December 11, 2009

Kimley Grant
ABA Center for Professional Responsibility
321 North Clark Street
15th Floor
Chicago, IL 60654

Dear Kimley,

I am in receipt of the Notice of February 5, 2010 Public Hearing. I cannot attend the meeting. In said notice it states that “The Commission also welcomes and encourages testimony regarding other issues relevant to its work.” I am outlining below one area the Commission should address.

I applaud the work of the Commission. The issues outlined in the November 19, 2009 letter are important and are needed as the practice of the law increasingly crosses state and international borders and issues arise in light of current and future advances in technology.

However, I would like to raise with the Commission another area which really transcends the issues now contemplated to be discussed by the Commission. That area concerns the much needed guidance that members of our profession require as to the manner in which attorneys bill their clients.

In 2002 the ABA Section of Litigation in its report, “Public Perception of Lawyers: Consumer Research Findings” stated:

Of all of the criticism that consumers have about their personal experience with lawyers, the greatest number of complaints arise around lawyers’ fees. Consumers say that lawyers .... are often not up front about their fees; and are unwilling to account for their charges or hours.

Despite this harsh condemnation the ABA has done nothing to correct the manner of billing by lawyers.

The ABA Standing Committee on Ethics and Professional Responsibility, in Formal Ethics Opinion 93-379, noted that “lawyers are not generally regarded by the public as particularly ethical. One major contributing factor to the discouraging public opinion of the legal profession appears to be billing practices of some of its members.”
In face of this Ethics Opinion the ABA has done nothing to correct the manner of billing.

In an article that I wrote and published in The Professional Lawyer, Volume 15 Number 1, I commented that “The Rules of Professional Conduct Should Provide Guidance to Attorneys with Respect to Billing Clients” (A copy of my article is attached hereto, as Exhibit 1 for your easy reference). Yet the ABA has not made any effort to give such guidance.

As a result of the inaction of the ABA the improper billing by lawyers has not diminished but has become more prevalent. This improper conduct, although they have been recognized by the courts even this has not curtailed the large greedy appetites of law firms, large and small. This will continue until the ABA acts. As I wrote in the Professional Lawyer: “It’s Not Hourly Billing, but How It’s Abused that Causes the Poor Image of Lawyers.” Volume 18 Number1. (A copy of my article is attached hereto, as Exhibit 2 for your easy reference). Because of the inactivity of the ABA and the improper conduct which has resulted from no guidance from the ABA some attorneys are advocating the end of hourly billing. I believe that properly conducted hourly billing is a fair manner of billing clients. The bar will be ill served if hourly billing dies because of the inactivity of the ABA. But the time is not too late for your Committee to put on your agenda the necessity of providing guidance to lawyers on how to properly bill on an hourly basis. (A copy of an article that was published in the Professional Journal , “Reviewing A Law Firm’s Billing Practices” 2001, is attached hereto, as Exhibit 3 for your easy reference).

Specifically, I urge the Commission to address some of the more flagrant improper practices.

First, the Rules should provide that block billing is improper and that if attorneys bill on an hourly basis the billing statements must state the time incurred on each task performed each day and not combine the time into one time. As I point out in a short article that I wrote for the Greater Los Angeles Leadership Exchange the guidance should caution that it may be unnecessary detail to break down each task involved in taking or defending a deposition or attending a trial. But that it would be improper to bill five hours for “legal research.” Block billing will continue until the ABA acts and states that it is improper. Law firms have the view that even if they are caught block billing they only have to reduce their statements a small amount.

Second: The Rules should provide that incremental billing in greater than tenths of an hour is improper. I see firms billing on a quarter of an hour and in one case a partner of the firm billed on a half hour basis. Without some Rule this practice will continue. (A copy of an article that I wrote which was published in the Greater Los Angeles Leadership Exchange is attached hereto, as Exhibit 4 for your easy reference).

Third: The Committee should study a growing practice where law firms which bill on an hourly basis also reward associates and partners who bill an excessive number of hours in a year such as over 2,000 hours. This acts as an incentive to padding the number of hours billed to receive the award. (I discussed this problem in Exhibit 2.) This issue was discussed by Wayne
Mark President of the Nebraska Lawyer. (A copy of his comments is attached hereto as Exhibit 5.)

I believe that your Committee should likewise examine and give guidance to the bar on some of the alternatives, now being discussed, as to how such manner of billing clients should be used to assure that the clients are billed fairly. I fear that one of the reasons for not using billable hours is that using other billing alternatives will enable lawyers to increase their fees without any accountability and the high fees will be concealed in a convoluted method of calculating the amount to be billed which the general public will not really understand and be able to ascertain if the fees are reasonable. This should be discussed now.

The issues raised by improper billing is of the utmost importance and frankly more vital to the future of our profession than the issues that you are now about to discuss in your hearing.

Thank you for permitting me to advise you as to my thoughts.

Sincerely yours,

Gerald F. Phillips
The Rules of Professional Conduct Should Provide Guidance to Attorneys with Respect to Billing Clients

Gerald F. Phillips

The American Bar Association Section of Litigation, in its 2002 report entitled Public Perception of Lawyers: Consumer Research Findings, made some troubling findings and identified some steps that the legal profession could take to improve its standing in American society. The report stated that "the greatest number of complaints arise around lawyers' fees.... Lawyers are often not upfront about their fees; and are unwilling to account for their charges or hours." The report found that "clients are confused about how lawyers bill for their services" and believe that "lawyers are motivated by greed." Over two thirds of the respondents in the survey agreed that "lawyers are more interested in making money than serving the clients." The report's Forward suggested that "[t]he image of lawyers is not just a matter of professional or personal pride. It affects the public's belief in our system, and ultimately, their faith in our democracy." Prior to the 1970's most lawyers used time spent for the client as only one of the factors in determining the amount to bill the client. However, during the 1970's, law firms increasingly based bills solely on the number of hours reported by timekeepers (partners, associates, paralegals and clerks). At the same time, there was a growing appetite by law firm management to maximize profits. Hourly billing, which started as a tool for law office management, turned into a requirement for all timekeepers to bill a large minimum number of hours per year. Salary, bonus and growth within the firm began to be largely based on the number of hours billed. The share of each partner in the profits of the firm began to be based in part on the number of hours billed. "During the 1970's and 1980's the system based on both lawyer rates and billable hours worked." However, "[d]uring the 1990's those billable hour commitments reached unreasonably high levels in many firms." Creative devices have been invented to increase the amounts on billing statements and thus the profits of the firm. For the public, the consequence has been the erosion of their trust of lawyers and for the profession it has meant diminished career satisfaction and loss of pride in being a lawyer. Billing statements should build the client-lawyer relationship. Unfortunately they are a source of frustration, irritation and bewilderment to the client. This is largely due to such practices as block billing.

The fact that lawyers are held in low esteem by the public is without dispute. Even the ABA Standing Committee on Ethics and Professional Responsibility, in Formal Ethics Opinion 93-379, noted that "lawyers are not generally regarded by the public as particularly ethical. One major contributing factor to the discouraging public opinion of the legal profession appears to be the billing practices of some of its members." Lawyers, even those who are responsible and ethical members of the bar, submit improper bills to their clients. Professor William Ross, one of the foremost commentators on time based hourly billing observed that "most attorneys probably try to achieve honesty in billing, and that most excessive billing results from ignorance or insensitivity about ethical issues rather than deliberate deception."

Although clients believe that lawyers should do a better job explaining their fees to their clients and could do a better job policing and regulating themselves, the ethics rules do little, if anything, to reinforce the need for lawyers to explain fees or to guide lawyers as to what is proper in billing fees.

Thus, despite the harsh denunciation from the ABA ethics committee, this unacceptable conduct may be attributed in part to the fact that the ABA Model Rules of Professional Conduct ("Model Rules") and, in the case of my home state, the California Rules of Professional Conduct, ("California Rules") give no guidance to lawyers as to what are proper or improper client billing practices, except that Model Rule 1.5 provides that lawyers shall not charge an unreasonable fee and California Rule 4-200 likewise provides that a member of the bar shall not enter into an agreement or charge or collect an illegal or unconscionable fee. The Model Rule lists eight factors in determining the reasonableness of a fee and the California Rule enumerates eleven factors to be considered in determining the conscionability of a fee. In neither case do any of the factors deal with billing practices.

So what is the problem with hourly billing? In the Forward to the 2002 Report of the ABA Commission on Billable Hours, Supreme Court Justice Stephen G. Breyer asked:

"[D]oes the billable hour contribute to or undermine a practitioner's ultimate goal—to provide clients with the best legal services possible? And to the extent billable hours are counterproductive ... how, when and

Continued on page 7
Billing, from page 2

to what extent, might it be possible to change billing methods."14

The Commission responded in part that:

"Reputable lawyers do not pad their timesheets. However, high hourly requirements can put subtle pressure on lawyers to be aggressive rather than conservative in recording their time. Under those circumstances, a lawyer may be less likely to carefully evaluate the quality of the time spent. Hourly billing tends to lead to simple quantitative recordings of time without qualitative judgments being applied.15

The Commission attached a newly created Model Law Firm Policy Regarding Billable Hours,16 which included the following items and which all firms would be well advised to adopt.

1. Integrity

Above all else, it is an absolute requirement and condition of continued employment that lawyers be scrupulously honest in recording time. That means that lawyers must carefully keep track of the nature and amount of time spent on individual matters . . .

2. Prompt Recording of Time

Consistent with point 1 above, the only way to ensure integrity and accuracy is to keep careful records and to record and submit time on a daily basis ...

3. Provide Meaningful Detail

In recording and describing time, lawyers should put themselves in the position of the client receiving the bill, and ask” Does this give me the detail I need to evaluate the quality and quantity of the services provided?...17

Incorporating these thoughts into the Rules would be a major step in preserving the hourly billing system and curbing what Professor Ross referred to as the “perfect crime.”

"The billing procedures used by most firms practically invite attorneys to commit the ‘perfect crime.’ The padding of bills is almost impossible to prove since there is no objective way to measure, except within very broad limits, the amount of time that one needs to spend on any particular task."18

The Rules Should Address the More Infamous Practices by Which Attorneys Inflate Their Bills

There are many practices by which attorneys improperly increase the time they bill for the alleged services rendered. These include block billing, excessive incremental billing formulas, overstaffing, excessive hours for revisions, rounding up the time billed, billing for overhead and for excessive research. This article will only discuss the first two practices. The cases discussed herein are based upon actual fee disputes in which the author served as an expert witness or as a neutr-
one hour was never less than the full hour. This would suggest bill padding by rounding up to the full hour.20

In another recent fee dispute one of the associates in a firm, which was suing for its fees, billed 18 hours in one day. An attorney who is on trial or in the midst of a merger that is about to close may be called upon to work long hours. However, it is unlikely that one can perform 18 hours of billable work in one day. Because clients are billed only for the time actually spent, the general rule of thumb for billing hours is that a lawyer must spend three hours in the office for every two that are billable. On that basis, this lawyer must have spent more than 24 hours that day in the office. And, in that fee dispute the bill did not indicate any reason such as suggested above for an 18-hour day.

The billing statement for the day was more than one page. The lawyer repeatedly indicated “review memorandum” (17 times). She also charged for “organize transaction documents,” “telephone conferences” (5 times) and the unbillable time “instructions to legal assistant regarding delivery of signature pages.”

Shockingly, a recent book advocated that bills should be set in paragraphs indicating the work performed without indicating the amount of time for each task.21 It recommended only to show the total amount billed for the indicated period and not to indicate what services the authors defined block billing as “a visual means of projecting effort.”

The cashiers showed a statement for $4,500 in one block for the period 3\16\003 to 10\09\003 with no indication of the time spent on any task. Among the items billed were charges for “copied document,” “printed inventory,” “printed documents,” “went to the bank,” and “prepared check.” These are not permissible charges for a lawyer to make.

