</p>	<p>Solved for Parentheses</p> <p>Hourly personnel cost          +hourly operating expense          =Total cost per hour</p>
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<p>Example - Attorney Formula</p> <p><math>(11,640^7/1,112,261^8) +</math>  <math>(11,640/276902^9) =</math> Total cost per hour</p>	<p>If 112 Avg Billable Hr</p> <p><math>95.56 + 23.06 = 118.6</math></p>
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Example in Table 6 for FY 2018, based on 112 average billable hours.

**Table 6: Total Revenue per Hour Based on 112 Average Billable Hours**

<b>Proposed 112 HR Avg</b>	Hours Billed	Cost	Hourly Cost if 112 HR Avg Billing	Hourly Operating Expense	Total Cost per Hour	Hourly Billing Rate	Revenue Per Hour
Attorney	11,640	\$1,112,261.00	\$95.56	\$23.06	\$118.62	\$106.00	-\$12.62
Paralegal	8,064	\$257,226.00	\$31.90	\$23.06	\$54.96	\$62.00	\$7.04

To impact revenue per hour, the three variables that can be changed are headcount, average billable hours, or hourly billing rate.

The **attached 10-year projection worksheet** is a tool that can be used to create a 10-year projection for a billable rate for attorneys and paralegals, while accounting for percent increases to wages and CPI. The yellow fields in the tool are intended to be adjusted to refine the projection.

<sup>7</sup> Total anticipated annual billable hours (goal)

<sup>8</sup> Total annual personal services costs

<sup>9</sup> Total annual operating expenses

Inputs:

- Headcount represents the head count for each position and can be adjusted to modify cost for total headcount.
- Proposed hours are the goal for average billable hours for each position.
- Billable rate is the rate that will be billed for each position.
- Personnel Services and Operating Expense are actual numbers for FY 2018 and are used in the assumptions below.
- CPI and Wages can be adjusted to estimate the average increase in these area's over the next 10-years.

**Table 7: Excerpt 1 from 10-Year Projection Worksheet**

	Headcount	Proposed hours	Billable Rate		Personnel Services	Operating Expense		Percent Increase
Attorney	9	112	\$ 121.00		\$ 1,112,261	\$ 215,089	CPI	2%
Paralegal	5	112	\$ 71.00		\$ 293,405	\$ 119,494	Wages	5%
Legal Secretary	1	0	\$ -		\$ 59,721			

- Percent Increase to Billable Rate can be adjusted for each year up to 2030 to allow for different adjustments each year to reach Reserve Goals.

**Table 8: Excerpt 2 from 10-Year Projection Worksheet**

	Hours Billed	Personnel Services	Operating Expense	Total Cost	Total Revenue	Annual Income	Total Income	FY	Percent Increase to Billable Rate	Reserves Goal	Reserves	Beyond Reserves
Attorney	12,022	\$ 1,112,261	\$ 215,089	\$ 1,327,350	\$ 1,463,616	\$ 136,266						
Paralegal	6,720	\$ 293,405	\$ 119,494	\$ 412,899	\$ 477,120	\$ 64,221	\$ 200,487	2020		\$ 290,042	\$ 200,487	\$ (89,555)
Attorney	12,022	\$ 1,135,661	\$ 219,391	\$ 1,355,052	\$ 1,463,616	\$ 108,564						
Paralegal	6,720	\$ 308,075	\$ 121,884	\$ 429,959	\$ 477,120	\$ 47,161	\$ 155,725	2021	0%	\$ 297,502	\$ 356,212	\$ 58,710
Attorney	12,022	\$ 1,192,444	\$ 223,779	\$ 1,416,223	\$ 1,522,161	\$ 105,938						
Paralegal	6,720	\$ 323,479	\$ 124,322	\$ 447,801	\$ 496,205	\$ 48,404	\$ 154,342	2022	4%	\$ 310,671	\$ 510,554	\$ 199,884
Attorney	12,022	\$ 1,252,066	\$ 228,254	\$ 1,480,321	\$ 1,583,047	\$ 102,727						
Paralegal	6,720	\$ 339,653	\$ 126,808	\$ 466,461	\$ 516,053	\$ 49,592	\$ 152,319	2023	4%	\$ 324,464	\$ 662,873	\$ 338,409

Assumptions:

- The tool uses FY 2018 financials because it was the last full set of annual data available.
- Attorney headcount includes one attorney as a bureau chief at 44% productivity.
- Personnel Services for all staff will move at the same rate represented by the editable field of Wages.
- Operating Expense are divided by headcount of total staff and are the same regardless of position. The tool also assumes all cost move at the same rate represented by the editable field of CPI.
- Reserves' goal is 60 days of total expenses.

**Recommendation:** The average increase for the billable rate needs to keep pace with increases in staff wages and increases in the cost of goods and services necessary for operations (84% Personnel Services - Wages, 16% Operating Expenses - CPI) after an initial market correction adjustment. Billable rate projections should also consider the need to maintain an appropriate working capital reserve to support operations.

The attached 10-year projection worksheet will serve as a starting point. It should be refined in conjunction with ALSB management and DOJ CSD. Once finalized, the spreadsheet can be regularly updated with new inputs (wages, CPI, etc.).

There is a planned 50 cent per hour increase for all state employees in January 2021 (\$1040 per employee). There are also an anticipating career ladder increases for most of the attorneys, resulting in an estimated overall 8% increases in wages to attorneys.

With these thoughts in mind, the recommended method includes the following actions with an assumed CPI increase of 2% a year and 5% wages increase per year after 2021:

- 2021- Increase the billable rate for each position by 15% to \$121 for attorneys and \$71 for paralegals.
- 2021 – Based on planned wage increased, add \$23,400 to total Personnel Services cost (\$1040 per person wage increase plus benefits).
- 2022 – Lobby for a 4% increase per year to billing rate for both attorneys and paralegals to support a sustainable revenue for ALSB.
- 2022 – Use the revenue that is beyond reserves to support capital investments into additional headcount and operational improvements, e.g., computers, software, office improvements, etc.

The suggested method and spreadsheet represent a starting point for developing a rigorous and consistent method for conducting a break-even analysis and determining appropriate ALSB billing rates. CMS recommends that ALSB leadership and DOJ Centralized Services staff evaluate this method and tool to determine their adequacy. Based on this evaluation the agency can modify this tool or develop a more appropriate method and spreadsheet going forward. The intent of the recommendation is to initiate a process and method that captures all relevant costs and that can be updated as costs and other factors (e.g., headcount) change.

## IV. Conclusion

The preceding report summarizes the assessment findings and recommendations and provides a roadmap for implementing business process efficiencies and updating ALSB service rates.

Due to the volume of data collected and considered, CMS attempted to synthesize the key themes and focus on the areas CMS feels are actionable and feasible. CMS recommends that bureau and division leadership evaluate the documentation attached to the report to verify our conclusions and recommendations, and to draw its own conclusions regarding the assessment data.

### A. Business process improvements

The report recommends several business process improvements based on information from assessment participants. CMS recommends leadership review these recommendations to identify those they feel are realistic, feasible, and that will materially improve operations.

One issue that came up several times in the interviews was the need to better define and reinforce the culture of the bureau. Participants state that one of the factors that attracts talent to the ALSB is the ability to maintain an appropriate work/life balance while performing a variety of interesting, consequential, and challenging legal work. Staff expressed a concern that leadership be mindful of this benefit to working at ALSB when considering changes to business processes, billing expectations, or the work environment.

ALSB staff recommend that leadership look at the impact of billing practices and billable targets not only from the perspective of revenue, but also how these practices relate to client relations and the culture of the ALSB. The interviews indicate billing practices and targets are also policy and climate shapes, client communication tools, performance evaluation tools, and the basis for incentives or management intervention. Staff also suggested that billing could be impacted by attorney personalities, with some attorneys who do not realize the value of their time being more inclined to write-off or not record time that could otherwise be billable.

Once management reviews potential business process improvements, CMS recommends that leadership develop a documented plan for implementing adopted improvements. This will ensure staff involvement and buy-in in any changes resulting from their input and ensure that any changes are implemented in a logical and timely manner. The plan can include specific strategies and objectives for implementation of adopted recommendations.

### B. Billing Rate Adjustments

The report provides a detailed analysis of costs associated with ALSB operations and justification for a rate increase proposal for the coming biennium. CMS recommends that ALSB critically evaluate this data and justification in conjunction with the Department of Justice Centralized Services Division to formulate Executive Planning Process and Legislative

proposals for rates that will ensure compliance with state law requiring that internal service fund fees and charges for services are commensurate with costs.

Future billing rates should also consider increases in the cost of goods and services, legislative increases to state employee wages, and the Legal Services Division's current initiative to implement career ladders and advancement opportunities for attorneys and support staff.

Finally, CMS recommends a legislative proposal that would enable the ALSB to conduct periodic cost and revenue reviews and to adjust service rates accordingly. If the legislature is amendable to agreeing on the process and inputs for such analyses and updates, it may not be necessary to submit a legislative proposal each time rates should be updated to maintain compliance with state law and requirements for operating reserves.

#### C. Staff communication and engagement

Although ALSB staff are very busy and have numerous demands on their time, the attorneys, paralegals and support staff interviewed expressed appreciation for management's interest in their input. CMS greatly appreciates their contributions as well as the contributions, guidance and consideration provided by ALSB and Legal Services Division Leadership and by Department of Justice Human Resources and Financial staff.

CMS recommends that after leadership has the opportunity to review and evaluate the findings and recommendations in this report, a communication go out to employees thanking them for their participation and informing them of any internal (business process improvements) or external (legislative proposal) initiative resulting from the assessment. Particularly with the business process improvements, CMS feels it is important that the staff know their voices were heard and that management values their input and will act on it where feasible and appropriate.

CMS would like to thank Department of Justice staff and leadership for their support of and involvement in this study. CMS appreciates leadership's willingness to listen to and act upon recommendations from staff. CMS is grateful for the opportunity to support ALSB and will stand ready to assist with any of the recommended actions documented in this report or otherwise determined by leadership.

## Appendix 1: ALSB Staff and Leadership Survey Summary

### The Survey

The survey consists of a series of 13 primary items used to assess aspects of how the organization bills, as well as feedback and suggestions, to improve billing practices. The items had open comment boxes to allow the participant the freedom to share their thoughts without leading questions.

### Response Rate

The response rate to the survey is your first indication of the level of energy your employees are willing to put towards this improvement effort. Of the 15 employees invited to take the survey, 12 responded for a response rate of 80%. Generally, rates higher than 50% suggest soundness, while rates lower than 30% may indicate problems. At 80%, your response rate is considered high.

### Survey Responses

The responses are organized into attorneys and paralegals. Administrative only had two responses, so when their responses were not represented in the attorneys and paralegals responses, they were added into the paralegal group. Responses are organized into themes and summarized to combine responses. Comments there were out of scope were not recorded below.

### What is your percent productivity goal (i.e., what percent of your overall time should be billable)?

#### Attorneys

- Average of 80%
- High of 100% and a low of 70%

#### Paralegals

- Average of 75%, with a
- High of 75% and a low of 65%

### Concerning meeting billable goals, which activities and behaviors allow you to meet your billable goal successfully?

Attorneys indicate the following activities and behaviors support them in meeting billable goals:

- Having adequate and quality paralegal support to reduce unbillable tasks.
- Flexibility to work when/where it is quiet (e.g., early morning or from home).
- Breaking goals into smaller units (weekly and daily) and totaling hours daily and weekly.
- Using better time tracking practices, such as a timer and notebook (including excel), to record billable time promptly.
- Recording non-billable time and significant events affecting billable time (training/orienting others, personal appointments, board meetings, etc.)
- Consistently having enough work.
- Prioritized billable tasks and learn how to take advantage of small blocks of time.

Paralegals and Administrative Staff indicated the following activities and behaviors support them in meeting billable goals:

- Learning more paralegal functions (administrative).

- Being assigned large projects, e.g., indexing records, preparing to answer discovery, initial disclosures, summary judgment preparation, preparing for, and attending trials.
- Receiving specific direction to complete billable tasks and communicate with attorneys when we have time for more work.
- Training administrative staff to do more non-billable work.

### **What activities and behaviors prevent you from meeting your billable goals?**

Attorneys shared the following activities and behaviors that stop them from meeting billable goals:

- Poor time tracking practices, and it takes time to track time, including needing to wait until the end to check paralegal time, and CMS is difficult to use to track time promptly.
- Administration work and completing too many paralegal-appropriate tasks, including too many meetings, professional development activities, conferences, and work that requires excessive briefing.
- We need to establish stronger routines, improve workflow, a changed deadline with consequences takes precedence over soft deadlines with no consequences.
- We are also cautious to not overbill.
- Other activities that are distracting are office socializing, low levels of work, and outside personal responsibilities.

Paralegals and Administrative Staff shared the following activities and behaviors that stop them from meeting billable goals:

- Office responsibilities such as the time needed for new staff training, answering questions about office processes, responding to emails, and being assigned other non-billable tasks.
- At times we forget to track billable time.
- Other activities that are distracting are office socializing, low levels of work, and outside personal responsibilities.