Elena S. Boisvert, president of a legal auditing firm, wrote:

“If the profession is charging for time, the client has a right to know how much time is spent on each task. Failing to provide the time spent on each task can mask billing abuses such as excessive time or churning of hours. In United Steelworkers of America, v. Phelps Dodge Corporation, for example, the court disallowed sixty percent of blocked entries, noting that “such entries made it difficult to determine the amount of time allocated to compensable tasks.”22

Many large corporate clients, especially insurance companies, provide in the retention letter with law firms that “the invoices should be itemized. No block billing is allowed.” “Each task must be given a separate entry.” However, smaller clients with little leverage cannot protect themselves. If clients with leverage are able to prohibit block billing, why should law firms representing smaller clients be permitted to block bill? The way to prevent this unfairness is to provide in the rules that if an attorney is billing on an hourly basis the billing statement must indicate the time for each task. The claim that this is too difficult for the lawyer is belied by the fact that many firms do not block bill and do indicate the time expended for each task. Likewise, firms at times are prohibited by a retainer agreement from block billing and indicate the time for each task. Firms also will not block bill when they know that the court will not order attorneys fees where the fees requested were block billed.

Abuse of Incremental Billing

Most law firms bill on an hourly basis in tenths (6 minutes) or two-tenths (12 minutes) of an hour increments and so advise the client in the retainer agreement. Some firms bill on the basis of a quarter of an hour, some advising the client and some not. Insurance companies often limit what their lawyers may bill to increments of six minutes. Judge Ralph G. Pagter, in In re Tom Carter Enterprises, wrote, “professional persons who charge their clients fees in excess of $80.00 per hour, based upon time spent, cannot in all honesty and reasonableness, charge their clients for increments in excess of one-tenth of an hour.”23 There is nothing in the rules that would make such conduct improper.

Lawyers who advise their clients in the retainer agreement that the firm bills on a quarter hour basis assert that the client consented to that type of billing when they executed the agreement. There is nothing in the Model Rules or California Rule 4-200 that addresses whether charging on such a basis produces an illegal or unconscionable fee and no California cases have opined on this question.

ABA Formal Opinion 93-379 states that it is incumbent upon lawyers not only to “make disclosure of the basis for the fee,” but also to give “a sufficient explanation in the statement so that the client may reasonably be expected to understand what fees and other charges are actually being billed.” The Opinion refers to Comment [2] to Model Rule 1.5, which addresses the basis or rate of fee, and which as amended since the Opinion now states:

In a new client-lawyer relationship, however, an understanding as to fees and expenses must be promptly established. Generally, it is desirable to furnish the client with at least a simple memorandum or copy of the lawyer’s customary fee arrangements that states the general nature of the legal services to be provided, the basis, rate or total amount of the fee and whether and to what extent the client will be responsible for any costs, expenses or disbursements in the course of the representation.

The Opinion also refers to Model Rule 1.4(b) (The opinion was rendered prior to the present Model Rules, but the new Rules are the same.) “A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding representation.”
The above language gives some guidance to lawyers about clarifying their fees but does not attempt to restrict the manner in which the lawyers may bill.

The egregious use of an incremental billing formula, in the cases discussed below, goes beyond the issue as to whether billing on a quarter hour basis is proper even if consented to by the client. The cases demonstrate how unprincipled attorneys have abused the practice of hourly billing and made a mockery of statements supposedly designed to advise the client as to the actual time spent by the attorney.

Case A

In this dispute, in which the client objected to a large fee submitted by the attorney and requested that the controversy be arbitrated, each of the timekeepers in the firm billed on a 0.25 hour basis and yet there was nothing in the retainer agreement advising the client that the attorney would bill that way. A client would not expect that the lawyer would bill 0.25 hour for each task and would bill that time for short phone calls taking less than three minutes (and even for uncompleted calls) or reading copies of short letters. As the court noted in In Re Tom Carter Enterprises, “very few telephone calls last more than one-tenth of an hour, and ... it rarely takes more than one-tenth of an hour to read an incoming letter or write a short outgoing letter.”

Attorneys who use an incremental billing basis assert that to properly compete the time for a phone call the attorney should include the time spent reviewing the file prior to the call and reviewing in his or her mind why the phone call is to be made and what must be discussed. But billing a quarter of an hour for an uncompleted call is dishonest. Certainly such an abuse of quarter-hour billing cannot be condoned.

Case B

The senior partner, in another case in which the author was retained to be an expert witness, charged 0.25 hour for each task, which he set forth in separate lines. For example, on one day he separately billed 33 entries and represented that each task took 0.25 hour. Thus he billed a total 8.25 hours (at the rate of $325 per hour) for that day and charged a total of $2,681.25. But incremental billing has never meant that a firm will bill 15 minutes for each letter read or phone call received or made. If we assume that each of the 33 entries took six minutes, using the court's suggestion from Carter that calls rarely take more than one-tenth of an hour, the lawyer should have billed 198 minutes or 3.3 hours. At the rate of $325 per hour he would have billed $975.00, not the $2,681.25 he billed!

In the Arbitration Advisory “Detecting Attorney Bill Padding” the California Committee on Mandatory Fee Arbitration, under the heading “examine the format of the invoices for patterns that suggest padding” wrote:

1. Formula billing: Every single piece of paper gets a time entry as it wends its way past the timekeeper to its destination. It does not take more than a few seconds to read most routine correspondence. If the timekeeper reads a group of documents in a minute or two and then records a minimum time for each document, this may ultimately increase the time by several hours.

The billing statements in this case revealed that repeatedly he billed .25 hours to “review correspondence” (e-mail or copies of letters sent to the lawyer, most of which were from others in the firm.) A study of the actual correspondence revealed that most were either a few lines or a voice message. The lawyer argued that he billed in accordance with the retainer agreement, and that there is nothing in the rules that prohibits such billing. The contract only states, “our services are billed in quarter-hour increments.” Not a word as to what that means. Since the law firm wrote the retainer it bears the burden of clearly explaining what is meant by “our services are billed in quarter-hour increments” and proving that they so advised the client before the client executed the retainer. This is especially true since the attorney has a fiduciary duty to the client. This language certainly did not mean that the attorney could bill 0.25 hour for reading each letter. This manner of billing was the attorney’s modus operandi, for in the months of June, July and August he billed in excess of 85% of the bills for a quarter of an hour. It is strange that the billing statements do not show the normal array of time where there would be approximately the same number of statements showing a quarter-hour, a half-hour and a full hour.

William Ross concluded in his book that: “More common and more insidious than ‘padding’ and churning” are more complex practices that ultimately amount to little more than versions of the same abuses.” The practice of this attorney was certainly most creative and is even more insidious than block billing.

The Rules Should Prohibit Fees Produced by Block Billing and Incremental Minimum Time in Excess of 0.20 Hours

The above examples demonstrate how attorneys have billed on the premise that there is nothing in the rules that says that such billing practices are improper. The rules should provide in a comment that billing a minimum incremental amount of time without fully explaining to the client the meaning of the provision produces an unconscionable fee and that incremental billing in excess of 1/10 of an hour, likewise, produces an unconscionable fee.

Professor Ross wrote:

“The importance of conscience in the context of time-based billing is particularly important since the Rules are so elementary that they offer virtually no guidance about the propriety of specific billing practices. As we shall see, the problem with many attorneys is that they are unaware that lying is wrong, but rather that they do not regard various forms of cre-
ative billing as dishonest, fraudulent, deceitful, or involving misrepresentations."

The practice of block billing could be easily eliminated by creating a rule against it. Insurance companies ban the use of incremental billing in excess of 0.10 hour when retaining lawyers. Those with little leverage are not able to do so. Attorneys, even those in the ethics community, defend their practice of block billing by asserting that there is nothing in the rules that prevents such billing. Permitting block billing makes it easier to commit the "perfect crime," as professor Ross has stated. It is impossible to ascertain the true time it took to do the various tasks that block billing camouflages. It enables the billing of hidden overhead charges such as secretarial work and other unbillable time. Prohibiting block billing would not eradicate the dishonesty of billing but would go a long way to stop a great deal of it.

Incremental billing of less than 0.20 hour could be permitted if fully explained but in excess of this should be prohibited. Attorneys who wish to bill on a quarter hour basis assert that it is acceptable if incorporated into the retainer agreement. Once again insurance companies often forbid this practice. Unsophisticated clients do not understand what affect billing on a quarter hour basis may have on the amount of time billed. Clients who do not have the necessary leverage with the law firm accept such a provision in retainer agreements without questioning its meaning. They do not recognize that billing on such a basis substantially increases the invoices. A formula, such as discussed above in case "B," whereby the attorney charges the minimum incremental time for reading each letter, should certainly be barred.

Attorneys should on their own not block bill or use incremental billing in excess of 0.20, but unfortunately many have not found the moral road to eliminate such practices. Doing so would help bond the client and attorney and would lead to more respect by the client for the attorney.

**CONCLUSION**

In the Preface to the Billable Hours Commission report, then ABA President Robert E. Hirshon stated, "It has become increasingly clear that many of the legal profession's contemporary woes intersect at the billable hour." Nevertheless, the report concluded that the "outright elimination of time billing is not a likely proposition." "No one expects hourly billing to go away. The goal of the Commission is to help lawyers consider alternative billing methods where appropriate."

Professor Ross has said that the problem is that many "lawyers are so blinded by self interest that they do not perceive any ethical difficulty." Bion Gregory, President of the Sacramento Bar Association and former Legislative Counsel to the California State Legislature, in a recent article wrote:

The tradition of a learned profession is that self-inter-
est is restrained to some degree in the service of the ideals of the profession, which, in our case, is justice. ... Lawyers, accountants and auditors allowed the pursuit of profit to trump long-standing professional values. The consequences of this corporate fraud for the accounting profession provide strong lessons for our profession.

He continued:

In the tradition of a learned profession, society and members of a profession form an unwritten social compact, whereby the members of the profession agree to restrain self-interest, and to promote ideals of public service and maintain high standards of performance in the area of the professional responsibility. In return, society allows the profession substantial autonomy to regulate through peer review.

He concluded that, "the accounting profession lost sight of this social compact in its excessive emphasis on profit." As a result "the public . . . called on Congress to end the profession's autonomy and to federalize the regulation of the profession." Mr. Gregory called upon the bar not to travel the same path as the accounting profession.

**ENDNOTES**


2. Id. at 8.

3. Id. at 8.

4. Id.


   Attorneys need to recognize that unethical time based billing practices harm not only their clients but also the legal profession, the courts and the public. Moreover, excessively clever strategies for accumulation of hours and the protraction of litigation for the conscious or unconscious purpose of generating more billable hours have aggravated a widespread cynicism about the legal profession that ultimately calls into question the integrity of the judicial system and weakens faith in the quality of the nation's justice.

9. "The study found that (80%) of those surveyed opined that the legal profession could do a better job of communicating with clients, and (78%) thought that lawyers should do a better job of explaining their fees to their clients." American Bar Association Section of Litigation, Public Perception of Lawyers Consumer Research Findings, April 2002.

10. "Americans also believe that lawyers do a poor job of policing themselves. Bar associations are not viewed as protectors of the public interest but as clubs to protect lawyers." Id.

11. ABA Model Rule 1.5 lists the following considerations regarding reasonableness of a fee:
   (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
   (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
   (3) the fee customarily charged in the locality for similar legal services;
   (4) the amount involved and the results obtained;
   (5) the time limitations imposed by the client or by the circumstances;
   (6) the nature and length of the professional relationship with the client;
   (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
   (8) whether the fee is fixed or contingent.

12. California Rule 4-200 lists the following factors in determining the conscionability of a fee:
   (1) The amount of the fee in proportion to the value of the services performed.
   (2) The relative sophistication of the member and the client.
   (3) The novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly.
   (4) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the member.
   (5) The amount involved and the results obtained.
   (6) The time limitations imposed by the client or by the circumstances.
   (7) The nature and length of the professional relationship with the client.
   (8) The experience, reputation, and ability of the member or members performing the services.
   (9) Whether the fee is fixed or contingent.
   (10) The time and labor required.
   (11) The informed consent of the client to the fee.