### **Would you like to stop doing concerning meeting your billable goal, and what is blocking you from stopping these behaviors and activities?**

Attorneys suggested, and are interested in learning more about how to better support productivity:

- Reducing data entry task, conference reconciling, and other non-billable tasks completing non-billable tasks, such as time organizing/scheduling, printing after hours, and over discussing no-bill time. We are concerned that no one else will do these tasks.
- Find a balance for office socializing, which we know is also important for the work environment.

The recommendations from Paralegals and Administrative are captured in other responses and are interested in learning more about how to better support productivity.

**When attorneys, paralegals, and administrative staff were asked, they suggested that the following items that are considered not billable but should be billed?**

Attorneys suggested:

- Work completed by legal secretaries that paralegals could complete (e.g., proofreading, blue booking, sherardizing briefs), prepping hard copy filings, mailing, etc.
- Bill at a lesser rate for paralegals and lower for a legal secretary (we need a better way to discount).

Paralegals and administrative staff suggested:

- Time searching for an example and motor pool charges.
- Some clients are put off by multiple short-duration entries, so we need a better process to capture these billable items.

**Productivity suggestions proposed by the Bureau Chief resulted in these recommendations.**

Attorneys shared:

- Several of us agree with the suggestions, and some have tried to put them into practice.
- These suggestions do not help us use excess/mandatory leave.

Paralegals shared they agree with the suggestions, noting they are limited to work attorneys give them, and these suggestions do not help with vacation time.

**Attorneys, paralegals, and administrative staff were asked what ideas do you have to improve billing practices for the office?**

Attorneys shared the following suggestions:

- Replace CMS and add a timer into billing software.
- Have a discussing about the ethical issues around billing, reviewing paralegal time, create standards for discounting, and time making billing a priority.
- Create a better understand of the billing process and review deadlines with consequences each week.
- Share how billing is also a method of communication with clients, more education on effective time-tracking strategies.

Paralegals and administrative staff also suggested improving CMS, but use excel to improve time entry into CMS until then.

**What is one process we can improve here?**

Attorneys shared:

- Create standards for a process and policies on everything.
- Improved expectations and work with paralegals.
- Find a better way of assisting attorneys with maintaining a busy but manageable caseload, and do a better job cross-pollinating our tasks and knowledge within the Bureau.
- Create a brief bank like the Tom Bowe library.
- Billing conferences should be more streamlined.

Paralegals and administrative staff suggested changing CMS.

**What are some ways that we can improve communication in ALSB?**

All three attorneys, paralegals, and administrative staff suggested regular staff meetings, being open to change and new ideas, consistency, and communicating about general resources from agency clients.

Attorneys also suggested:

- Sharing work burdens, how cases get assigned, and developing standards as a team.
- Come together for celebrations and Friday coffee traditions.

**Name (optional). Include your name if you would like us to specifically follow-up with you on any issue or suggestion presented in the survey.**

Lauretta Briscoe, Sarah, Chris Abbott, Kristen Madsen

**Note:** Vacation and other leave were repeatedly mentioned to justify low billing hours. Responses noted that 112 a month does not consider vacations and leave.

## Appendix 2: ALSB Staff and Leadership Interviews Summary

### The Interviews

The survey consists of a series of four primary items used to gain deeper insight into the survey results, as well as collect feedback and suggestions about that individual's productivity. The items were asked verbally in a private one-on-one setting. The interviewer took notes during the interview.

### Responses

Of the 15 employees invited to take the survey, 12 responded to the survey, and 11 were interviewed. We did not access if the 11 who were interviewed were only from the 12 who responded to the survey.

### Interview Responses

The responses are organized into attorneys and paralegals. Administrative only had two responses, so when their responses were not represented in the attorneys and paralegals responses, they were added into the paralegal group. Responses are organized by the interview questions and summarized to combine responses. Comments there were out of scope were not recorded below.

All responses are listed without priority, however, the number before a summary is how many times a similar comment was made (e.g., 3 means that responses or other responses like it was made 3 times). The numbers include attorneys, paralegals, and administrative staff responses regardless which group they are reported in (e.g., if 2 attorneys and 1 paralegal said has the same response, there is a 3 in the attorney response). One person may have made several responses, but functionally similar responses were only recorded once from one person.

### Follow-Up Interview Summary

**Sharing the summary (in part) with the interviewee and asking them to provide more detail (including following up on any specific responses they had of interest if applicable). Followed by when we reviewed the productivity assessment (individual spreadsheet of billing productivity).**

Attorneys indicate the following activities and behaviors support them in meeting billable goals:

- (2) Having multiple cases requiring billable work.
  - (2) Working on lots of cases. Civil cases with intense activity - some cases can take 400 – 600 hours. Trials.
  - (6) Doing work that involves travel, trial, depositions, board meetings, hearings, motions, or other activities that require large blocks of time.
  - During times of high billing (and comp time) I had major cases or deadlines, so was working on weekends (preparing for hearings, travel, attending hearings).
- (6) Recording time contemporaneously with doing the work, recording time before leaving for the day, and having an effective method to track time while transition to on multiple cases in the same day and sometimes at that same time.
- (3) Working a consistent schedule and staying focused on work, reducing distractions, unnecessary instructions and engaging in small talk.

- Complete more billable activities that support the case myself, such as filing, discovery and research.
- Having flexibility and autonomy to figure out my goals and how I need to meet them, while using tools such as laptop/docking station and a flexible schedule.

Paralegals and administrative staff indicate the following activities and behaviors support them in meeting billable goals:

- Working for high performing attorneys or three comparted to two attorneys.
- The work of the attorney, e.g., advice vs litigation, can change the workload.

Attorneys indicate the following activities and behaviors acted as barriers for them in meeting billable goals:

- (3) That nature of some work, phone calls and emails, make it harder to bill efficiently because they create a lot of transitions during the day.
  - Unpredictable or unanticipated work, questions about bills, assisting other attorneys.
- When tracking my time is not a priority and the work, with consequences, are more pressing.
- When I am concerned about over billing.
- (2) When workload is low, such as when we are waiting on decisions from the courts, and we wait to take on more work for when what is waiting needs to be done.
- (8) Our current software. It works fine for tasks involving chunks of time (e.g., briefing), but not for client counseling, phone calls, emails, etc. Software with multiple client time tracking, research, and file management is how we are being trained in law school.
- (2) When we have an inconsistent use of case numbers, both internal and external and when some use case numbers and others use case names.
- Our research tool is not as powerful as others.
- (2) Document management slows not productive because CMS does not create documents, and everyone uses the N drive.
- The need to reconcile conferences, review work of legal support staff, and check the billing of other attorneys to my cases.
- (3) The 112 goal doesn't account for holidays and vacation time, so you have to bill to a target of 120 or more to account for holidays and vacation (e.g., 5.5 hours a day in months with no holidays vs. 6.5 hours a day in months with a holiday).

Paralegals and administrative staff indicate the following activities and behaviors acted as barriers for them in meeting billable goals:

- Completing assigned admin duties, such as supervising and training support staff.
- Attorneys will keep billable hours for support activities, such as research, instead of asking paralegals to do them.
- When a co-council has their own support staff, paralegals have less work to do for that case.
- When attorneys are on vacation, then the work goes down.
- When learning a new area.
- When I do not track my time right away, rather than trying to think back.
- Our common practices prevent us from some billing tasks, such as delivering documents.
- (2) There is a lack of support for the CMS system.

Recommendations for improve billable time were:

- Offer and incentive to maintain 112 hour per month billing.
- Incentives people to keep billing current.
- (5) Document Management – everyone uses the N drive. We need document management software with version control. Document management helps when there is turnover or people can easily come into or go out of a case.
- A collection of templates would improve response time.
- (8) If there were a billing system that allowed us to enter time on multiple cases throughout the daily easily, it would greatly increase billing efficiency and improve capture of hours.
  - Or at least everyone should use excel to track time so we can copy and paste into CMS vs writing it down.
- Create an updated list of accountabilities for each position then a cheat sheet of what everyone does/can/wants to do so we know who to pass work to.
- Share big changes in bit size pieces with cheat sheets or step by step directions so we do not waste time trying to understand what we are being asked to do, e.g., performance appraisals.
- Charge more for copying: 15 cents vs 35 cents a page to print, no charge vs 35 cents a page to scan.

#### *Delegating*

- If a paralegal has investigation training, they can do records research, contact clients, summary of records, pulling relevant dates and issues, citing, draft initial stipulations and answers in case, while being the main point of contact with clients.
- (2) Legal Secretary can do correspondence, mail, a table of contents, authorities.
- Give as much work as possible that require transition (5 min tasks).

**Inquiry about billing practices (e.g., from private experience or from working with contract attorneys or other agencies) that ALSB should consider and recommendations.**

Attorneys, paralegals, and administrative staff shared following practices and recommendations:

- (3) When time entries are more detailed, clients are less likely to question them and more likely to see the value of the service. For example, instead of "confer" or "conference," enter "research and analyze applicability of HIPAA."
- (3) Software with multiple client time tracking, research, and file management similarly to how we were trained in law school. (repeat from above).
- If I do a write-off, I show the time and write it off as a client courtesy.
- Training at DOJ on how to write billing entries and best practices.
- Reconcile conferences could help efficiency.
- Increasing rates will enable ALSB to continue to attract and retain talent because we will be able to continue to offer value to employees with work/life balance versus having to push people to bill a higher target to sustain operations.

**When asked how customers could perceive the cost-effectiveness of ALSB services and ALSB billing practices, these are the responses and recommendations from attorneys, paralegals, and administrative staff:**

- (6) Our rates are substantially less than private law firms that contract with the state. There are firms with which the state has negotiated lower rates charge \$200/hour.
- We know that we have depleted our reserves as we had a number of employees with large balances of comp and vacation time retired several years ago.
- (5) RMTD is our biggest client. We could ask RMTD their thoughts because they rely on outside counsel. A good question for RMTD would be, what can ALSB do to get that business?
- (2) We need to ensure we have adequate funding for leave balances should employees retire or resign.
- (2) A fee increase won't change the way clients interact with us. Asking for an increase affects agency budgets. We are in and of itself an efficiency. We are here ala carte and on demand.
- If agencies had a pool of money for ALS, it would help the smaller agencies.
- We should reach out to more departments and agencies and let them know we are here.
- NITA immersion training was incredibly effective.
- (2) Develop a policy that provides guidance for what we bill and don't bill; what we write down; what we write off. This includes practices for support staff.

## Appendix 3: ALSB Analysis of Billable Time

**Three-month rolling productivity reports** – useful to see an average of billable hours over the prior three months, regardless of leave.

**Productivity** = Billed time for a rolling 3 months (1,2,3 months reported in month 3)

**Target** = 112

**ECT** = comp time / hours that month less holidays

**Taken** = Any type of leave taken that month

**Hours of Month** = Available work hours that month (assuming 40 hours a week, less holidays)

Note: An average of the Attorneys correlation between hours available during a month and hours billed during a month is 0.2907, which means there is a very low correlation in how much a person can work and how much work they bill.

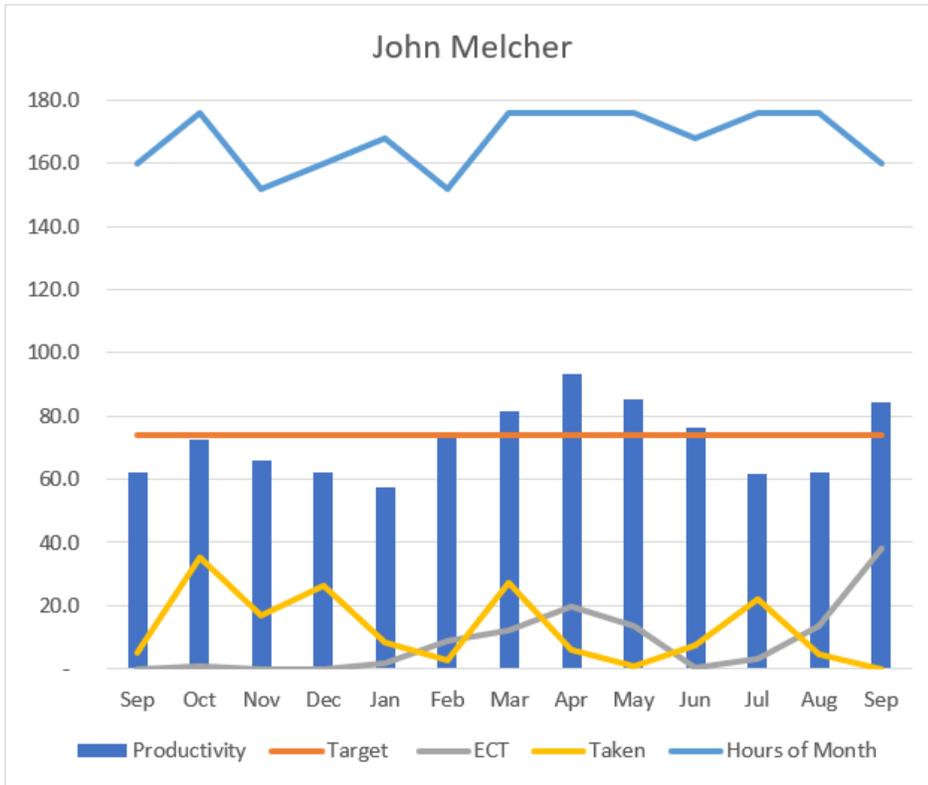
In these charts the blue line at the top, **hours of the month**, are the total number of hours, less holidays, of working hours assuming 8 hours a day M-F. This line is useful in seeing that hours per month can fluctuate and that may explain dips in the three-month average.

The red line, **target**, is the previous 112 hours a month expectation for billing. A line, on the Y axis, for 120 hours is just above that line for reference of the current expectation.

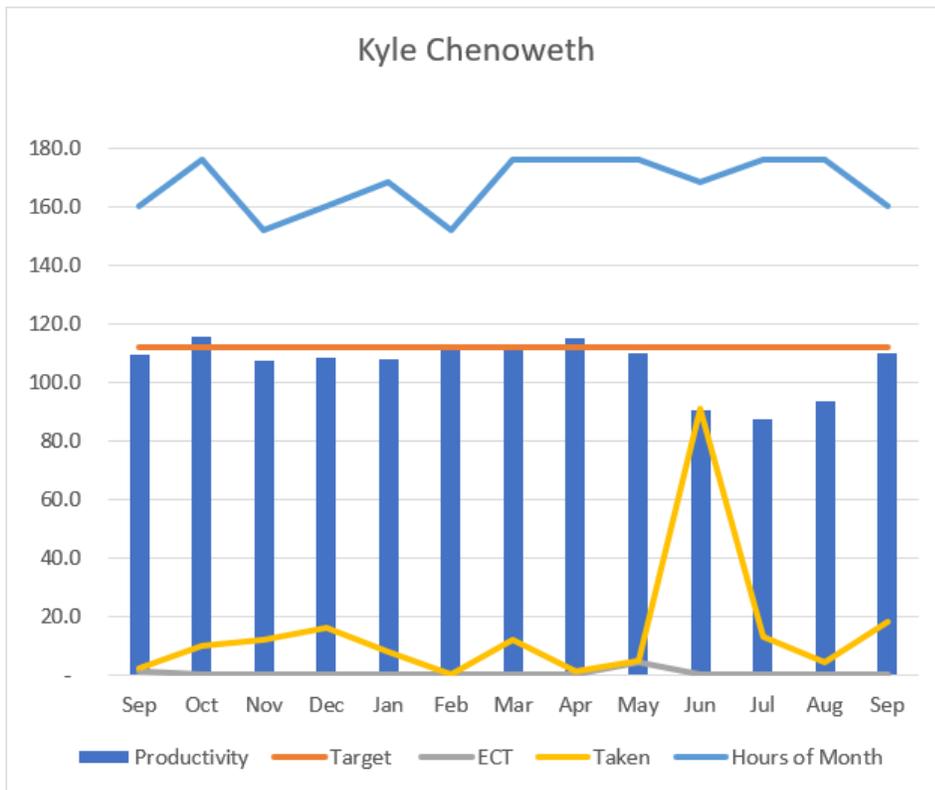
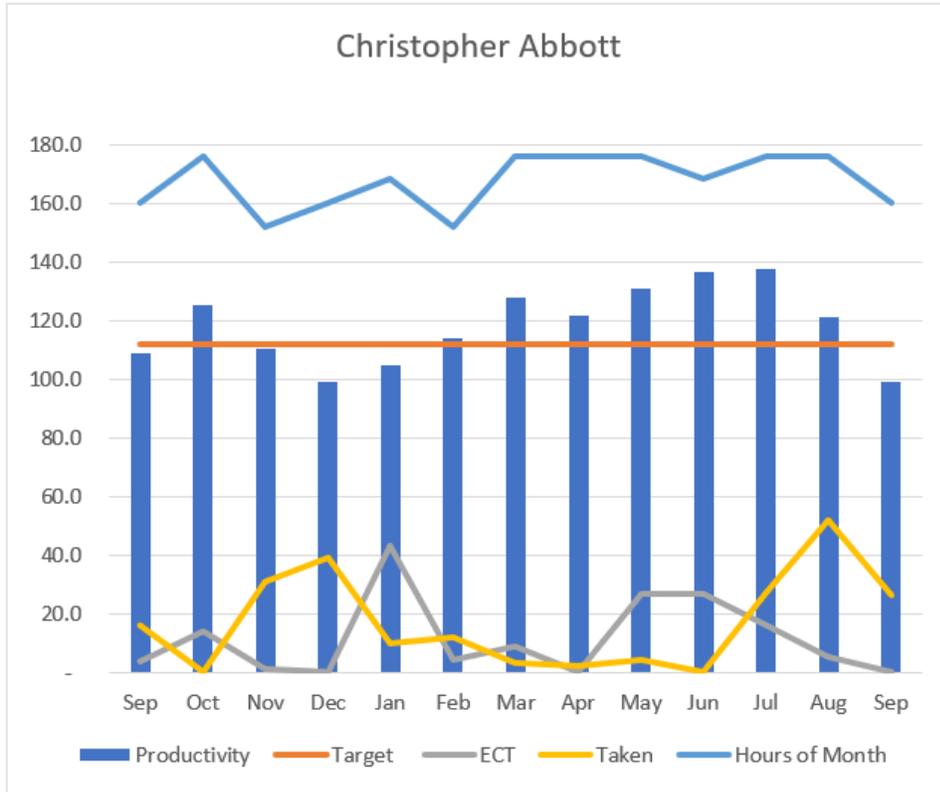
The blue bars, **productivity**, represent a rolling three-month average of productivity (average hours a month they have billing in the past three months).

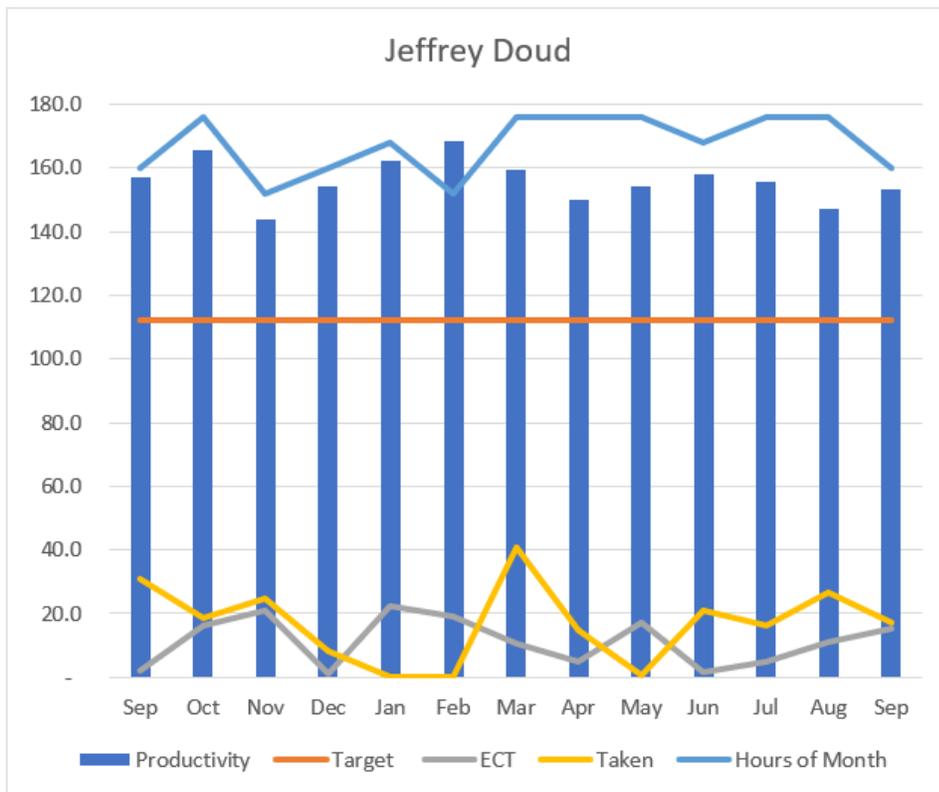
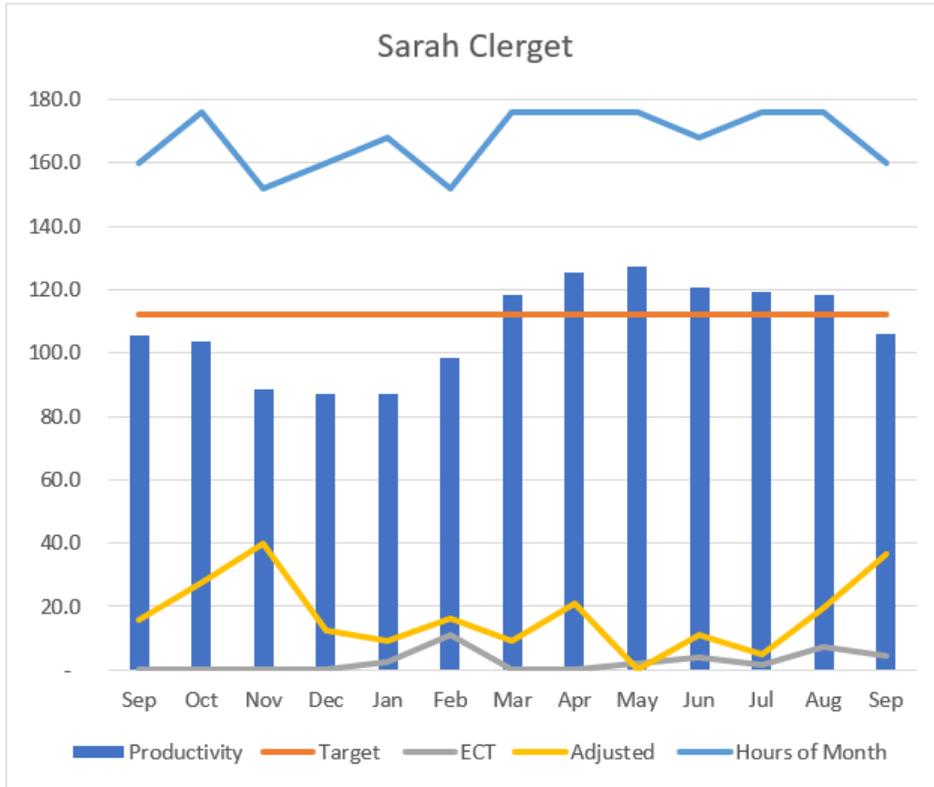
The yellow and grey lines, leave **taken** and **ECT** earned, are for only that month and are useful for reference.