13. Likewise, little assistance is given to attorneys in the Written Fee Contract Section 6148 (a) of the California Business and Professions Code with respect to billing statements, which states:
   "(1) Any basis of compensation including, but not limited to, hourly rates, statutory fees or flat fees and other standard rates, fees and charges applicable to the case.
   (2) The general nature of the legal services to be provided to the client.
   (3) The respective responsibilities of the attorney and the client as to the performance of the contract.
   (b) All bills rendered by an attorney to a client shall clearly state the basis thereof. Bills for the fee portion of the bill shall include the amount, rate, basis or calculation, or other method of determination of the attorney's fees and costs.

14. COMMISSION at page vii.

15. COMMISSION at page 7. "The recording of hours for hourly billing tends to focus the lawyer on mechanical functions rather than on accomplishments or substantive progress." Id.

16. COMMISSION at page 49.

17. COMMISSION at page 49. See also California Committee on Mandatory Fee Arbitration, Arbitration Advisory 98-03, Determination of a Reasonable Fee ("Fee agreements are required to be fair and drafted in a manner the clients should reasonably be able to understand [Alderman v. Hamilton (1988) 205 Cal. App.3d 1033,1037]. Attorneys have a professional responsibility to ensure that fee agreements are neither unreasonable nor written in a manner that may discourage clients from asserting any rights they may have against their attorney [Los Angeles Co. Bar Assn. Ethics, Op. No. 489...].")

18. Ross at page 2.


25. Arbitration Advisory 03-01, Detecting Attorney Bill Padding, published by the Committee on Mandatory Fee Arbitration.


29. COMMISSION at page ix.


31. Bion Gregory, How to Protect Our Profession from Regulation, SACRAMENTO LAWYER MAGAZINE (Sept/Oct 2003).
It's Not Hourly Billing, but How It's Abused That Causes the Poor Image of Attorneys

Gerald F. Phillips*

The ABA Section of Litigation, in its 2002 report, "Public Perceptions of Lawyers: Consumer Research Findings," stated:

"Of all of the criticisms that consumers have about their personal experiences with lawyers, the greatest number of complaints arise around lawyers' fees. Consumers say that lawyers... are often not upfront about their fees; and are unwilling to account for their charges or hours."¹

Professor William Ross, who has devoted himself over many years to commenting on hourly billing, agrees that "[t]he public perception that lawyers over-bill their clients has accounted in part for the low esteem with which lawyers are held by much of the general public."²

Professor Ross, who in 1995 surveyed attorneys on the subject of hourly billing,³ is now reporting the results of his most recent study.⁴ He conducted a poll of 5,000 attorneys and 251 responded. Two-thirds stated that they had "specific knowledge" of bill padding. This finding is virtually identical to his earlier poll.⁵ He also reported that 54.6% of the respondents (as compared with 40.3% in 1995) admitted that they had sometimes performed unnecessary tasks just to bump up their billable output. In his prior study he estimated that forty percent of lawyers inflate their bills and admitted allowing their personal economic interest to affect their decision to perform work.⁶ Ross defines bill padding as invoicing a client for work never performed or exaggerating the amount of time spent on a matter. Unnecessary work is that which exceeds any marginal utility to the client.⁷ Ross concluded: "With ever increasing compensation and billing pressures, attorneys are finding ways to generate more hours in a way that is not always ethical."⁸ A cottage industry of legal auditors is now available to scrutinize billing statements and to testify in court to the presence of improper billing. This author continually is asked to testify as an expert witness in fee disputes or to serve as a mediator or arbitrator in such disputes.

And the abuse of the billable hour system is not just directed toward clients, as noted by Lawrence Fox in his article "End Billable Hour Goals... Now", where he wrote:

What started as an innovation grudgingly accepted by law firms, soon became the gold standard, applied almost universally to this day, despite numerous objections and staunch advocates in favor of alternative billing methods... And what started as an effort at simply drawing comparisons, slowly evolved into a method of punishing, at first, associates whose billable hours were below average and then, partners whose low billing hours translated into their being perceived as "unproductive."⁹

Moreover, in a most provocative and insightful book, "How Lawyers Lose Their Way: A Profession Fails its Creative Minds", Professors Jean Stefancic and Richard Delgado, in answer to their own question "Why are lawyers so unhappy?", opined that the discontent stems in large part from the long hours lawyers are forced to spend in repetitious, boring work in order to satisfy their minimum billable hours requirement, which law firms increasingly use to measure the success of their associates, quantitatively rather than qualitatively. The authors suggest that "[d]ismantling needless regulation, excessive specialization and the insane pursuit of more and more billable hours in the workplace frees the mind to consider new ideas."¹⁰

And then there is the legal system itself:

Attorneys need to recognize that unethical time based billing practices harm not only their clients but also the legal profession, the courts and the public. Moreover, excessively clever strategies for accumulation of hours and the protraction of litigation for the conscious or unconscious purpose of generating more billable hours have aggravated a widespread cynicism about the legal profession that ultimately calls into question the integrity of the judicial system and weakens faith in the quality of the nation's justice.¹¹

However, the purpose of this article is not to discuss how extensive improper hourly billing is in the legal profession today or to discuss how improper hourly billing is destroying the reputation of lawyers and our judicial system and the lives of many associates. These condemnations are not debatable. It is this author's view that it is not billing on an hourly basis that is responsible for the ills of our profession, but how the system is corrupted by creative devices used by
lawyers to attain the excessive minimum number of hours required of them. The focus of this article is how the billable hour system can and should be preserved by law firms by their voluntarily eliminating the required minimum billable hour if they bill on an hourly basis or by outlawing such requirements by changing the Model Rules of Professional Conduct and the various comparable state ethical rules. Various devices by which attorneys manipulate and fraudulently bill their clients must, likewise, be prohibited. The evil is the requirement set by law firms that its attorneys bill a large, often unattainable number of hours and not the hourly billing system.

In 2004, the author suggested “The Rules of Professional Conduct Should Provide Guidance to Attorneys With Respect to Billing Clients” and now again suggests that such practices such as block billing, and incremental billing in excess of 0.10 hrs, should be made unethical.

TO HELP PRESERVE HOURLY BILLING

We must assume that although certain alternatives to hourly billing may be used in the future, billing by the hour will continue to predominate. So, first, law schools should train their students how to properly use and not abuse hourly billing. The law schools should discuss with their students not only hourly billing, but also the importance of the students devoting themselves to non-billable areas, which include pro bono work, service to the firm, client development, training and professional development. It is problematic to wait until the students have gone to work for a firm for such instruction to begin. The ABA Commission on Billable Hours found that “[w]ith few exceptions, formal training does not appear ongoing or extend beyond orientation.” Alan Greer in his article “Billing, Our Profession’s Not So Hidden Sham” in answer to the question, “Why do they (meaning associates) stretch their billable hours?”, wrote:

Because we have, in not so subtle ways, let them know that if they don’t, they and their high paid associate positions are gone. We have confronted them with a moral and ethical dilemma in their young lives most of them can only solve by buckling under our pressure.

As their very first lesson in the practice of law, we, their mentors and teachers-in-the-law, have taught them how to cheat the same clients whom we have taken an oath to faithfully serve. Thus begins a downward spiral of declining professionalism that allows more and more lawyers to mentally justify to themselves less and less ethical conduct in the name of their own personal wants—be they financial or emotional.

Second, attorneys should not be graded on their billable hours. Law firms that bill on an hourly basis should not tie hour, or have any requirement that each attorney bill a minimum number of hours per year. Similarly firms should not give any rewards or bonuses based on the number of hours billed or reduce associates’ compensation if they do not bill a certain number of hours. This incentive to the padding of billable hours is the major cause for the abuse of hourly billing. Some have referred to the minimum as a “target” to camouflage the real intent. By eliminating this incentive, attorneys would not be pressured to reach a required number of billable hours, and would more often bill the true time incurred in representing the client.

Third, law firms should represent to their clients, in their retainer agreements/engagement letters, that their firm does not require any minimum number of billable hours for those submitting billing statements. Sophisticated clients understand that billing abuses often are the result of attorneys endeavoring to meet the high minimum number of billable hours set by the firm. In addition, the firm should set forth in its retainer agreement/engagement letter that it will not permit certain abuses to billable hours, discussed in detail in a separate section therein, such as block billing, large incremental units of time, etc. Not requiring any minimum amount of billable time when using hourly billing is a major step that should be taken to “rekindle pride in our profession and restore the practice of law to the respected position it once occupied.”

Lawrence Fox observed:

Think for a moment, moreover, about what a billable hour reward and punishment system says about where the law firm’s real values are. The hiring literature, the firm Web site, the summer associate presentations all may talk about a balanced life. Many firms have enshrined the work-life balance in their mission statement. But the true firm commitment to that concept is found, not in what the firm says, but in what it does. And what it does when it engraves its devotion to high billable hours in a billable hour reward and punishment system is to tell associates that the rhetoric of work-life balance is just so many eloquent but meaningless words.

[Hourly billing certainly has one huge ethical deficit. The client has a very real interest in limiting the client’s legal fees; the lawyers get rewarded, at least in the short run, for an increased number of hours. In short, hourly billing is a great incentive for the lawyer to undertake more tasks and to complete them more slowly, perhaps contrary to the interests of the client.

The imposition of specific goals, quotas or requirements for billable hours by law firms only heightens this conflict and . . . they are hard to justify as serving any legitimate client interest.

This author agrees with that viewpoint, but will herein
basis where there is a requirement to bill a number of hours is improper and should not be allowed. This requirement not only destroys the image of lawyers but also deprives attorneys of the time to lead a balanced life, do pro bono work or play a part in the firm activities because of the mad drive to meet the fixed number of hours.

Sol Loinwitz described what goes on in a large law firm:

The quid pro quo at large firms is dazzling. We attract them, we lure them, we bribe them, and in the process we don’t tell them that they’re going to be giving up a decent life. They are so busy racking up the hours, it becomes an obsession, not a life. 18

It is this author’s opinion that if any connection between billable hours and the compensation of the attorneys at a firm is completely and honestly removed from hourly billing, that billing by the hour would be proper and a fair manner of billing.

Lawrence Fox, in his article “Save Us from Ourselves” suggests:

[T]he firms ought to issue a client bill of rights that says that ‘... we will judge our associates on their willingness to take on work that must be done, but no one should feel any pressure to bill a particular number of hours and padding of hours by either sloppy recording or undertaking tasks that are not in the best interests of the client will not be tolerated.”

Bar associations should ask law firms to pledge that they will not bill on the basis of hourly billing if the firm has any minimum number of hours that must be billed by associates and partners. Ethics committees should consider creating new rules that make it unethical for a firm to bill on an hourly rate and at the same time offer a bonus for billing hours in excess of a minimum number of hours. 20

Mr. Fox further advocated an idea that should be considered by all general counsel:

Perhaps general counsel will reinforce this message by announcing that they will not hire any firms that have minimum hourly billing requirements. 21

Professors Jean Stefancic and Richard Delgado endeavor to account for the widespread professional misery reportedly experienced by lawyers today. They first propose that the root cause of lawyers’ unhappiness is how law is taught in law schools. They refer to this as “formalism”, which they describe as follows.

In law, formalism is connected to the rule of precedent and conservative judging. In legal education, it manifests itself in the teaching of rules and doctrines at the expense of social analysis. ... In legal practice, it appears in the form of narrow specialization, hierarchical organization of the law firm, the relentless pursuit of billable hours ... (emphasis added) 22

These authors continually make reference to billable hours as one of the causes of the misery of the legal profession. The authors conclude with a chapter entitled “High-Paid Misery” and suggest that:

At first, the practice [of billable hours] was a social good—an attempt to rationalize billing and insure that the attorney was accountable to the client ... But it became a tyrant, an elevated form of the factory worker’s time card developed in the 1920 and 1930s. 23

Eliminating the requirement of the minimum number of hours that attorneys must bill and correcting the abuses of hourly billing will permit attorneys to live a “balanced life”, enabling them to participate in pro bono work, client development, and service to the profession and to their firm.

In an April 10, 2007 article in the Los Angeles Daily Journal, staff writer John Roemer reported that two Stanford Law students wrote to 100 of the nation’s premier firms urging that law firms “switch billing systems that charge clients per transaction, not by time spent. If that’s impossible, they want associates at least to face lower billable hour expectations and an improved balance work and life.”

The large minimum number of hours set by a law firm is calculated to produce a larger profit for the partners and to assure the profitability of the associates, who receive very high annual salaries. The salaries are set by competition between law firms, based upon a going wage set by a few large firms and followed by the others, to attract the highest quality of associates. The salaries are not fixed by any economical evaluation. It would appear that the trend for higher salaries for associates will continue and that firms will require a minimum of 2400 billable hours to offset the continually rising wages for associates. The high minimum number of hours causes a relentless pursuit by associates to reach this excessive goal and to earn a bonus if they exceed the minimum. The number of required hours is often unattainable without the attorney adding hours through the devices discussed below, which are concealed by block billing.

BILL PADDING IS CONCEALED BY BLOCK-BILLING

Billing padding is achieved by block-billing or lump billing where those billing do not indicate on their bills the time spent on each task inserted in the bills. One total combined time is billed for each day by each associate. By not disclosing the time it took to do each alleged task, those billing are able to add time to the total bill, pad the bill, without concern that their deceit will be detected. Block-billing enables bill padding for it hides the deception being perpetrated. Hourly billing also causes some firms to pursue unnecessary and burdensome discovery, taking many unnecessary depositions and propounding lengthy interrogatories that require many hours to perform. If the firm is charging for time, the client has a right to know how much
time was spent on each task billed. Failing to provide the time spent on each task masks such billing abuses as excessive incremental billing, excessive reviewing and vague description of work allegedly done.

An entry, for which the attorney bills 3.00 hrs, as set forth below, without indicating the time spent on each task, is block-billing and hides the time spent on each task.

1/24/07: Called client, sent letter to opposing counsel, read letter from client, researched law. 3.00 hrs

Courts are beginning to rule that they cannot determine if the fee is reasonable if the invoices are block-billed.24

BILL PADDING THROUGH IMPROPER INCREMENTAL BILLING

In most retainee agreements there is a provision that permits the firm to bill in minimum increments. Most often this provision is not adequately explained and clients often don’t know what it means. Courts will accept billing a minimum of 0.10 hours, (six minutes) for a phone call, reading a letter or sending an e-mail. This minimum may be billed even though the time actually spent was only three minutes. It is thought that the time billed should be 0.10 hours because it would take a few minutes to prepare for the call. An attorney may not bill any greater minimum than that set forth in the retainee agreement for that would be fraud. However, some attorneys in well respected firms bill 0.20 hours or 0.25 hours, as set forth in their engagement letters. This author has seen attorneys billing a minimum of 0.50 hours. In a recent case, in which the author was an expert witness, an attorney billed consistently to “review correspondence 0.25 hours” with no exact description what he reviewed and why. The attorney billed one hour for reading four e-mails. Each e-mail was but two or three lines. Thus, he defrauded the client, who believes that the lawyer spent one hour reading these e-mails even in fact the time spent was perhaps less than a minute. Attorneys who regularly bill using incremental billing of 0.20 hours or more use such a rate to bill higher fees.

State of California “Arbitration Advisory 03-01” states:

It does not take more than a few seconds to read most routine correspondence. If the timekeeper reads a group of documents in a minute or two and then records a minimum time for each document, this may ultimately increase the time by several hours. 25

BILL PADDING THROUGH THE USE OF VAGUE DESCRIPTIONS

The foundation of hourly billing is that the invoices submitted by counsel must tell the client what he or she needs to know in order to understand how the amount billed was calculated.26 Regularly, attorneys hide their bill padding by billing for “reviewing the file” and “research,” etc.

John W. Toothman and William Ross in their book, Legal Fees: Law and Management, under the heading “Adequacy of Time Entry Detail & Cryptic Entries” wrote:

A cryptic entry is an entry that is vague, ambiguous, or lacks sufficient detail for the client (or court) to determine what was done, by whom, why, or when. A cryptic entry might, for example, simply say that the lawyer had a “telephone conference” or had a “telephone conference with Dan Smith without giving the subject of the communication. In extreme cases the entry may have no description at all. As a federal court explained, “[e]ntries such as a ‘telephone call’ and ‘review of documents’ are not sufficiently specific as to enable the court to determine whether the hours are duplicative or excessive.”27

Entries that fail to identify the subject matter of the documents reviewed or the topic of conversation in a telephone conference are unacceptable. (Wilder v. Bernstein, 1998 WL 323492 at 6 (S.D.N.Y. 1998)

BILL PADDING THROUGH THE USE OF EXCESSIVE REVISING

A keen observer can often spot billing entries for repeated review and revision of an associate’s work product. If constant revising was necessary, then the original work probably wasn’t first-rate. Firms should not bill for both the original and for excessive time spent making revisions. If the matter was handed first to an inexperienced attorney, the firm is billing the client for training. One practice of attorneys that causes the most client irritation is the repetition, line after line of the billing statement, ‘reviewing and revising.’ Whenever one sees an excessive amount of time billed for reviewing, one can take that as a signal for bill padding.

BILL PADDING THROUGH OVERSTAFFING

Clients can easily recognize when reviewing billing statements that the case was overstaffed. In a recent case the firm used five attorneys and ten paralegals. On one brief the names of five attorneys appeared. In another case a partner billed 6.40 hours for a “conference with the defense team.” However, none of the other members of the defense team billed for the conference. Rather, they billed large numbers of hours for other work. It was not clear if the attorneys attended the conference but covered that up by billing 10 hours for other work on the case.

THE UNINTENDED RESULTS OF HOURLY BILLING

Billing on an hourly basis in a firm that requires a minimum number of billable hours has many unintended disastrous consequences for its attorneys, for the firm, for our profession and for our community. The ABA Commission on Billable Hours found

The unending drive for billable hours has had a negative effect not only on family and personal relationships, but on the public service role that lawyers traditionally have played in society.28
Professors Stefancic and Delgado devote many pages describing the seriously discontented lawyers who they state experience high rates of divorce, burnout, mental illness, and drug and alcohol abuse. One important factor they assert that is responsible for this is the high billable hours required by firms.

The Hon. Stephen G. Breyer, Associate Justice of the United States Supreme Court, in his forward to the report of the ABA Commission on Billable Hours Report, laments the fact that over "the past four decades it has become increasingly difficult for many lawyers ... to undertake pro bono work, engage in law reform efforts, even attend bar association meetings." He said, "[t]he villain of this piece is what some call the "treadmill" - the continuous push to increase billable hours." He asks how can the lawyer partake in such activities "if that lawyer also must produce 2100 or more billable hours each year, say sixty-five or seventy hours in the office each week." He answers his own question: "most cannot, and for this both the profession and the community suffer." He concludes that:

the study made by the ABA "concerns how to create a life within the firm that permits lawyers, particularly younger lawyers, to lead lives in which there is time for family, for career, and for the community. Doing so is difficult. Yet I believe it is a challenge that cannot be declined, lest we abandon the very values that led many of us to choose this honorable profession."29

The then President of the ABA, Robert E. Hirshon, in a preface to the report stated that:

Disaffection with the practice of law is illustrated by a feeling of frustration and isolation on the part of lawyers who, due to time-billing pressures, are not being as well mentored as in the past. Time pressures also result in less willingness on the part of lawyers to be collegial, which only exacerbates work load since it necessitates that everything be written. Not coincidentally, public respect for lawyers has been waning since the 1970's. All of this at a time when lawyers are less interested in climbing the corporate ladder and more interested in life balance.30

MODEL LAW FIRM POLICY REGARDING BILLABLE HOURS

In its report, the Commission on Billable Hours created a "Model Law Firm Policy Regarding Billable Hours", which it referred to as "Hours Expectation/Model "Diet." It cautioned, that to be successful, law firms must develop training programs that should be incorporated into the orientation programs of the firms. It was quick to explain that with respect to expectations as to hours, there should be no hard and fast minimum levels. Law firms should state that they "absolutely reject[] a compensation system tied to billable hours without flexibility and without consideration of contributions through pro bono work and service to the firm."31 It based the number of hours believing that the attorneys are "eager to enjoy the life of the firm, eager to serve the higher ideals of the profession, including through pro bono work, and eager to learn."32 The commission characterized what it produced as a model "diet" or mix of work that the "typical associate" should have as a goal. The commission, in its diet, provided a model that provided for 2300 hours of billable and non-billable work.

Billable client work –1900 hours
Pro bono work – 100 hours
Service to the Firm – 100 hours
Client Development – 75 hours
Training and Professional Development – 75 hours
Service to the Profession – 50 hours. 33

The commission said that it chose 1900 billable hours because that is typical at large firms.34 However, it said that it would defer determining the particular level of billable work to each firm, as a "cultural choice."35

The commission stated that the lawyers should, in describing the work performed, give the client the details that the client would need to evaluate the quality and quantity of the services provided. It opined that such entries as "Research" "Legal Research" or "Summary Judgment Brief" would be insufficient.

CONCLUSION

The State Bar of California Committee on Mandatory Fee Arbitration, in its Arbitration Advisory 03-01, concluded:

"The vast majority of lawyers are honest and their bills are reliable statements of what was done. However, the economic pressure on lawyers and firms is enormous, continuous and irrefutable.36

Professor Lisa Lerman summarized what this pressure can cause.

The central one [problem] is that it appears that for many lawyers in the firm, professional values have been subordinated to financial aspirations. The lawyers are engaged in pervasive deception of clients, pretending to be doing work that they are not doing, pretending to spend more time than they are spending, pretending that work needs to be done which in fact does not need to be done. The delivery of legal services is conceptualized principally as a billing opportunity to be manipulated and expanded."37

Firms that use billable hours as the basis for billing clients should advise their attorneys and clients that the firm does not require any number of billable hours for their associates and partners. The firm would thus eliminate this source of pressure on associates and partners to pad bills. In many firms, associates believe that their becoming a partner
in the future depends on them producing a large number of billable hours. This should dispel any associate believing that the track to partnership is a large number of billable hours and that by padding their billable hours they will curry favor with the partners. The quality of an attorney's work should be of paramount importance and not the quantity. However, it would be naive to think that with the dramatic rise in salaries and the demand by firms for higher output from associates that many lawyers would not respond by padding their bills, by adding time or by adding tasks to their monthly statements. Assuring the firm's attorneys that there are no number of hours that it requires to be billed would go a long way to eliminate this reason to pad the monthly bills. Padding has become such a common practice that some observers may question whether it is no longer observed even by the critical eye as cheating the client. This is especially true when even the most honest lawyers can find ways to justify ethically dubious practices and reasonable attorneys can differ about what constitutes ethical behavior. Therefore, it is incumbent on the bar associations to make it clear that various billing practices, such as block billing and high incremental units of billing are improper. Those who retain attorneys and are concerned with bill padding and recognize that attorneys have a real incentive to pad their bills should ask their attorneys if they reward their associates who bill high billable hours. Firms make it difficult, by requiring large billable hours, for their attorneys to do pro bono work, client development, training and professional development, service to the profession and to engage in law reform efforts or even attend bar association meetings. Engagement letters with clients should commit that the firm has no minimum hourly billing requirement. Furthermore if the firm wants its attorneys to live a balanced life, it must not require excesses billable hours.

It has been stated by many that hand and hand with the minimum number of billable hours required of attorneys, are padded billing statements. It should be the policy of all law firms that it is an absolute requirement of continued employment at the firm that those submitting hourly billings record their time honestly and not permit such abuses as block billing and high incremental billing units to be part of their statements. In order for those recording their billable hours to ensure the integrity and accuracy of the firm's bills, all attorneys must keep careful records of the work done and record and submit time on a daily basis. The firm's timekeepers should be required to submit their time at the end of each day or at the latest, the next morning. Lawyers who violate this rule and attempt to reconstruct their time from memory or notes at the end of the week or month should be dealt with by the firm. Not contemporaneously preparing time statements cheats the firm or the client.