## Attorneys

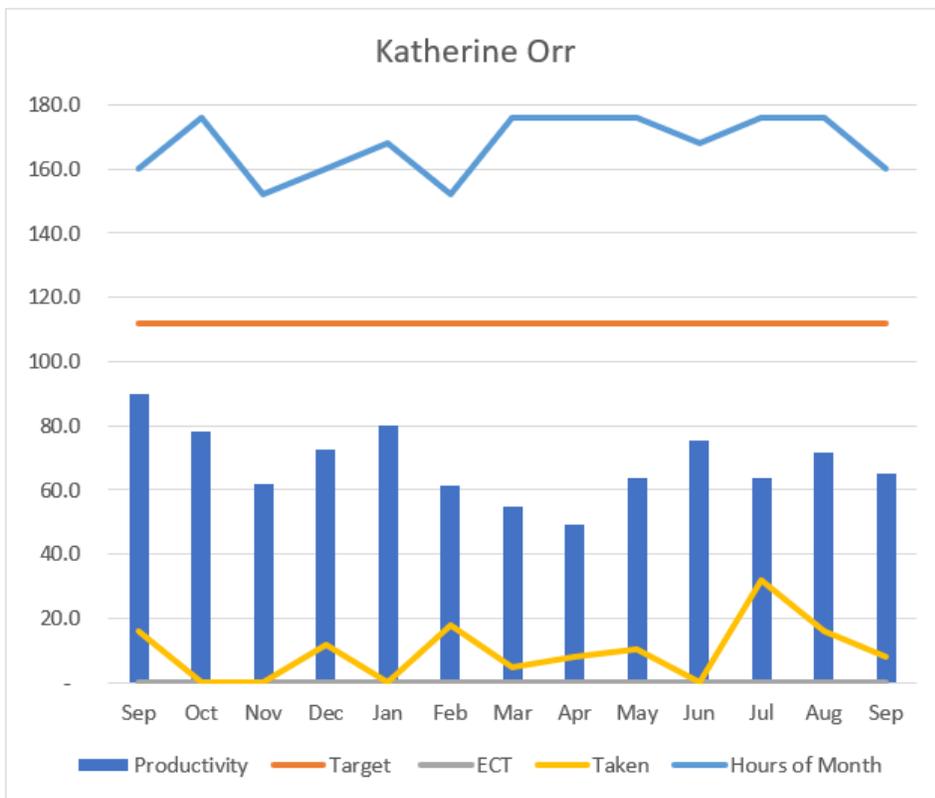
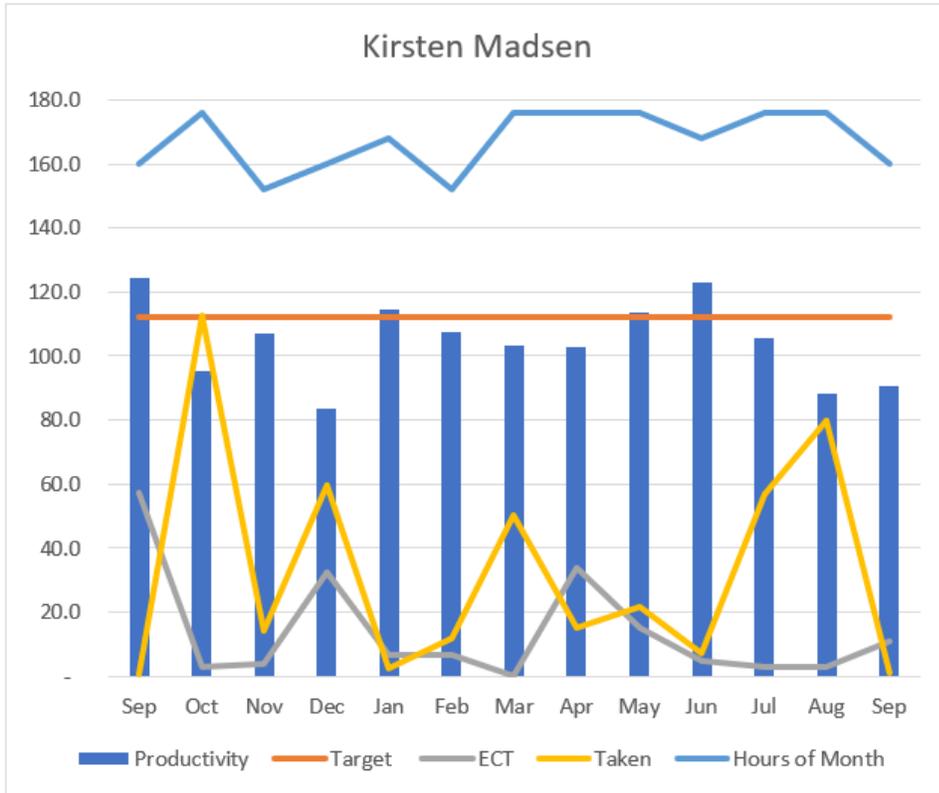


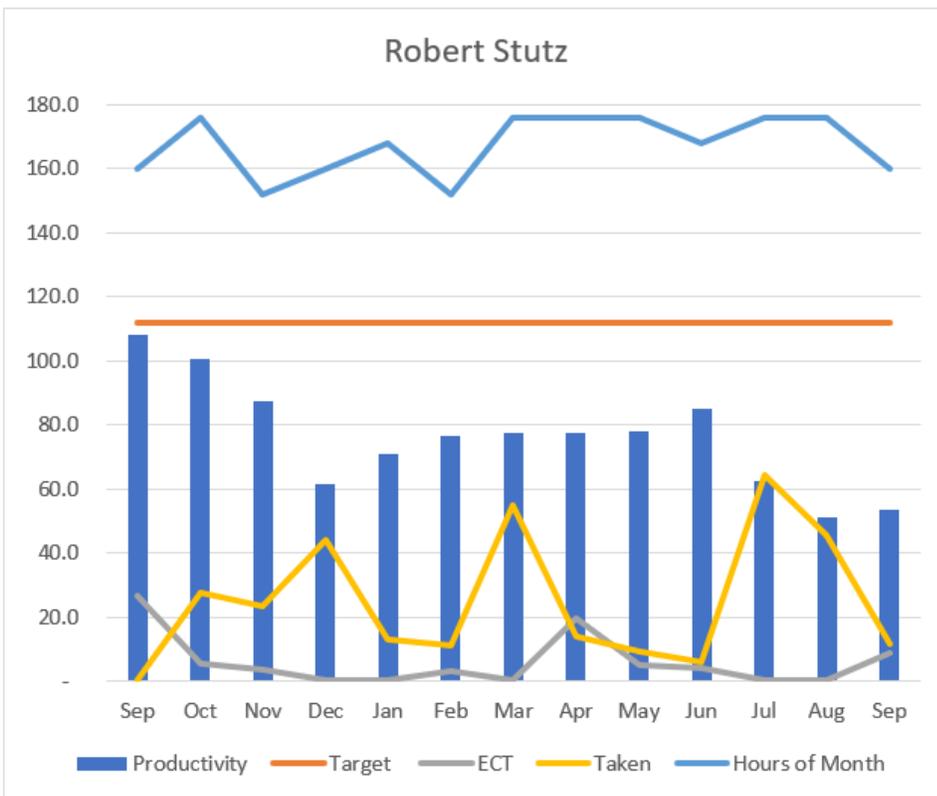
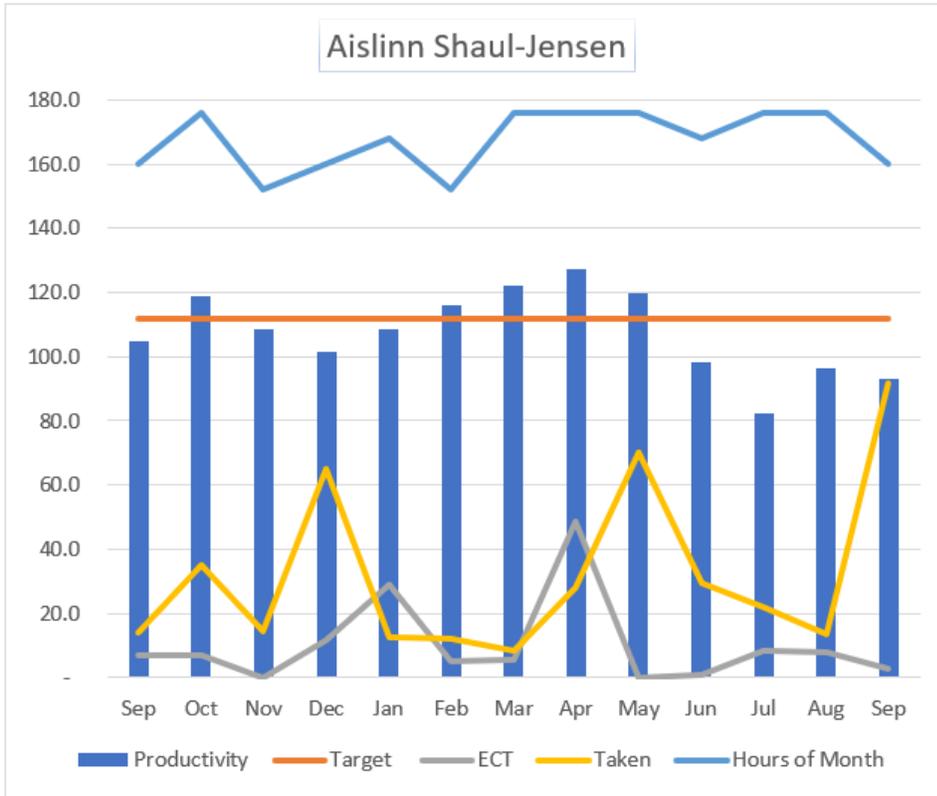
*Note: Assumes a target of 74 hours per month*



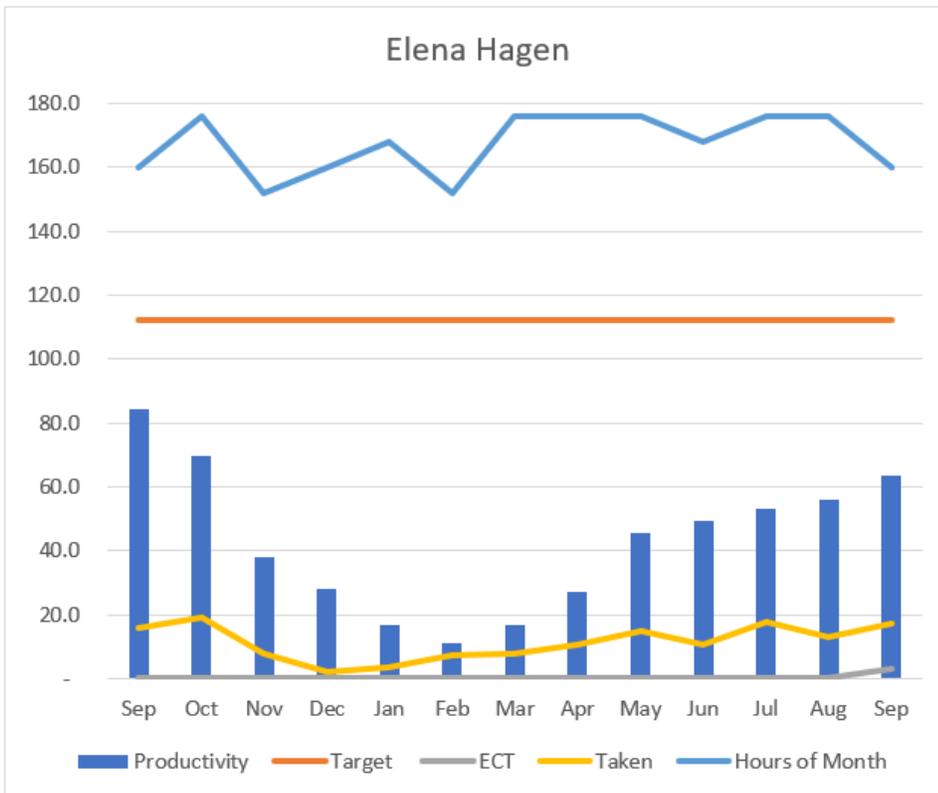
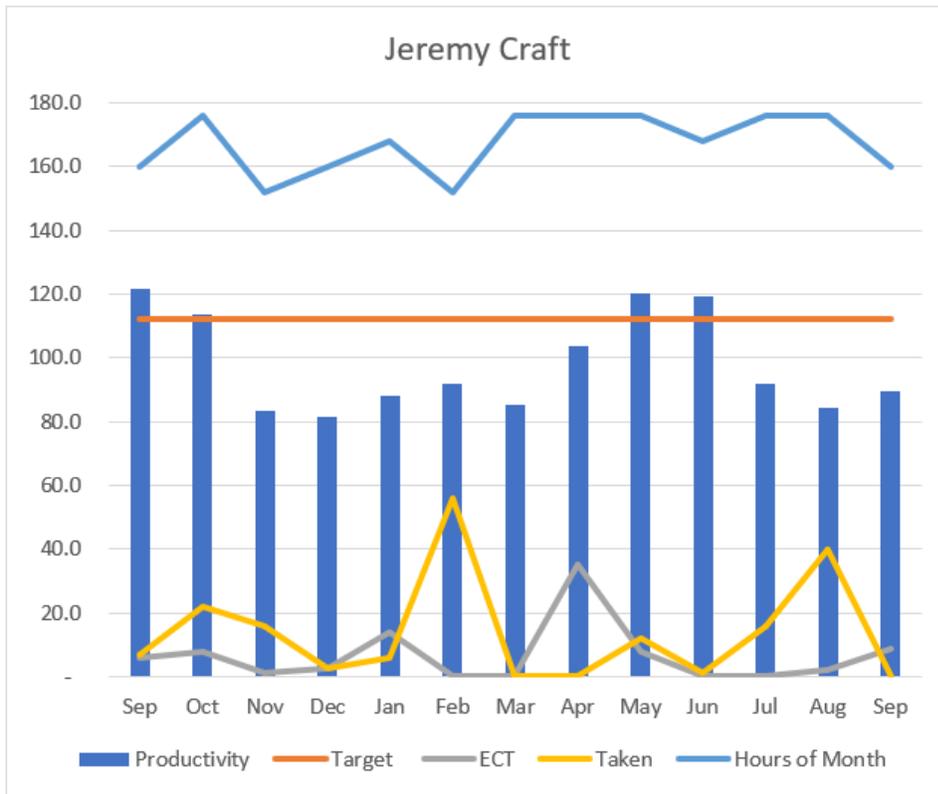