It is important to reiterate in a simple unambiguous engagement letter with the client what was discussed at the initial meeting with the client. Instead of the retainer agreement bonding the relationship between the attorney and the client such agreements often cause bewilderment to the client. The firm should realize that the client usually is not an attorney and it is fair to presume that the engagement letter may be one of the first legal documents that the client has been asked to sign. I suggest inserting in the engagement letter the following:

During our meeting we advised you as to the billing rate used by each person who will bill on an hourly basis. These rates are set forth [.]. Although many law firms permit block billing or lump billing, which means that one time charge is assigned to various tasks, this firm will not engage in this practice. Some attorneys believe that this practice is not improper. However, in order to permit you to better understand the billing statement we will not engage in block billing. Another widely used practice in billing is to use a minimum incremental time unit. As we discussed this means that instead of billing the exact time for each phone call or reading a short letter which may take but a few minutes the firm may bill 0.10 hrs., which is six minutes. Some firms will use a minimum 0.25hrs, a quarter of an hour. We will endeavor to advise you in our monthly statements what was done in your behalf on a day by day basis. In doing so we will try to describe the tasks in clear and unambiguous language. A great deal has been written about law firms requiring its lawyers to bill a number of hours each year and to reward its lawyers for billing above the requirement and to punish them for not reaching their minimum. This we will not do.

As suggested by the title of this article, what is destroying the reputation of the billable hour system is the bill padding and the devises that creative attorneys have developed to enable them to meet the excessively high billable requirements set by some firms. This creates the need for honest people to become dishonest and find various ways to bill more hours than they worked. Professor Lisa Lerman, in discussing the problems of deception, distrust and abuse that arise from hourly billing suggests that lawyers should follow the example of auto mechanics and provide clients with written estimates. This may be practical for certain legal work, such as real estate acquisitions, corporate acquisitions, and uncontested divorces, but completely impractical, for example, for litigation. Some critics of hourly billing have suggested that hourly billing be replaced by a fixed sum negotiated in advance with the client. This is a good example of the grass looking greener on the other side of the fence. A fixed sum has many more problems if used for litigation. In order for a firm to be fairly compensated it would have to fix a large sum, which may turn out to be completely unfair to the client if the worst scenarios do not
develop and the litigation runs smoothly with a cooperating adversary. If the fee were fixed at a low sum it could turn out to be disastrous to the firm.

There is no question that the associate who puts in a great number of hours must be compensated. The partners who bill for the services of the associates, review their work, know the quality of their work and the value of their service to the client. If an associate overbills, the partner, who should be required to approve all bills before they are sent to the clients, can eliminate excess hours.

Law firms should encourage each associate to work diligently, but at the same time to do pro bono and community work, and work for the betterment of the firm by taking part in recruiting and mentoring new associates and serving on firm committees. It is important that all attorneys be given the time to develop clients. An expectation of an unreasonable amount of time for an attorney to perform his work effectively prevents them from having a balanced and quality life.

The aforementioned “Public Perception of Lawyers” is very critical of lawyers. Knowing how the public feels about lawyers, what are the Bar, law firms and our law schools going to do to improve the public perception of our profession? This article gives suggestions as to what can and should be done. It is our hope that the suggestions are heeded and that our leaders discuss their validity and act upon them.

Endnotes

1. ABA Section of Litigation, “Public Perceptions of Lawyers: Consumer Research Findings” at 14.
4. Id.
5. Id.
7. Id.
8. Id.
15. Linowitz, supra note 11 at p.xii.
16. Lawrence J. Fox, End Billable Hours . . . Now, 17 The Professional Lawyer #3 (2006) at p.5.
17. Id. at 4.
18. Linowitz, supra note 11.
20. It has been suggested in a blog by “Big Law Cumberland Grad,” in the article referring to the recent survey conducted by Ross, see note 5, “when choosing legal counsel, clients should ask about a firm’s billable requirement... choose a firm with a low billable numbers... and you will be more likely to get quality, efficient, creative work product... In addition, state courts and bar associations should step in to create ethical rules addressing this incentive for firms that keep their billable requirements below 1500 might help.
21. Fox, supra note 19 at p.2196.
23. Id at 80.
24. See Abbott v. Village of Winthrop Harbor, 1999 WL 675292 at 3 (N.D. Ill) (the court reduced the fee request by more than $61,000 on account of block billing); Brown v. Smythe, 1993 WL 481543, at 5-6 (E.D. Pa.) (the court wrote: “the problem with this aggregate form of billing is that the court has no way of determining how much time was spent on each task and, thus, the Court is unable to ascertain the reasonableness of the hours charged.”); In re Leonard Jet Co., 103 B.R. 706, 713 (Bankr. D. Md. 1998) (the court explained that block-billing is disfavored for two reasons. First it “permits an applicant to claim compensation for rather minor tasks which, if reported individually would not be compensable.” Second, “it prevents the Court from determining whether individual tasks were expeditiously performed within a reasonable period of time because it is impossible to separate into components the services which have been lumped together.”); and In re S.T.N Enterprises, Inc., 70 B.R. at 836 (the court said it “would disallow compensation altogether for any entry that aggregates individual services.”) Also see U.S. Bankruptcy Court for the District of Delaware Local Rule 2016-2 (d)(vii) (expressly prohibiting “lumped” time entries).
28. ABA Commission on Billable Hours, supra note 13, at ix.
29. Id. at vii
30. Id. at ix.
Reviewing A Law Firm’s Billing Practices

Gerald F. Phillips

Dear Bill,

You have asked for my professional opinion as to the propriety of the billing practices of the law firm that recently represented you (“The Firm”). In addition, you have requested my views on whether the manner of billing impacted on the amount of fees you paid. This opinion is derived only from the Statements rendered to you (“Billing Statements” or “Statements”). I do not opine as to the quality of the legal services rendered or as to whether each task undertaken was necessary.

Before I summarize my conclusions, I suggest that you ask the Firm for the time slips and billing statements rendered to other clients for those specific days on which you were billed a large number of hours. In your request, suggest that the Firm redact all privileged information about the services and to whom they were rendered before sending the documents to you. The purpose of examining the statements will be to learn whether the lawyers whose time was billed to you also billed other clients a large number of hours on the same days. Does the combined number of hours billed on those days by any lawyer appear suspicious?

The number of hours that the Senior Partner (SP) and one Associate (AC) billed in the seven plus months was enormous. SP billed you 429 hours during the period that he represented you. On a prorated basis for a full year, this would equate to 735 hours. If we assume that partners in firms bill approximately 1800 hours, not including administrative time, SP billed 40% of what he would bill on a yearly basis on your matter. AC billed 441 hours on this one case. On a prorated basis for a full year he would have billed 756 hours or 42% of the normal yearly billable time. The total fees were in excess of $400,000.

In summary, the Firm’s billing practices were, in my opinion, improper and caused the Statements to be excessive and the fees charged unconscionable. The reasonableness of a fee depends not just on the amount charged, but also on the disclosure to the client of the method by which the fee is to be determined. (Lisa G. Lerman, Scenes From A Law Firm, Rutgers Law Review, Vol. 50: 2153, 2179, Summer 1998)

As I will explain below, the Firm did not disclose how it would in fact bill—the amount was set at a rate higher then the 0.10 of an hour that it stated it would use at the beginning of the representation (it actually used a minimum time of 0.20 of an hour) and it rounded up.

Professor William G. Ross, in his excellent book The Honest Hour, The Ethics of Time-Based Billing by Attorneys (Carolina Academic Press, 1966), stated that dishonest billing is the perfect crime because verifying the accuracy of time records is almost impossible. However, often attorneys do leave a trail from which the dishonesty can be discerned. A.

THE INCREMENTAL BILLING USED BY THE FIRM SHOWS THAT THE FIRM DID NOT BILL IN INCREMENTS OF 1/10TH OF AN HOUR AND ADDED TIME TO THE BILLS

A normal billing arrangement for a firm is to bill in increments of 0.10 of an hour, (6 minutes). “[P]rofessional persons who charge their clients fees in excess of $80.00 per hour, based upon time spent, cannot, in all honesty and reasonableness, charge their clients for increments in excess of one tenth of an hour.” In re Tom Carter Enterprises, Inc., 55 B.R. 548, 549 (Bankr. C.D. Cal. 1985). And in your case the retainer agreement, paragraph C: Attorney Fees, provided: “We charge for our time in minimal units of a tenth (0.1) of an hour.” The Firm did not bill on that basis. Instead, the Statements show that the Firm generally billed in increments of 0.20 of an hour, 0.50 of an hour, and a full hour. For example, the Billing Statements indicate that 81% of the time that SP billed two or more hours, he billed in increments of 0.20, 0.50 and full hour. This was contrary to the retainer agreement and improper. This practice substantially increased the time and consequently the fees that were billed.

It appears that the Senior Partner and the Firm billed 0.20 of an hour for telephone calls. For example, the Senior Partner billed “Telephone conferences with the client and office 0.20”, and he billed 0.20 of an hour for a call to the Associate. On one day SP billed 0.60 hours for three telephone calls. How much time he billed for the many phone calls he made is concealed in the block billing. The Senior Partner billed only two entries at 0.10 of an hour during the entire period of representation. Thus a phone call of 5 minutes or less would be billed as if it lasted 12 minutes.

In re Tom Carter Enterprises, Inc., 55 B.R. 548, 549 (Bankr. C.D. Cal 1985) the court observed, “very few telephone calls last more than one-tenth of an hour, and . . . it

Continued on page 10
 Billing Practices, continued from page 2

rarely takes more than one-tenth of an hour to read an incoming letter or write a short letter..." and in In re S.T.N. Enterprises, Inc., 70 B.R. 823, 832 (Bankr. D. Vt. 1987) the court held that phone calls may not be billed in units of more than one-twentieth of an hour (three minutes).

Chart 1 demonstrates that 66% of the time the bills rendered by the Senior Partner for one hour or less were in increments of 0.20, 0.50 or a full hour. The Firm's improper billing practice is brought into sharp focus when we analyze the Statements submitted by the Senior Partner for two or more hours. (Chart 2) He submitted 84 statements for two hours or more. Eighty-two percent (82%) were for a full hour or a half-hour (that is 2.00, 2.50, 3.00, etc.). Fifty percent (50%) of the time, 42 bills, were for a full hour. If the Firm were actually billing on the basis of 1/10th of an hour the incremental array of time in tenths of hours would have been about equal. One does not work more often for a half-hour or an hour than for 20 or 40 minutes. Only if there were rounding up would there be a concentration of half or full hour billings. If the billings were on a 1/10 of an hour basis we would find a greater number of items billed at each of the 1/10th increments. In addition, the Senior Partner submitted 35 bills that were for five or more hours. (Chart 4) Twenty-nine such bills (65%) were billed in increments of a half or a full hour.

The Billing Statements for the Firm, for two or more hours, also show that the Firm as a whole rounded up. (Chart 3) Of the total 195 entries for time for two or more hours, 54% were for a half-hour or a full hour. This study indicates and supports the prior studies that the Firm was rounding to the next half or full hour or pulling time out of the air.

B. ROUNDING UP THE TIME BILLED WAS A MISREPRESENTATION AND INCREASED THE FEES CHARGED

The Firm, although it stated that it would bill in increments of 0.10 of an hour, rounded up its time to the half or full hour. In so doing, the Firm in essence charged you for time it did not spend. For example, if the Senior Partner spent 2.45 hours and rounded up the time to 3 hours you were billed for 15 minutes that he did not spend on your behalf, although the bill stated that 3 hours were incurred. The charge for 3.00 hours, at his billing rate, would be $1,170, but if he did not round up and billed for 2.45 hours the charge would be $755.50. This practice resulted in a gross overstatement of the time charged and consequently the fees billed.

Professor Ross, in "The Honest Hour" (Page 167), wrote: "As this lawyer's comments suggest, liberal rounding of small units of time can add up to large rip-off for clients." The Firm did not only round up in small units, less than one hour, but it generally rounded up all time to the next half or full hour. This explains why so many bills show incremental time of a half or a full hour. In an article in U.S. Business Litigation, (November 1997, pages 16-17) the authors, Mari Henry Leigh, Miki Schroeder and Donna Wolf wrote: "Rounding up can easily inflate a bill by 15% to 30%, if not more, depending on how frequently and to what extent it is used. Rounding
For time in excess of five hours we find that 65% of the bills were for a full hour.

up when done to the nearest whole-hour, as seen in some invoices, can result in a gross overstatement of the fees incurred.” Once again, if there were no rounding up the time reported would have covered the full array of the 1/10 increments (0.10-0.90 and a full hour), which is certainly not present here. Each 1/10th of an hour would have received about the same number of billing entries.

Rounding up and billing on a basis other than 1/10th of an hour, when the retainer agreement stipulated that the billing would be on a 1/10th of an hour basis is certainly improper. An attorney owes a fiduciary duty to the client and billing in such a manner is a misrepresentation of the time actually spent.

Both the Senior Partner and the Associate put in numerous billing statements showing an excessive number of days with very long hours and a large number of whole-hour days. (Chart 5) On none of these days were they in court or taking a deposition, either of which could explain a large number of hours. Notice that all but one of these entries by the Senior Partner were for a full hour and that one was for a half-hour. This is evidence of rounding up.

In the aforementioned article in U.S. Business Litigation the authors wrote: “The presence of an excessive number of days with long hours or large whole hour days (e.g. 8.00, 9.00 or 10.00) may indicate that the fees are excessive or that the biller is billing “door - door” . . . . Such excessive hours are suspect and generally non-reimbursable. At the very minimum even if the hours were actually expended, the efficiency of the attorney producing the work and thus the value of the work product may not be accurately reflected in the invoices and may require reduction.”

C. THE BLOCK-BILLING CONCEALED THE ACTUAL TIME EXPENDED AND FACILITATED BILL PADDING

“Block-billing, assigning one time charge to multiple tasks is a practice that is almost universally disapproved.” U.S. Business Litigation (at page 16). It is disapproved because it allows a lawyer to conceal the time spent on each task and prevents the determination of whether individual tasks were performed within a reasonable period of time. In this case, this practice also enabled the attorneys to round up and to bill more often for a half or full hour.

Listed below are two examples of block-billing that permitted the Senior Partner to bill a full hour and a half of an hour, with no indication how much time was spent on each separate task listed.

“5/8 “Telephone conferences with a potential expert, reporter, client; legal research; meeting with client and Associate.” 4.00 hours

There is no way to know how long each call took or to know what legal research was done or how long it took. This bill is meaningless and conceals the length of time SP took performing each task. I venture to say that if each task were separately itemized in the bill the cumulative time would not have been 4.00 hours. Was the inclusion of “legal research” a generic add on aimed at filling up the recorded time?

“5/19 Prepare for and meeting with Bob; telephone conference with client; telephone conference with investigator, telephone conference with ABC” 4.5 hours

We do not know how long the meeting with Bob took. If the meeting took 2 hours, did the phone calls take an additional 2 and 1/2 hours? Notice in both entries the rounding up.

In Chart 6, other examples of block-billing can be found, which again permitted the rounding up of the bills to a half-hour or to a full hour.

Professor Ross wrote:

“A bill should always specify exactly how much time was spent by each attorney on each day on each specific task. Courts in numerous cases involving the award of attorney fees have complained about bills that have intermingled hourly charges and thus precluded the discernment of allocation of specific tasks (at page 65).
Senior Partner, and a Second Partner. Examples of excessive “reviewing” and “revising” are replete throughout. Examples where the revisions were extensive are found in (a) the Motion to Suppress, (b) the Motion to Dismiss as Void for Vagueness as Applied, (c) the Motion to Transfer, and (d) the Motion for Reconsideration discussed below.

(a) Motion to Suppress

The preparation of the Motion to Suppress (29 pages) is a good example of excessive reviews and revisions. (See Chart 7) Preparation of the motion was originally undertaken by the Associate (a four-year associate) but the next month the work was taken over by a Second Partner (JP), who billed at $370 an hour. After JP billed 8 hours for researching and preparing the motion, the Senior Partner then revised the motion. After the Second Partner put in additional time for legal research, the Senior Partner again billed for additional research and to “prepare motion to suppress.” What did he mean when he said he “prepared motion”? The Second Partner already had prepared the motion. Then, after two partners revised this motion, which should have been a relatively routine one for this law firm, AC “revised the motion.” Then SP again on two occasions reviewed and revised this motion. Thus, on four separate bills, with respect to this 29-page motion, both SP and AC revised the motion. Was this overkill or should we suspect that the revisions and reviewing may not really have been done on each occasion? Were all of these revisions necessary, especially when the original work was done by a partner of the firm? If the Second Partner researched and drafted the motion and a Senior Partner reviewed it, was it necessary to also have the

---

**D. THE EXCESSIVE REVISIONS WERE UNNECESSARY OR WERE REQUIRED BECAUSE OF THE POOR QUALITY OF THE ORIGINAL WORK**

The Statements indicate that it was the regular practice of the Firm to have attorneys repeatedly review and revise the work product of others. This practice generated larger fees. If the constant “reviewing and revising” were necessary, then the original work was not of the quality that a first-rate firm should perform. If this was the case, the firm should not have billed you fully for both the poor quality original work and for the time spent in making the revisions. If the tasks were given to inexperienced young attorneys, you should not have been billed for their training. Billing partners, when reviewing statements, often write off time that they recognize as excessive and the result of an associate’s inexperience. Based on the pattern here the excessive reviewing and revising appears to have been used to increase the fees. Whether the time reported was actually incurred in reviewing and revising the motions and memoranda cannot be discerned from the Statements. The time expended was usually concealed by the fact that it was integrated into the block billing.

The large number of hours expended in reviewing and revising various memoranda submitted by the Firm, especially when done by an additional attorney, or more than one attorney, is indicative of a procedure that produces excessive fees. A partner may wish to review the work of an associate, but the number of times was excessive. In this case one partner would “review” and “revise” another partner’s work in addition to the associate’s work. Even worse, the Associate continually “reviewed” and “revised” work of the

---

**CHART 7**

<table>
<thead>
<tr>
<th>DATE</th>
<th>ATTY</th>
<th>ACTIVITY</th>
<th>HOURS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>9/19</td>
<td>&quot;Legal research re motion to suppress...&quot;</td>
<td>.8</td>
</tr>
<tr>
<td>2.</td>
<td>10/13</td>
<td>&quot;Legal research re motion to suppress...&quot;</td>
<td>2.3</td>
</tr>
<tr>
<td>3.</td>
<td>10/14</td>
<td>&quot;Legal research re motion to suppress...&quot;</td>
<td>2.2</td>
</tr>
<tr>
<td>4.</td>
<td>10/15</td>
<td>&quot;Legal research re motion to suppress...&quot;</td>
<td>3.7</td>
</tr>
<tr>
<td>5.</td>
<td>10/16</td>
<td>&quot;... revise motion to suppress&quot;</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>(Block-billed **)</td>
<td>2.6</td>
</tr>
<tr>
<td>6.</td>
<td>10/16</td>
<td>&quot;Legal research re motion to suppress...&quot;</td>
<td>2.1</td>
</tr>
<tr>
<td>7.</td>
<td>10/17</td>
<td>&quot;Research and revise suppression motion...&quot;</td>
<td>6.5</td>
</tr>
<tr>
<td></td>
<td>10/17</td>
<td>&quot;Prepare motion to suppress...&quot; (Block-billed)</td>
<td></td>
</tr>
<tr>
<td>9.</td>
<td>10/16</td>
<td>&quot;...Review/reverse motions...&quot; (Block-billed)</td>
<td>6.5</td>
</tr>
<tr>
<td>10.</td>
<td>10/18</td>
<td>&quot;Legal research re motion to suppress...&quot;</td>
<td>1.6</td>
</tr>
<tr>
<td>11.</td>
<td>10/18</td>
<td>&quot;Revise motion to suppress...&quot; (Block-billed)</td>
<td>9.9</td>
</tr>
<tr>
<td>12.</td>
<td>10/19</td>
<td>&quot;Revise motions...&quot; (Block-billed)</td>
<td>5.2</td>
</tr>
<tr>
<td>13.</td>
<td>10/19</td>
<td>Review revised motion to suppress</td>
<td>3</td>
</tr>
<tr>
<td>14.</td>
<td>10/31</td>
<td>&quot;Attend hearing on motion to suppress...&quot;</td>
<td>8.7</td>
</tr>
</tbody>
</table>

* Indicates that this was the complete description of the services rendered on that day in contrast to block-billing where only one item of the bill is set forth. Where there is no indication of block billing the statement quoted is the full billing statement for that day.

** Indicates that the item was only part of the listed services, on that day.

---

THE PROFESSIONAL LAWYER, FALL 2001
Associate revise it? One would also think that this law firm would have, on many occasions, moved to suppress evidence and, therefore, would have researched the law in this area many times before. In view of that was all this review and revision required? Was it actually done?

(b) Motion to Dismiss for Vagueness

Another example of excessive work was that done on the motion to dismiss for vagueness. (See Chart 8) I will not comment on whether this motion should have been made at all. A large number of hours were billed by YL, who was admitted to the bar in 1999. The fact that he was a first year associate was not revealed in any of the correspondence. The correspondence reveals that the Firm referred to him as an “expert.” Again, because of block-billing, it is not possible to discern the exact number of hours he billed on this motion. We know from the bills that were not block-billed that he billed in excess of 50 hours on this motion. In addition, he billed for other tasks in excess of 19 hours. Thus his work on this motion cost the client at least $25,000.

AC, in four separate block-billings, charged 26 hours for reviewing or revising this motion, also referred to as the constitutional motion. SP also “reviewed/revised vagueness motion”. The amount of hours YL spent on this motion, and the reviewing and revising done by AC and SP, either shows the poor quality of his work, perhaps because of his inexperience, or is another example of duplication of effort. YL billed 3 hours for “research and edit motion” even after AC and SP had reviewed the motion and YL had billed on 12 different days for his work on it. Then, after this entry, AC billed, “Revise and prepare for filing constitutional motion...” It would certainly appear that this motion was used as a training ground for the new associate. A great deal has been written about young associates being pressured by law firms to bill an exorbitant number of hours. (See Scenes From a Law Firm, by Lisa G. Lerman, Rutgers Law Review, Vol. 50:2153). Perhaps this explains the billing practices of this young associate. The following comment by Professor Lerman (on page 2175) in her article, may also explain some of the other billing practices in your case:

“The central one [problem] is that it appears that for many lawyers in the firm, professional values have been subordinated to financial aspirations. The lawyers are engaged in pervasive deception of clients, pretending to do work that they are not doing pretending to spend more time than they are spending, pretending that work needs to be done which in fact does not need to be done. The delivery of legal services is conceptualized principally as a billing opportunity to be manipulated and expanded.”

Although the motion is set forth in 29 pages, the first 12 pages dealt with the factual background, which was the same as in other memos.