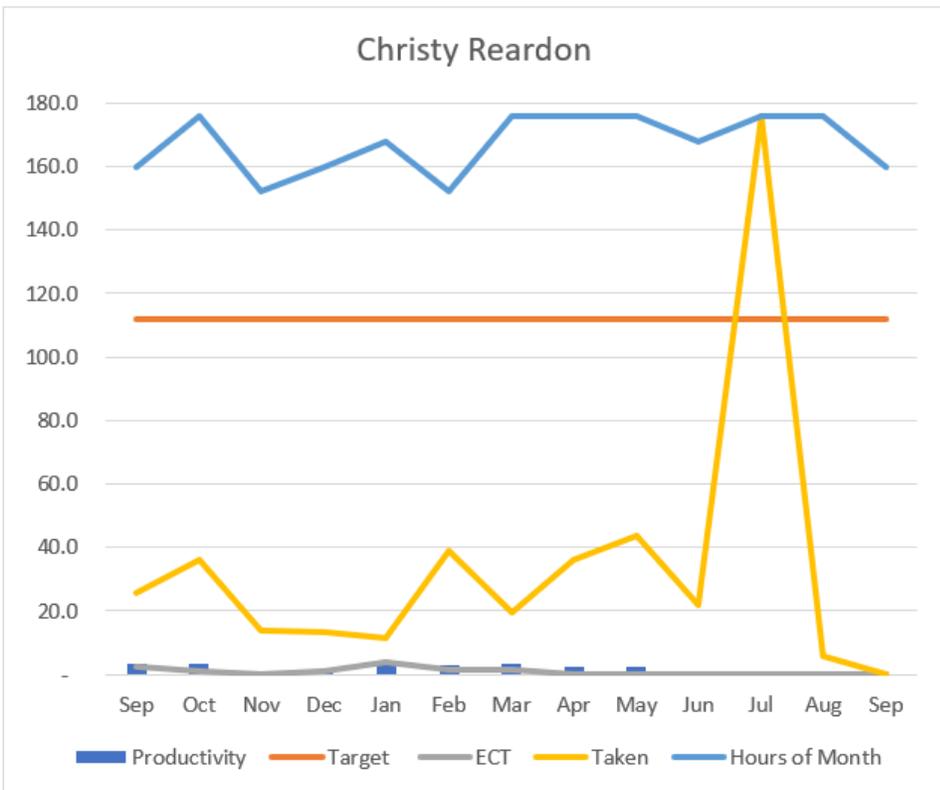
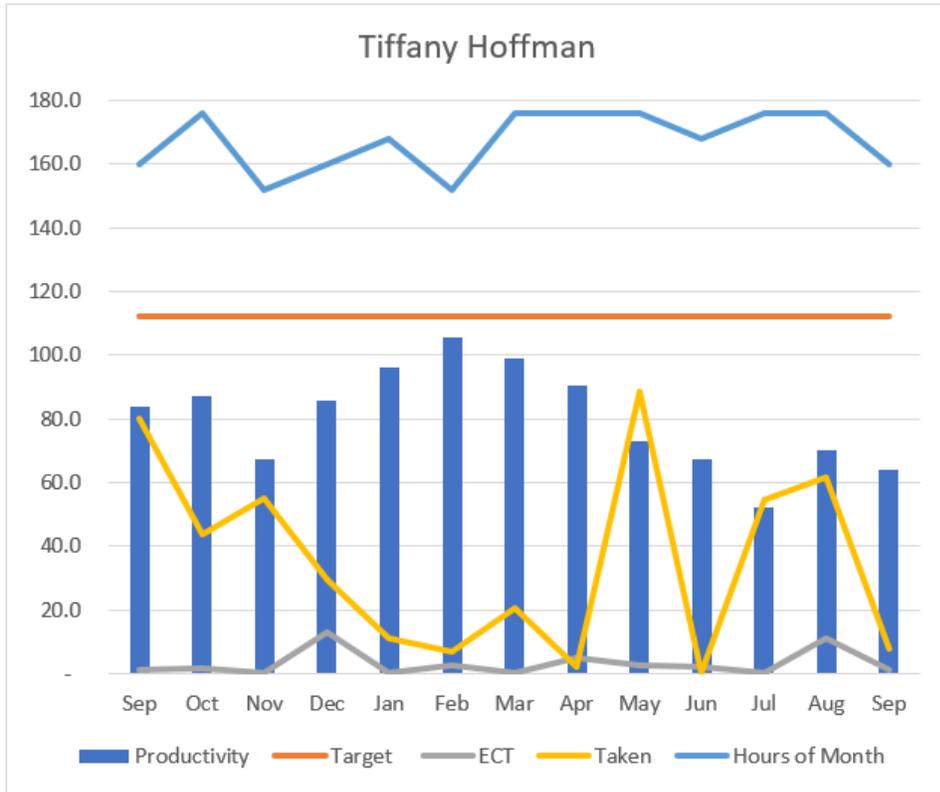
*Note: Feb can be above hours of the month because it is a rolling 3-month average, and the hours of month assumes 8 hours a day for workdays that month (less holidays).*

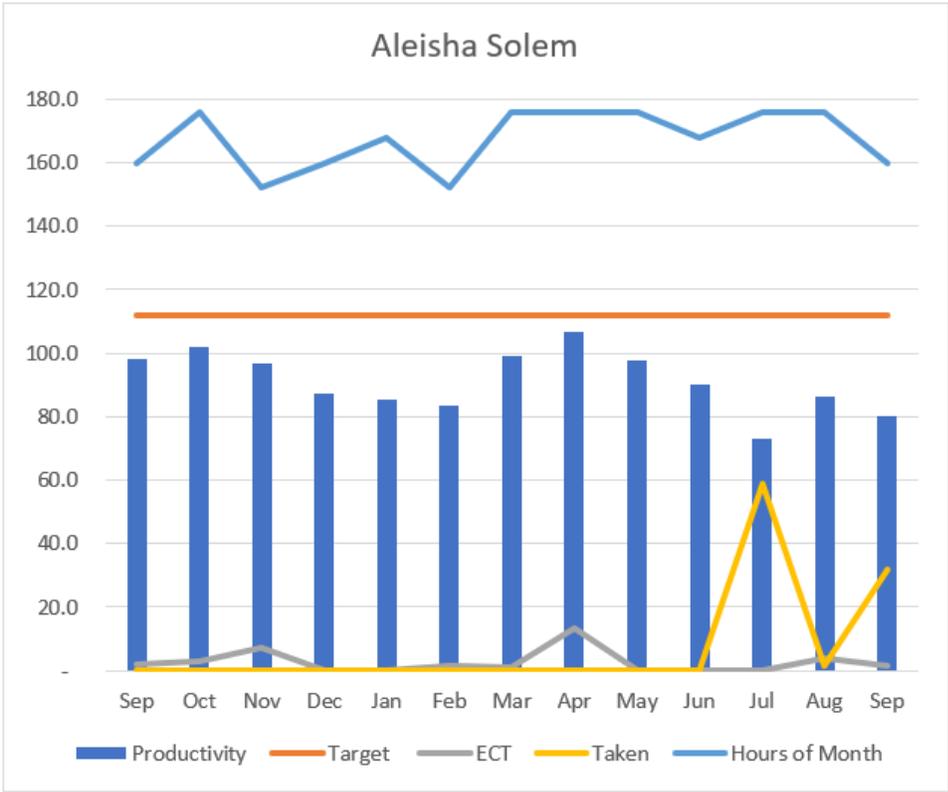




## Paralegals







**Monthly productivity reports** – useful to see what percent of the worked time (less leave and holidays) is billed per month.

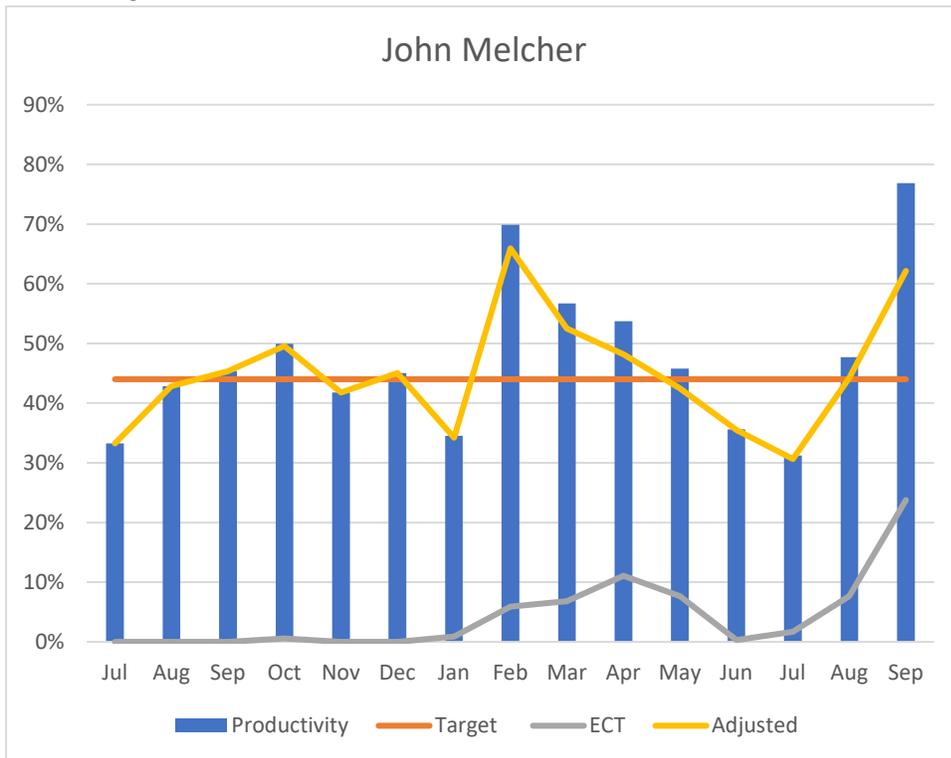
**Productivity** = Billed time/hours that month less holidays – leave

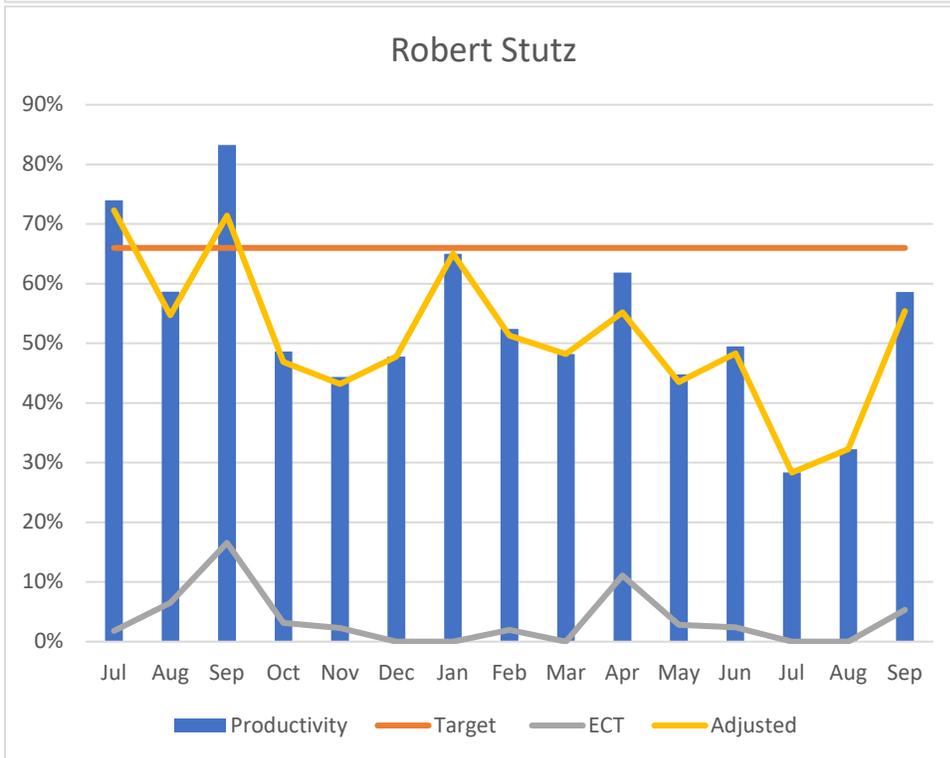
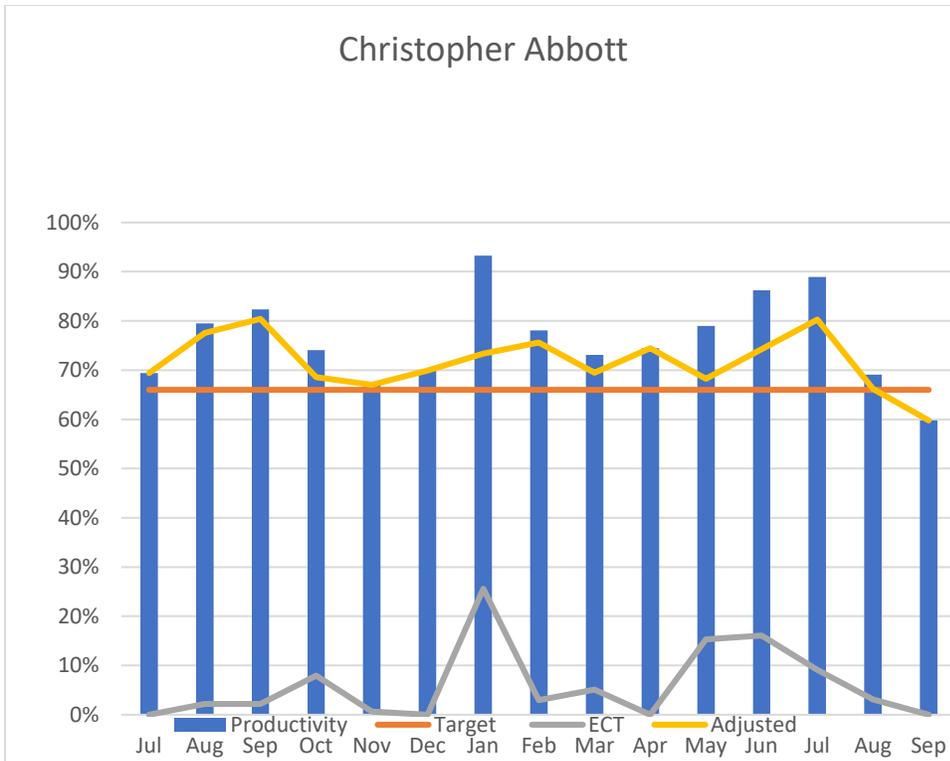
**Target** = 66% of hours that month less holidays (except John which is at 44%)