(c) Motion to Transfer

As with the two motions mentioned above, the billings for the Motion to Transfer (also referred to as venue motion) show tremendous duplication of effort. Analyzing the

<table>
<thead>
<tr>
<th>DATE</th>
<th>ACTIVITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>5/11</td>
<td>&quot;Research vagueness issue...&quot; research confidentiality (Block-billed)</td>
</tr>
<tr>
<td>5/12</td>
<td>&quot;Research vagueness issue...&quot;</td>
</tr>
<tr>
<td>5/12</td>
<td>&quot;Review material; research vagueness issue&quot;</td>
</tr>
<tr>
<td>5/23</td>
<td>&quot;Outline constitutional challenge&quot;</td>
</tr>
<tr>
<td>5/24</td>
<td>&quot;Review articles&quot;</td>
</tr>
<tr>
<td>5/25</td>
<td>&quot;Meeting with SP, AC; review articles&quot;</td>
</tr>
<tr>
<td>5/28</td>
<td>&quot;Void for vagueness research&quot;</td>
</tr>
<tr>
<td>5/28</td>
<td>&quot;Void for vagueness research&quot;</td>
</tr>
<tr>
<td>5/30</td>
<td>&quot;Review articles re vagueness&quot;</td>
</tr>
<tr>
<td>6/29</td>
<td>&quot;Prepare vagueness motion&quot;</td>
</tr>
<tr>
<td>6/30</td>
<td>&quot;Research&quot;</td>
</tr>
<tr>
<td>7/12</td>
<td>&quot;Research re vagueness...&quot;</td>
</tr>
<tr>
<td>7/13</td>
<td>&quot;Draft, research vagueness motion&quot;</td>
</tr>
<tr>
<td>7/14</td>
<td>&quot;Motion for vagueness&quot;</td>
</tr>
<tr>
<td>7/20</td>
<td>&quot;Prepare motion re vagueness&quot;</td>
</tr>
<tr>
<td>7/24</td>
<td>&quot;Prepare motion&quot;</td>
</tr>
<tr>
<td>10/3</td>
<td>&quot;...research motion&quot; (Block billed)</td>
</tr>
<tr>
<td>10/5</td>
<td>&quot;Meeting with SP re motion&quot;</td>
</tr>
<tr>
<td>10/6</td>
<td>&quot;Research re vagueness, meeting with SP&quot;</td>
</tr>
<tr>
<td>10/12</td>
<td>&quot;Prepare constitutional motion&quot;</td>
</tr>
<tr>
<td>10/13</td>
<td>&quot;Meeting with SP and AC; outline constitutional motion&quot;</td>
</tr>
<tr>
<td>10/17</td>
<td>&quot;Meeting with SP, work on vagueness motion&quot;</td>
</tr>
<tr>
<td>10/17</td>
<td>&quot;Prepare motion re vagueness&quot;</td>
</tr>
<tr>
<td>10/18</td>
<td>&quot;Work on Constitutional motion, meeting with SP&quot;</td>
</tr>
<tr>
<td>10/19</td>
<td>&quot;Meeting with SP research for vagueness motion&quot;</td>
</tr>
<tr>
<td>10/20</td>
<td>&quot;Review for vagueness motion (First amendment; Claim of right; contract law)&quot;</td>
</tr>
<tr>
<td>10/24</td>
<td>&quot;Research; vagueness motion edits&quot;</td>
</tr>
<tr>
<td>10/30</td>
<td>&quot;...Review/review vagueness motion...&quot; (Block-billed)</td>
</tr>
<tr>
<td>10/31</td>
<td>&quot;Research and prepare constitutional motion;&quot;</td>
</tr>
<tr>
<td>11/1</td>
<td>&quot;Prepare constitutional motion, meeting with AC&quot;</td>
</tr>
<tr>
<td>11/1</td>
<td>&quot;...Review void for vagueness motion&quot; (Block billed)</td>
</tr>
<tr>
<td>11/2</td>
<td>&quot;Meeting with AC; research and revise motion&quot;</td>
</tr>
<tr>
<td>11/2</td>
<td>&quot;Revise constitutional motion; conference with YL re same...&quot; (Block-billed)</td>
</tr>
<tr>
<td>11/3</td>
<td>&quot;Revise constitutional motion, Conference with YL...&quot; (Block-billed)</td>
</tr>
<tr>
<td>11/5</td>
<td>&quot;Review motions...&quot; (Block-billed)</td>
</tr>
<tr>
<td>11/6</td>
<td>&quot;Research and edit motion&quot;</td>
</tr>
<tr>
<td>11/7</td>
<td>&quot;Revise and prepare for filing...&quot;</td>
</tr>
</tbody>
</table>

Amount of time spent on this task, however, is made impossible by block-billing. Billing Statements should show clearly the amount of time incurred with respect to each task and that information should not be concealed by such devices as block-billing. AC billed 30.6 hours for work on the transfer motion, excluding time included in block-
billings, which totaled 12.7 hours. (See Chart 9 and Chart 10 for Motion for Reconsideration)

Because of AC’s lack of experience it may have been necessary for SP to spend a great deal of time revising the work of the Associate on this motion. The block-billing conceals how much time it took SP to revise this motion. If SP did not spend a great deal of time reviewing and revising this motion then the total block-billed entry is inaccurate.

6/05 SP Telephone conference with client; review correspondence; revise venue motion; meeting with AC. 4.0 hours

It would appear that SP spent most of the 4 hours on the motion revising the work of the Associate. Telephone calls and reviewing correspondence do not usually take a great deal of time. Thereafter, SP spent additional time revising and meeting with AC.

6/07 SP “... revise motion.” 1.2 hours
6/08 SP “... meeting with AC re venue motion 5.0 hours
6/09 SPR “... review/revise motion” 4.0 hours

Notice the statements that were rounded up to a full hour 5.0 and 4.0 hours.

It cannot be determined from the following entry how much time AC spent on the motion to transfer or how much time was spent in the conference with co-counsel.

6/2 AC “Research and prepare motion to transfer venue; conference with SP and Client re same; prepare stipulation re unsalable documents; conference with co-defendant counsel re same.” 5.7 hours

Similarly, one cannot tell from the following block billing how much time was spent on the motion to transfer and how much preparing subpoena.

6/9 AC “Revise motion to transfer venue; prepare document subpoena” 4.0 hours

Because of AC’s lack of experience it may have been necessary for SP to revise the motion. If so the Firm should not have billed fully for AC’s time and for the time devoted to the revisions made by SP.

A. 6/05 SP “...Revise venue motion meeting with AC” Block-billed 4.0 hours
B. 6/07 SP “... Revise motion” Block-billed 1.2 hours
C. 6/08 SP “... meetings with AC re venue motion; Block-billed 5.0 hours
D. 6/09 SP “... review and revise motion” Block-billed 4.0 hours
E. 7/10 SP “... revise reply brief” Block-billed 4.0 hours

Once again note the rounding up.

AC also worked on a reply brief. He billed 20.1 hours total time, not block-billed, he again included work on the reply brief and showed that in block-billing a total of 15.2 hours.

SP again reviewed and revised the work of AC.

7/10 SP “...revised reply brief” Block-billed 4.0 hours
7/11 SP “... Revise reply brief...” Block-billed 2.5 hours
AC billed 8.6 hours, not block-billed, for the motion. In addition he billed 8.7 hours in which he listed that he

| CHART 9 |
| MOTION TO TRANSFER |
| TIME OF AC |
| DATE | ACTIVITY | HOURS |
| 1. 5/30 | "Legal research re motion to transfer venue..." (Block-billed) | 6.4* |
| 2. 5/31 | "Conference with SP and client re venue motion...” (Block-billed) | 2.0** |
| 3. 6/02 | "Research and prepare motion to transfer venue...” (Block-billed) | 6.7 |
| 4. 6/03 | "Prepare motion to transfer venue” | 5.7 |
| 5. 6/04 | "Prepare motion to transfer venue” | .7 |
| 6. 6/05 | "Prepare motion to transfer venue” | 3.6 |
| 7. 6/06 | "Revise motion to transfer venue” | 3.3 |
| 8. 6/07 | "Revise declaration re motion to transfer venue” | .6 |
| 9. 6/08 | "Revise motion to transfer venue and prepare AC declaration in support of motion;” | 10.1 |
| 10. 6/9 | "Revise motion to transfer venue; prepare document subpoenas” (Block-billed) | 4.0 |
| 11. 6/19 | "Conf. with SP re motion to transfer venue” (Block-billed) | .7 |
| 12. 7/6 | "Prepare reply re motion to transfer venue” | 1.6 |
| 13. 7/7 | "Prepare reply re motion to transfer venue” | 3.6 |
| 14. 7/8 | "Prepare reply memo re motion to transfer venue” | 3.5 |
| 15. 7/10 | "...Revise reply memo re motion to transfer venue” (Block-billed) | 4.0 |
| 16. 7/11 | "Revise reply motion to transfer; prepare reply re motion for reconsideration” | 5.3 |
| 17. 7/12 | "Prepare reply re motion to transfer venue...” (Block-billed) | 5.9 |
| 18. 7/14 | "... attend hearing .....” (Block-billed) | 7.1 |
| 19. 7/18 | "... Attend court hearing on motion to transfer...” (Block-billed) | 3.9*** |

* Where there is no indication of "Block-billed" the statement is the complete description of the services rendered on that day in contrast to block-billing where only one item of the bill is set forth.

** Indicates that the item was only part of the listed services that were block-billed.

*** It would appear that AC went to the court twice on the same day, 7/14 and 7/18. He only put in for mileage for 7/14. Is this a mistake? SP attended only on the 18th. AC put in for mileage on 7/14 for 36.40 miles. Yet when he went to court on 6/23 and 8/9 the mileage was 28.60. Why the difference? When he went to court on 6/8, 8/9 and 9/12 the mileage was 23.40.

| CHART 10 |
| MOTION FOR RECONSIDERATION |
| DATE | ACTIVITY | HOURS |
| 1. AC 6/23 | "prepared motion for reconsideration...” (Block-billed) | 2.1 |
| 2. AC 6/26 | "Prepare motion for reconsideration re June 20, 2000 order” (Block-billed) | 4.9 |
| 3. SP 6/27 | "...review/revise motion to reconsider and declaration” (Block-billed) | 1.2 |
| 4. AC 6/27 | "...Prepare and revise motion for reconsideration;... conference with SP re same” (Block-billed) | 3.7 |
| 5. SP 8/28 | "Revise motion...” (Block-billed) | 3.0 |
| 6. SP 9/29 | "Revise motion for reconsideration...” (Block-billed) | 2.4 |
| 7. SP 7/11 | "... review response to reconsideration motion” (Block-billed) | 2.5 |
| 8. SP 7/11 | "Prepare reply re motion for reconsideration “ (Block-billed) | 5.7 |
| 9. AC 7/12 | "...review/revise reply to motion for reconsideration” (Block-billed) | 3.9*** |
worked on this motion. SP also reviewed and revised motion. The block-billed time was 4.2 hours.

E. THE EXCESSIVE RESEARCH AND THE REPETITIVE TASKS SHOULD NOT HAVE BEEN REQUIRED

For a Firm that specializes in the type of law required in your case and holds itself out as having that expertise one must wonder why so much time was spent and so many revisions made on what should have been routine matters for such a firm. I wonder whether your case was outside the Firm’s expertise, which made it necessary for it to do certain research that you could have correctly expected to be unnecessary if the law firm possessed expertise in this area and already had work product on this area in its database. If so, the Firm may have misrepresented its expertise. If this case was not the type of case generally handled by this Firm I believe it was incumbent upon the Senior Partner to have so advised you and you should not have been charged at the higher hourly rates that you were charged. On the other hand, if the Firm was truly expert in this area and such standard motions as a Motion to Transfer or a Motion to Suppress were in the database, why was so much research required? Some of the research appears to have been used to educate or train young associates and should not have been billed.

It is also very surprising that the Senior Partner would so often do his own “legal research”. For example, on the very first day, SP said he did “legal research”. Because of block-billing 8.00 hours on that day, we do not know how much time he spent on legal research. He also billed for legal research on other days and repeatedly, on seven different days, “reviewed discovery.” (See Chart 11).