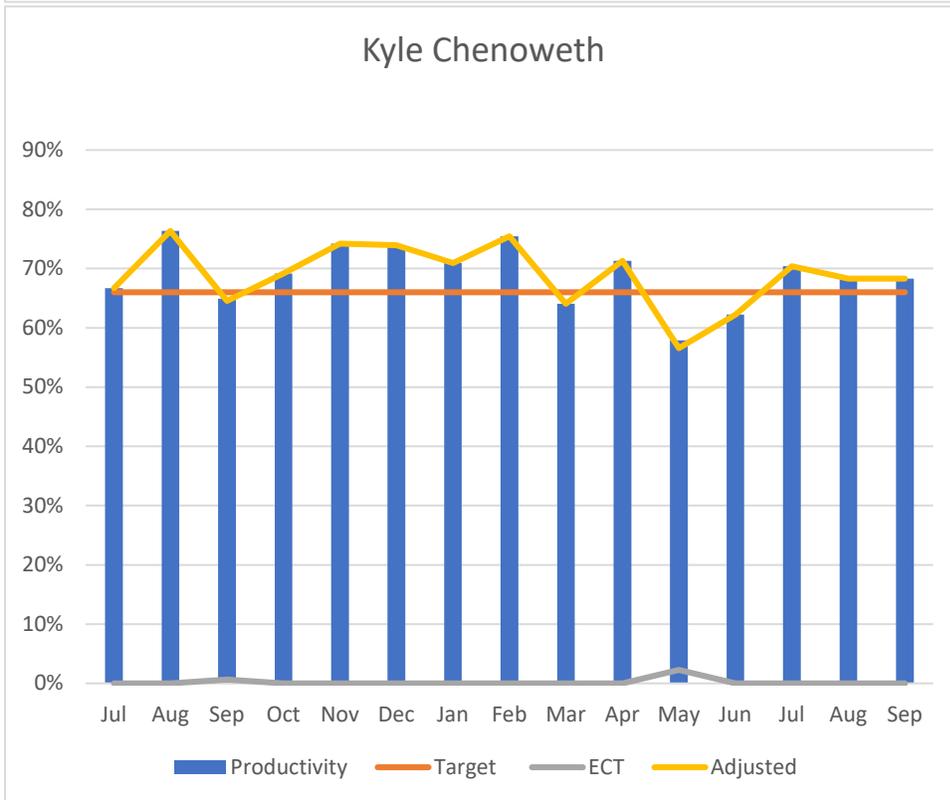
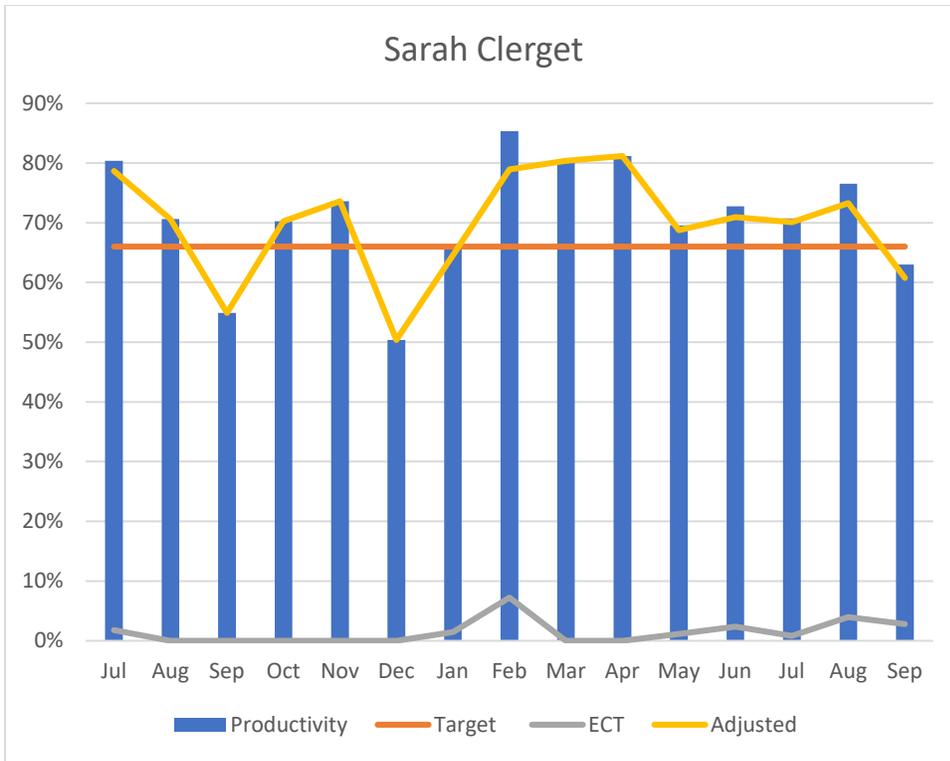
**ECT** = comp time / hours that month less holidays

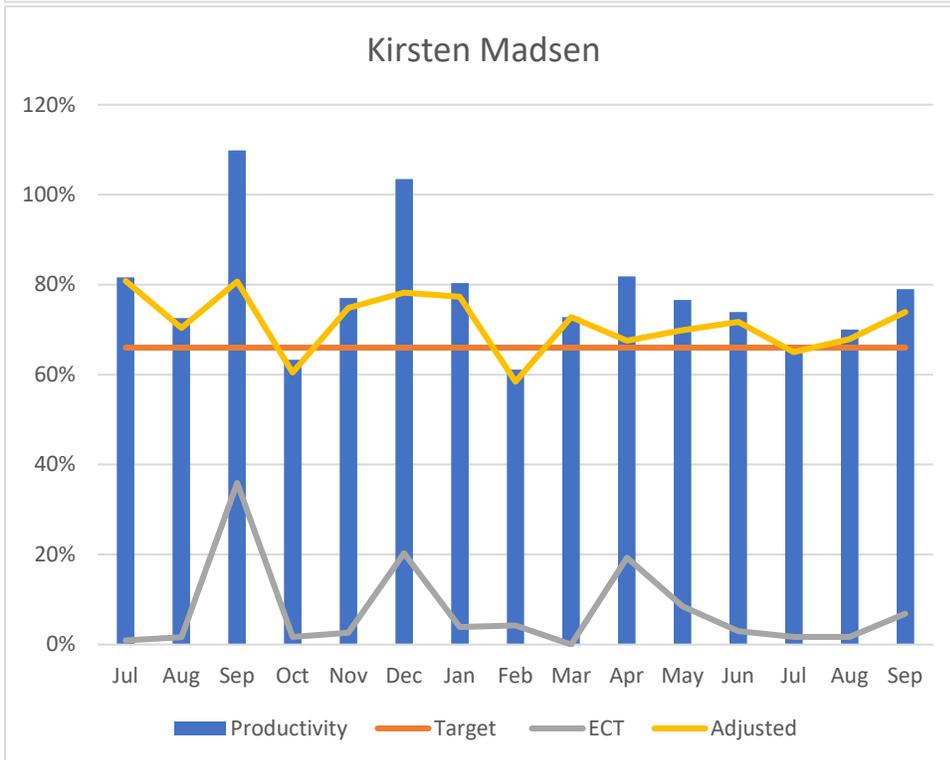
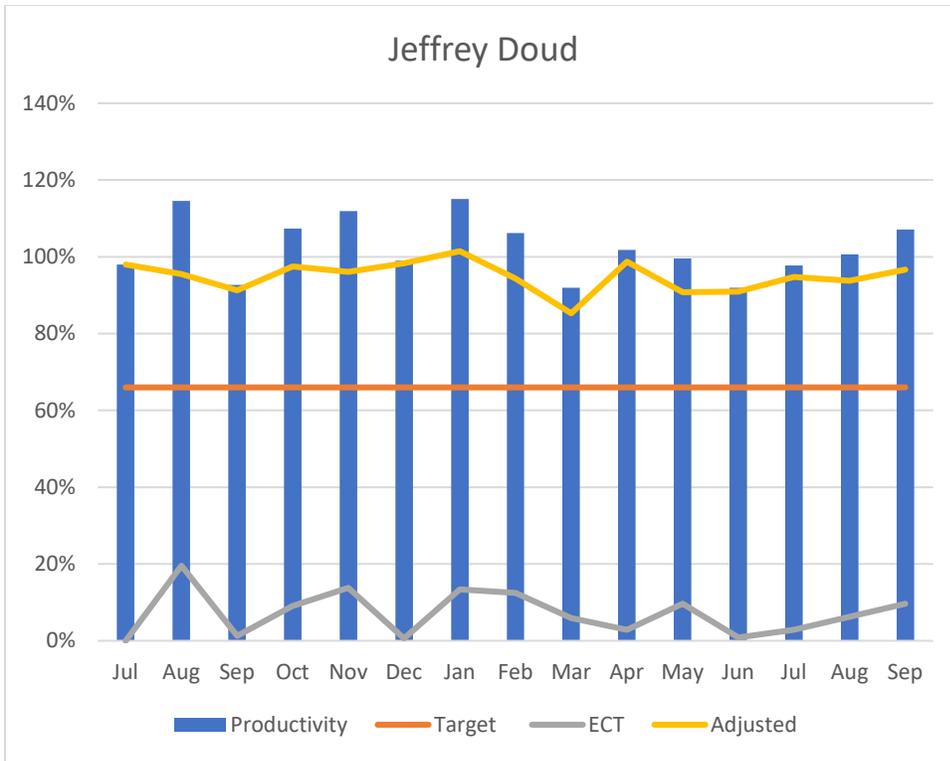
**Adjusted** = Billed time / ((Leave – hours that month less holidays) + comp time)

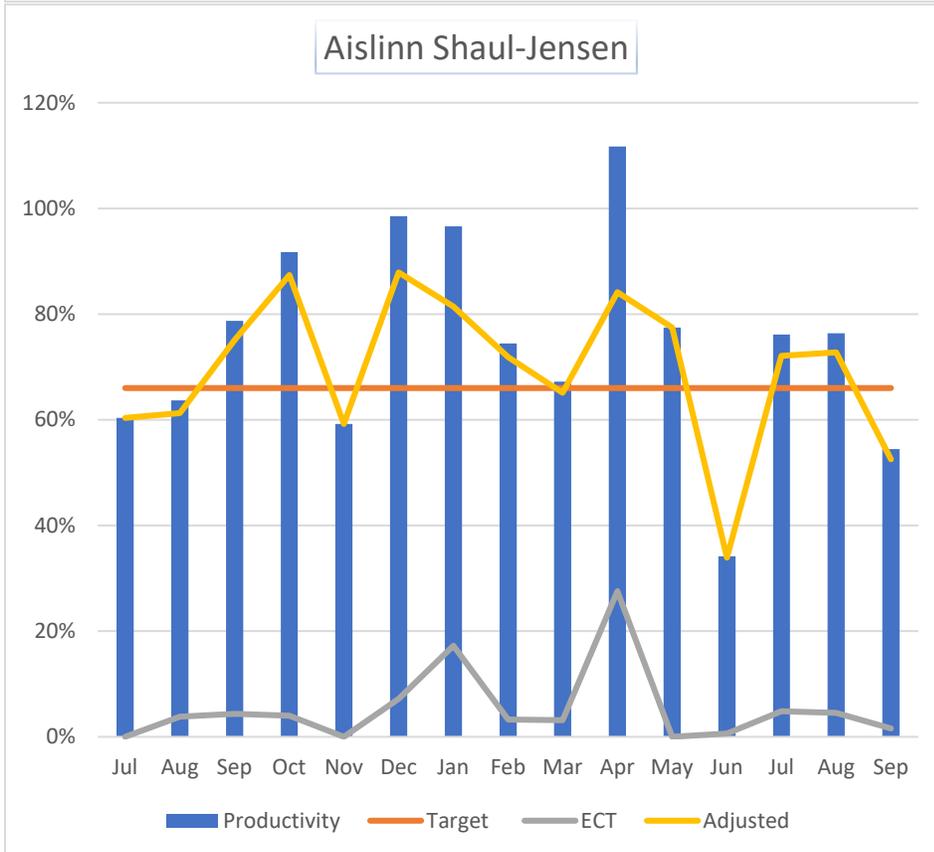
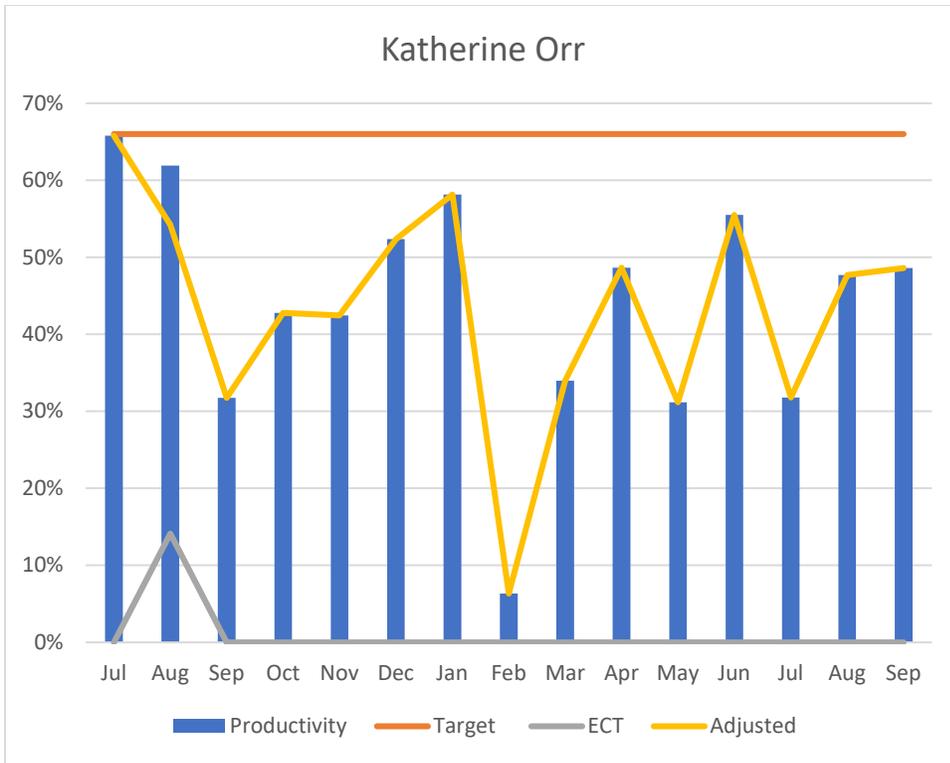
**Attorneys**

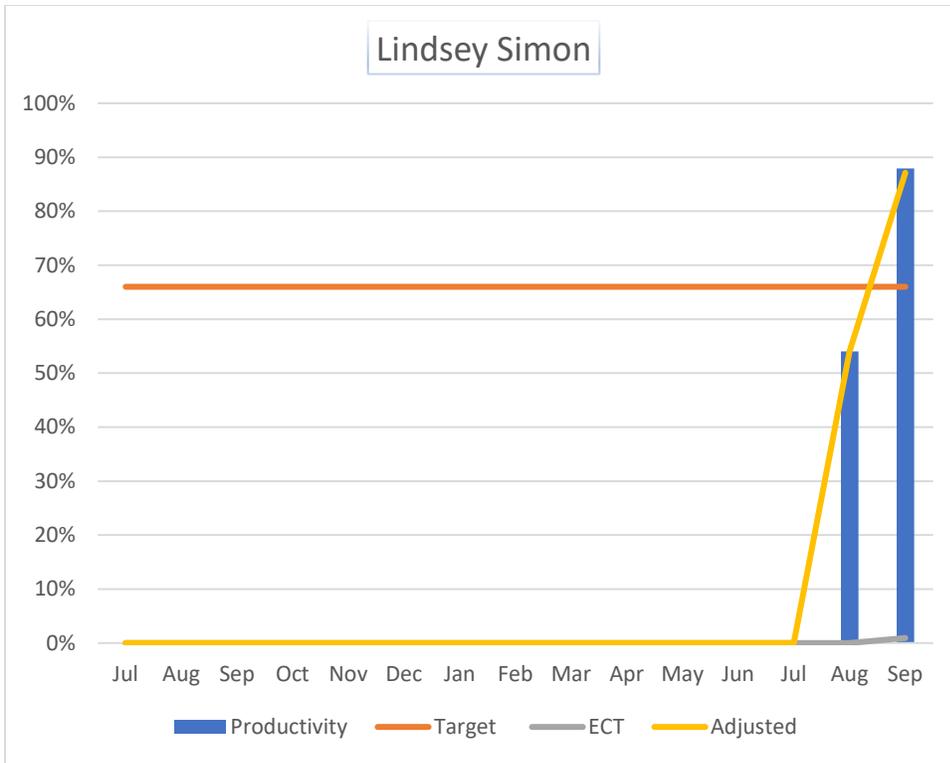




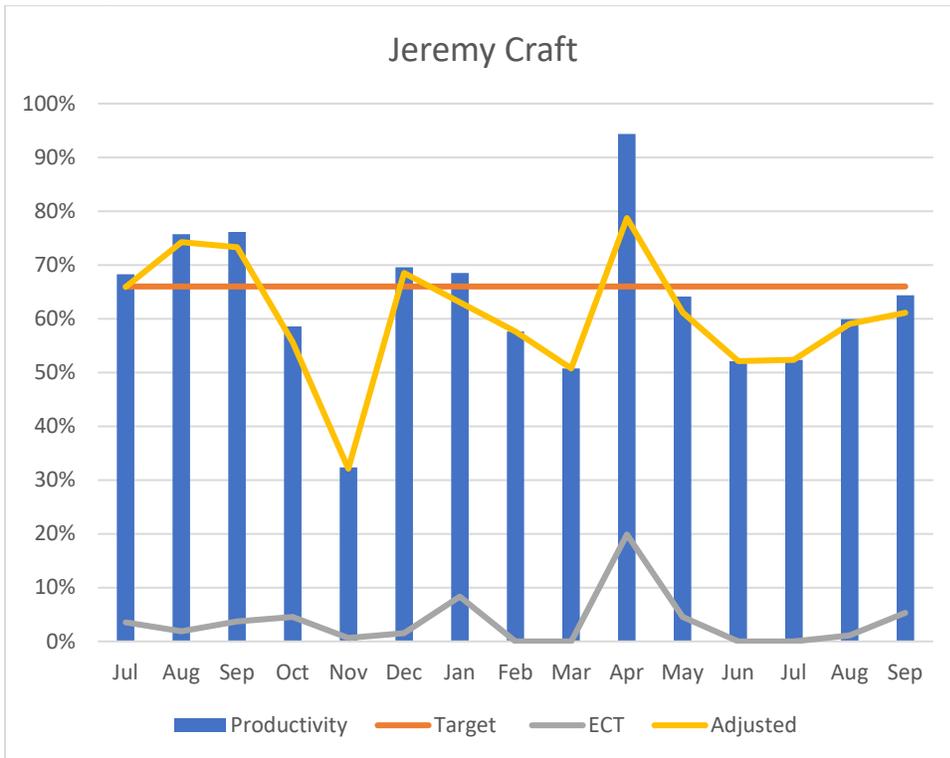


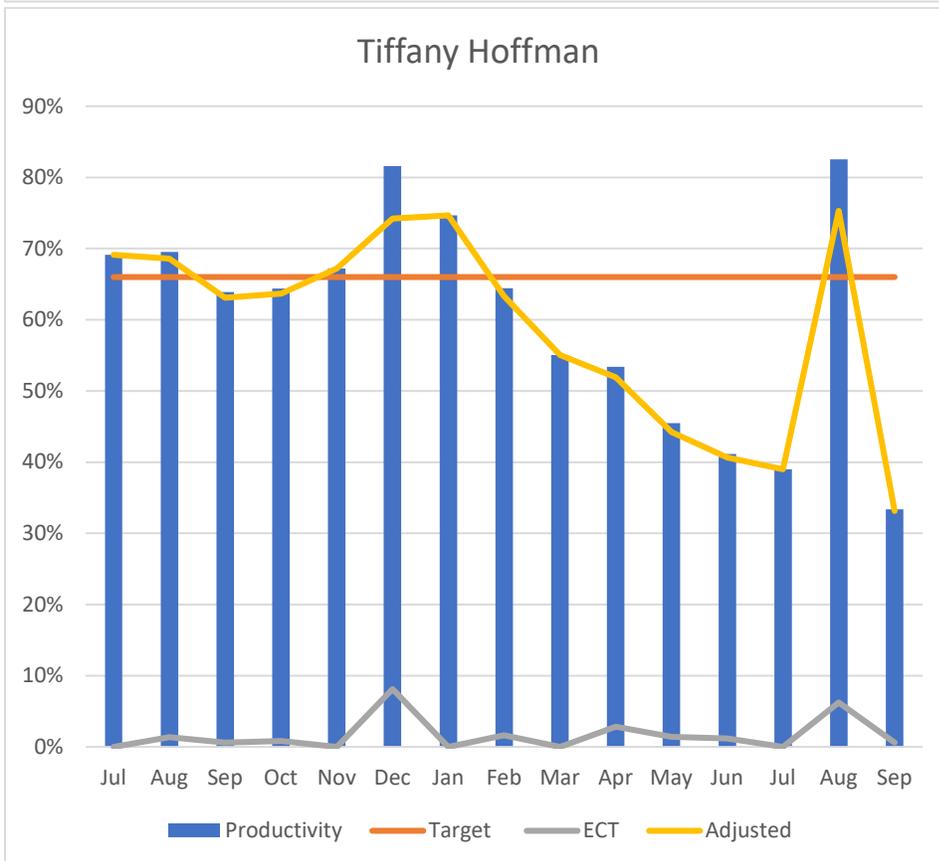
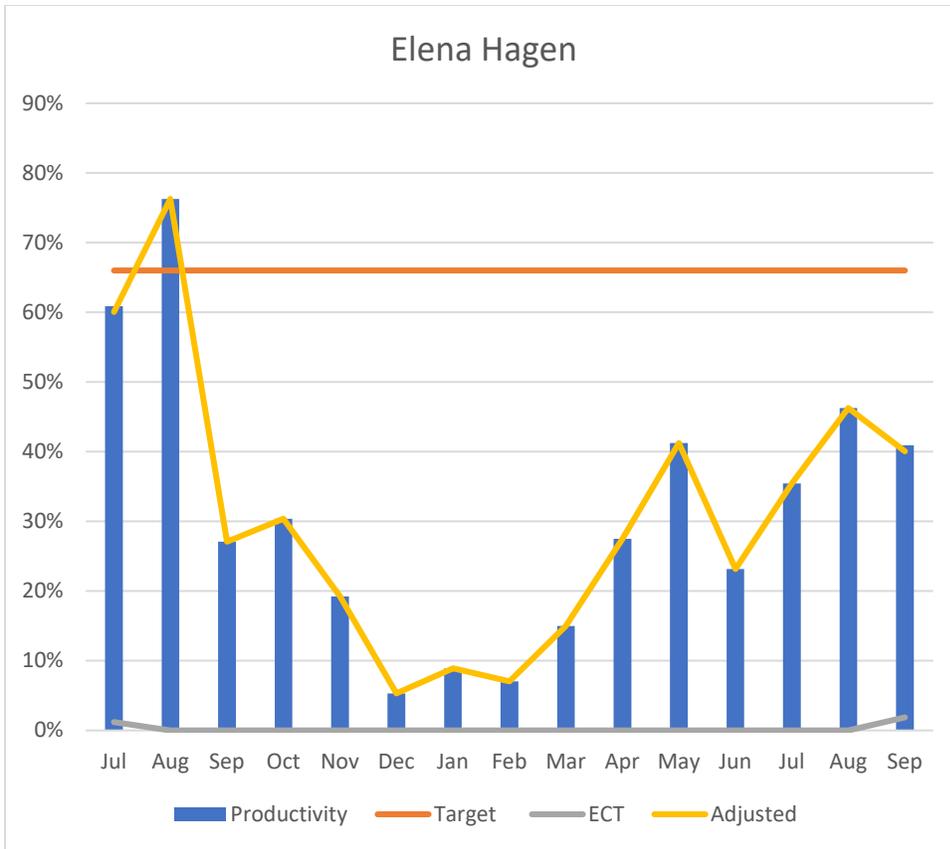


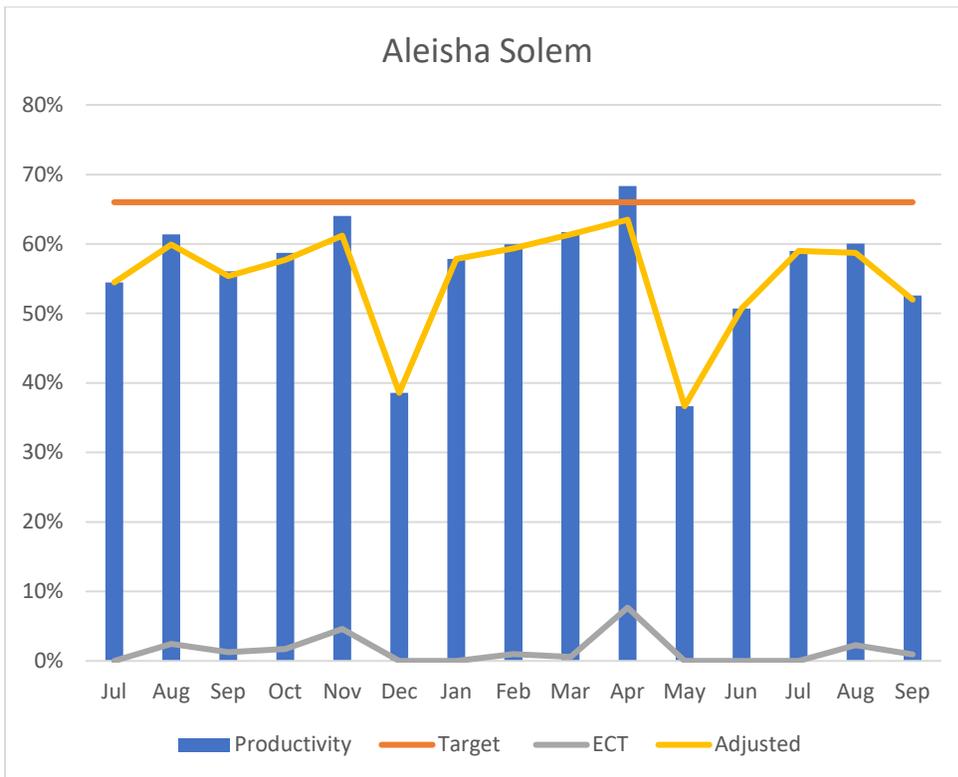
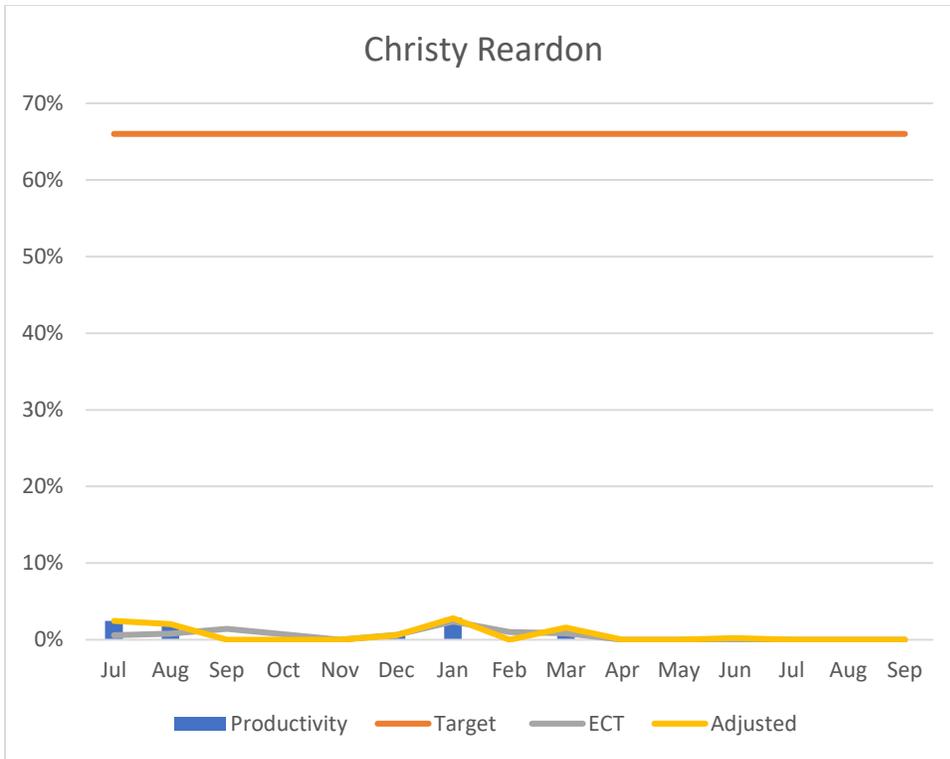




## Paralegals







## Appendix 4: Cost Per Hour Analysis

Actual FY 2018 – was created using the actual hours billed, personnel services cost, and operating expenses from the fiscal year 2018 July-June.

<b>Actual FY2018</b>	Hours Billed	Annual Personnel Services Cost	2018 Hourly Personnel Cost	Hourly Operating Expense	Total Cost per Hour	Hourly Billing Rate	Revenue Per Hour
Attorney	10,425	\$1,112,261.00	\$106.69	\$23.06	\$129.75	\$106.00	-\$23.75
Paralegal	4,086	\$257,226.00	\$62.95	\$23.06	\$86.01	\$62.00	-\$24.01
<b>Proposed 112 HR Avg</b>	Hours Billed	Cost	Hourly Cost if 112 HR Avg Billing	Hourly Operating Expense	Total Cost per Hour	Hourly Billing Rate	Revenue Per Hour
Attorney	11,640	\$1,112,261.00	\$95.56	\$23.06	\$118.62	\$106.00	-\$12.62
Paralegal	8,064	\$257,226.00	\$31.90	\$23.06	\$54.96	\$62.00	\$7.04

Personnel Services Cost and Operating Expense are detailed in the chart below.

FY 2018 Personnel Services cost separated by attorneys, paralegals, and legal secretary.

Lawyer	\$ 1,112,261
Paralegal	\$ 257,226
Legal Secretary	\$ 58,681
	\$ 1,428,168

FY 2018 Personnel Services and Operating Expenses

Acct Lvl 1	Acct Lvl 2	Account	Amount
<b>61000 Personal Services</b>			<b>1,428,163.48</b>
	<b>61100 Salaries</b>		<b>1,087,644.23</b>
		61101 Regular	915,470.32
		61103 Sick Leave	27,879.07
		61104 Vacation	62,124.72
		61105 Holiday	40,963.02
		61112 Differential Pay	128.18
		61133 Termination Pay - Sick Leave	1,825.66
		61134 Termination Pay - Vacation	1,457.43
		61136 FSLA Comp Time Payout	186.00
		61158 Compensatory Time Taken	37,609.83
	<b>61400 Employee Benefits</b>		<b>340,519.25</b>
		61401 FICA	79,850.38
		61402 Retirement - Other	93,019.07
		61403 Group Insurance	158,384.37
		61404 Workers Compensation Insur	6,467.94
		61410 State Unemployment Tax	2,797.49
<b>62000 Operating Expenses</b>			<b>275,902.11</b>
	<b>62100 Other Services</b>		<b>108,790.84</b>
		62102 Consult & Prof Services	72,152.46
		62104 Insurance & Bonds-Fixed Costs	10,354.77
		62108 Legal Fees & Court Costs	6,627.98
		62114 HRIS Service Fees	3,093.95
		62114A Workers' Comp Program Fees	284.42
		62127 Other Legal Costs	56.00
		62148 SABHRS Administrative Costs	962.24
		62165 Temporary Services	8,113.33
		62181 Data Network Serv/Non-D Of A	5.00
		62186 Waste Disposal	42.41
		62186A Recycling	466.51
		62187 Records Storage	866.95
		62190 Printing/Pub & Graphics	175.79
		62191 Printing/Other Provider	564.19
		62184 ITSD Application Hosting Servi	(4.72)
		621C5 ITSD Enterprise Services	5,029.56
	<b>62200 Supplies &amp; Materials</b>		<b>37,491.07</b>
		62225 Books & Reference Materials	5,209.25
		62236 Ofc Supplies/E-Market	5,945.40
		62238 Minor Equipment-Office Equip	1,470.00
		62241 Office Sup/Minor Equip-NonStat	1,451.16
		62245 Computer Hardware	18,967.92
		62249 Non-Capitalized Software	954.00
		622B1 ITSD Asset Broker	3,493.34
	<b>62300 Communications</b>		<b>13,109.86</b>
		62304 Postage & Mailing	3,245.97
		62309 Advertising - Non Recruiting	569.80
		62319 Cellular Phones	1,727.57
		623B0 ITSD Voice Services	3,467.48
		623B1 ITSD Video Services	2,983.50
		623B2 ITSD Network Services	551.20
		623B4 ITSD Long Distance Services	564.34
	<b>62400 Travel</b>		<b>11,927.76</b>
		62401 In-State Personal Car Mileage	801.22
		62404 In-State State Motor Pool	1,592.32
		62407 In-State Meals	374.00
		62408 In-State Lodging	2,341.35
		62410 In-State Meals Overnight	416.00
		62412 Out-Of-State Commercial Trans	3,203.70
		62418 Out-Of-State Lodging	2,690.17
		62430 Out-Of-State Meals-Overnight	509.00
	<b>62500 Rent</b>		<b>75,040.41</b>
		62504 Office Equipment	2,870.47
		62506 Postage Meter	426.54
		62517 Leased Equipment	2,075.94
		62519 Photo Copy Equipment	1,866.02
		62528 Rent-Non Dept of Admin	67,801.44
	<b>62700 Repair &amp; Maintenance</b>		<b>1,333.56</b>
		62704 Office Equipment	1,085.00
		62750 Software Maintenance	248.56
	<b>62800 Other Expenses</b>		<b>28,208.61</b>
		62801 Dues	6,969.00
		62802 Subscriptions	9,690.23
		62809 Education/Training Costs	8,698.40
		62817 Meetings/Conference Costs	230.94
		62878 Parking Fees	39.00
		62886 Procurement Card Default	0.00
		62888 Statewide Indirect Costs	2,581.04
<b>Grand Total</b>			<b>1,704,065.59</b>

## Appendix 5: Average Billing Expectation Analysis

An analysis of current leave benefits and the typical State schedule reveals that 112 average billing expectations are the most appropriate balance of revenue targets and leaven benefits.

Total hours a year for 40 hours a week	2080
Sick Leave Accrual	96
Holiday Time	88
Annual Vacation Accrual	168
Non-billable Duties (Meetings, Professional Development, etc.)	377
Total Available to Bill	1,350 = <b>112.5833 a month</b>

## Appendix 6: Montana Operations Manual 2-028-.20 Working Capital Used for Budgetary and Rate Purposes

### **2-0280.20 Working Capital Used For Budgetary and Rate Purposes (Effective 7/1/2009)**

At the request of the Legislative Finance Committee and Office of Budget and Program Planning, the Department of Administration has adopted a policy defining the calculation of working capital. Although the Statement of Changes in Working Capital has been replaced by the Statement of Cash Flows, working capital is still used in 2 CFR 225 (A-87) and the State proprietary rate calculation process.

For State budgetary and rate calculation purposes working capital is defined as the amount of cash that would remain if all of the current assets were converted, and all of the current liabilities paid, at their book value. As a result working capital is calculated by deducting total current liabilities from current assets. Because the working capital used in the State budgetary process and a-87 focus on an allowable 60 working capital balance, material inventory balances and other current assets not readily convertible to cash will generally be excluded from this calculation.

Current assets are those assets which will be used up or converted to cash within one year. This differs from the 60 day availability concept used for revenue accrual purposes in governmental funds.

Current liabilities are those liabilities which are payable within one year. Although encumbrance accounting (the use of A-Accruals) is required under State statute, encumbrances do not represent a valid liability and should not be included in the working capital calculation.

An example of a working capital calculation follows:

Current Assets –	
Cash in Bank	\$1,171,775
Due From Federal Gov	50
Merchandise Inventory (1)	16,038
<b>Total Current Assets</b>	<b>\$1,187,863</b>
Current Liabilities –	
Loans Payable - Current	\$ 655,802
Due to Other BU or Funds	17,022
Vouchers Payable	396,578
FYE Payroll Payable	22,264
Accrued Liability	1,520
Comp Abs Current	23,096
<b>Total Current Liabilities</b>	<b>\$1,116,282</b>

**Montana Operations Manual (MOM) Volume II**

Chapter 0280.20

Subject

Effective 7/01/2009

Working Capital	\$ 71,581
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(1) – As noted above material inventories are normally excluded. Because this inventory balance is not material it is included in the example provided.

Fund balance, or net assets, cannot be equated to working capital in proprietary funds because this residual balance includes non spendable assets (i.e. equipment) and long term liabilities (i.e. Other Post Employment Benefits). Although the federal government may use an adjusted fund balance calculation in their working capital analysis, under 2 CFR 225 (A-87), the State will continue to use working capital, defined in this policy, as the basis for rate calculation in internal service funds. Based on information provided by the Federal Health and Human Services Division of Cost Allocation's Statewide Cost Allocation Plan Negotiator, fund balance, or working capital, used in indirect cost plan preparation may not include the implied rate subsidy portion of OPEB.

This policy does not apply to enterprise funds or to Montana State Fund.