F. INEFFECTIVE STAFFING SUBSTANTIALLY INCREASED THE FEES

The Firm used two partners and two associates on this case. The Billing Statements show that others often reviewed and revised the work and that there was excessive conferencing. The charges for conferences often did not indicate, as it should, the subject of the meeting.

| CHART 11 |
|---|---|---|
| **DATE** | **ATTY** | **ACTIVITY** | **HOURS** |
| 1. 5/11 | SP | "...review discovery" (Block-Billed) | 1.2 |
| 2. 5/12 | SP | "...review correspondence and discovery" (Block-Billed) | 1.8 |
| 3. 5/14 | SP | "Review discovery and outline issues and questions" (Block-billed) | 5.0* |
| 4. 5/15 | SP | "...Review discovery material and video tape" (Block-billed) | 3.0 |
| 5. 4/16 | AC | "Review discovery documents" | 4.8 |
| 6. 5/17 | SP | "... review discovery" (Block-billed) | 1.5 |
| 7. 5/18 | SP | "... discovery" (Block-billed) | 2.7 |
| 8. 5/18 | AC | " Review discovery documents..." | 5.5 |
| 9. 5/19 | AC | "Review discovery documents..." (Block-billed) | 4.3 |
| 10. 5/25 | AC | "...prepare memo re discovery..." (Block-billed) | 2.6 |

* Where there is no indication, “block-billed” the item was the complete description.

G. THE BILLING STATEMENTS WERE VAGUE AND WERE MEANINGLESS AND DISCLOSED REPETITIVE ENTRIES

Many of the entries were vague, such as “legal research” or “Telephone conference with X”. Many entries were repetitive such as “Review discovery” or on successive days billed for “Review articles.” If “legal research” was done it is incumbent on the attorney to specify the nature of the research. Many entries are vague, especially since they were repeated month after month. “Reviewing” “revising” and even editing may have been used to permit gross padding.

H. EXCESSIVE TIME, TRANSFERRING FILES

It would appear that substantial time was spent on organizing the files to transfer to new counsel. It is very surprising that the senior counsel who billed at $390 an hour spent time on two days on this task. In addition, AC was also involved in the transfer on three days. This work certainly should not have been billed at their billable hours. A paralegal should have done this work, or if there was no paralegal, then this task should have been billed at a paralegal’s rate. This is a relatively small matter but it may be indicative of the Firm’s general practice.

I. FORFEITURE OF ALL FEES PAID IS AN APPROPRIATE WAY TO DETER A FIRM’S FEE ABUSES

In an article on page 82 in Volume 83 of the ABA Journal, April 1997, entitled Excessive Fees Bite Back, the author, Joanne Pitulla, concluded: “While innocent... errors in billing are not ethical matters, deliberate overcharging is.” Moreover, “[c]ourts regard the imposition of an unreasonable fee as a flagrant ethical transgression going to the heart of the fiduciary relationship between lawyer and client and impose stern punishments.”

Both fee forfeiture and discipline are appropriate in this case since the facts show that the Firm took advantage of its position of trust for personal gain. The Firm should not be permitted to argue quantum meruit that the fees you paid should not be disgorged. Such an argument would allow the unscrupulous lawyer to take the risk and charge an unreasonable fee knowing that the safety net of quantum meruit would be available.
This article is written as an open letter to the clients of a hypothetical law firm. It explains how a law firm bills or perhaps should bill. It is something that can be used as a guide tool for new firms, a policy in a firm handbook or perhaps in marketing materials for a law firm. This is Part One of a Two Part series.

DEAR CLIENTS:

Law firms that do not use the proper billing practices discussed herein should advise their clients that they bill differently than many other firms.

In today's economy it is critically important that clients know that the bills that they receive from their counsel are honest, not padded, and properly describe in detail the services rendered. This law firm bills on an hourly basis when representing clients in litigation as do most other firms. Unfortunately many attorneys, whether because of ignorance or insensitivity about ethical issues, bill improperly to add hours. We, therefore, believe that it is prudent to advise you how we bill and inform you that this firm will not be guilty of bill padding. We are committed to billing fairly. Our retainer agreements state categorically that we will not bill in the manner in which some less ethical attorneys bill because we believe such billing to be improper. We believe that you should know how we differ from many firms in how we bill.

BLOCK BILLING - THIS FIRM DOES NOT PERMIT THIS PRACTICE

One of the most infamous billing practices is "block billing," which is very widely used by all size firms. This practice consists of the billing of a one-time charge for multiple tasks. This enables attorneys to conceal the actual time spent on specific tasks and prevents the determination of whether individual tasks were performed within a reasonable period of time. The very purpose of hourly billing is to advise the client of the actual time expended to perform the tasks billed. Block billing defeats this purpose. The California Committee on Mandatory Fee Arbitration, in its Arbitration Advisory 03-01, January 29, 2003, "Detecting Attorney Bill Padding" stated that block billing "is not a favored practice... and many courts specifically prohibit block billing." It further stated, "[t]his is almost never allowed by federal courts. This practice hides accountability and may increase time by 10%-30%." Some courts have disallowed as much as sixty percent of blocked entries.

One word of caution so that you fully understand what is proper and what is improper with respect to block billing - the U.S. Supreme Court in Hensley v. Eckerhart stated that attorneys are "not required to record in great detail how each minute of time was expended, but at least counsel should identify the general subject matter of his time expenditures" (461 U.S. 424 (1983)). An unnecessary detail would be to require a breakdown of the tasks involved in taking or defending a deposition. Therefore, an entry such as taking deposition of defendant John Smith 7 hours 9:00-4:00 PM would not be improper even though there was no breakdown such as direct examination and redirect. On the other hand an entry such as "legal research - five hours" would be improper.

This firm does not block bill. Thus our fees may be substantially less than other firms that do.

THIS FIRM DOES NOT PERMIT INCREMENTAL BILLING GREATER THAN TENTH'S OF AN HOUR.

The normal manner of billing for a firm is to bill in increments of tenths (0.10) of an hour, which means that a minimum of six minutes would be charged even if the time expended was actually two minutes. This is an acceptable exception to the basic rule of hourly billing that attorneys must bill only the "actual time." There are a growing number of firms that are charging in increments of a quarter of an hour. This we deem unconscionable.

Billing in an increment of a quarter of an hour not only means that a minimum of 15 minutes will be charged for each task even if only 2 minutes were expended but also that the time will be rounded up to the nearest quarter hour rather than to the next 10th of an hour, Professor William Ross, the eminent writer on hourly billing, wrote: "liberal rounding of small units of time can add up to large rip-offs for clients".

In a recent case the district court imposed a 20% across-the-board reduction on the number of hours counsel billed in quarter-hours increments. The Ninth Circuit affirmed and concluded: "...the hours billed were inflated because counsel billed a
minimum of 15 minutes for numerous phone calls and e-mails that likely took a fraction of the time. Our own review of the time sheets confirms that it is replete with quarter-hour or half hour charges for drafting of letters, telephone calls and intra-office conferences,” (Welch v. Metropolitan life 480 F 942 2007)

Billing in increments of an hour is often improperly manipulated. Some attorneys bill the minimum for telephone calls not completed. The attorney also billed the minimum when the call was again made. This is impermissible. Another improper use of the minimum billing increment is to bill the minimum for receiving an e-mail and then billing the minimum for replying. The billing should be the total actual time spent receiving and responding to the e-mail. The minimum should be billed only once.

This firm does not bill in increments of more than the acceptable 0.10 of an hour. Thus our fees, billed with no block billing, may be substantially less than what another firm may bill where they bill on a quarter of an hour basis. Additionally, we do not manipulate incremental billing to add hours to our billing.

About The Author: GERALD E. PHILLIPS is a full time mediator and arbitrator in large complex litigation and specializes in conflicts in the entertainment industry. He serves as a consultant to corporations as to how to reduce litigation expenses. He has served as a mediator and arbitrator and as an expert witness in fee disputes. He has written extensively on disputes arising between counsel and the client. He is an adjunct professor at the Straus Institute, Pepperdine Law School and is on the Board of CDRC and the Los Angeles County Bar Association Dispute Resolution Services. He is a member of APRL, Association of Professional Responsibility for Lawyers. He is a member and one of the founders of the College of Commercial Arbitrators. He and his family created the Phillips Family Fund at the Dartmouth Ethics Institute.

SECTION REPORTS

Multi-Office Section

A Multi-Office Section Roundtable was held on Thursday, June 11, 2009 at the offices of Milbank, Tweed, Hadley & McCloy Downtown LA. In attendance were Janet Krause of Goodwin Procter, Virginia Banker of Buchalter Nemer, John Purins of Reed Smith, Betty Archer and Marcellina Hawthorne of White & Case, Michelle Luffman of O'Melveny & Myers, and Helen Younghood.

We discussed several pertinent issues, including business continuity plans in the event of an emergency, administering evaluations and managing the influx of resumes, being the most discussed topics.

The topic of having videoconferenced meetings so that everyone on both sides of the city could easily attend was discussed and Michelle Liffman of O'Melveny & Myers and John Purins of Reed Smith both offered their offices.

Lunch was catered by The Village Kitchen and was enjoyed by all.

Bonita J. Paul
Human Resources Manager

NEW MEMBERS & MEMBER UPDATES

NEW MEMBERS

Barrie Koplow
Administrator
The Cochran Firm – Los Angeles
4929 Wilshire Boulevard, Suite 1010
Los Angeles, CA 90010
Telephone: (323) 931-6200 Ext. 405
Fax: (323) 931-9521
Email: bkoplow@cochranfirm.com

Rony Danielli Rosebaum
Director of Human Resources
Jeffery Mangels Butler & Marraro, LLP
1900 Avenue of the Stars, 7th Floor
Los Angeles, CA 90067
Telephone: (310) 203-8080
Fax: (310) 785-3317
Email: rdr@mbm.com
Thanksgiving, Food and Food for Thought

Here it is the Monday before Thanksgiving and I am trying to write a President's Page that won't appear or be read until after January 1, 2008. I should probably jump right into a topic which, through clairvoyance, I know is going to be of interest to you as you start out the new year. Doing that, however, would require that I fast forward past what is my favorite Holiday.

I love the Thanksgiving Holiday. It has been my favorite Holiday for as long as I have been married. Thanksgiving is the one Holiday that, at least for me, is only about family and food. It is a Holiday that is not cluttered with Holiday Parties or the pressure of gift buying. It is, for me, a four-day Holiday because I have traditionally not worked on the Friday after Thanksgiving, choosing rather, to spend the day with family.

I like to cook and I love the aroma of my "to die for" mincemeat and pumpkin pies baking in the oven in a crust made with lard from a recipe handed down to me by my Mother. I love the aroma of a turkey baking in the roaster and the smell of dressing (also made from a recipe handed down to me by my Mother) baking in the oven. I know of no greater joy than gathering around a table with my children and my grandchildren and sharing good conversation and taking time to be thankful for all of the gifts and blessings we have received over the last year. This year Thanksgiving will be a particularly happy time because I have received some very special gifts this year for which I am thankful. I have a child who has been struggling to find her way but who, over the last nine months, has made great progress in righting her ship. Furthermore, on June 7th of this year (Mary's and my wedding anniversary) our lawyer son, Jeff and his lovely bride Liz blessed us with our fourth grandchild (Katie) and she will be spending her very first Thanksgiving at Grandpa Mark's house. How cool is that!!! The three of them will be coming from Milwaukee where Jeff practices law in the von Briesen law firm. So I am looking forward to this week and not thinking much about 2008.

Nevertheless, in tune with the New Year and New Year's Resolutions and the food theme surrounding Thanksgiving (see above) here is some food for thought.

As President of our Association I receive a magazine called The Professional Lawyer published by the American Bar Association Center for Professional Responsibility - Standing Committee on Professionalism. In the most recent issue, Volume 18 Issue Number 3, there is an article entitled It's Not Hourly Billing, but How It's Abused that Causes the Poor Image of Attorneys written by Gerald F. Phillips. This article posits the proposition that law firms should voluntarily eliminate the minimum billable hour requirement for partners and associates if the firm bills on the basis of the billable hour. It also suggests that the practice should be outlawed by changing the Model Rules of Professional Conduct. Finally, the author proposes that short of the practice being outlawed as a violation of our ethical rules, "Law firms that bill on an hourly basis should not tie the compensation of their attorneys to billing clients by the hour, or have any requirement that each attorney bill a mini-
PRESIDENT’S MESSAGE

I do not pretend to know what the real world answer is to the ethical dilemma created by implementing minimum hour requirements which are used to determine compensation and position in the firm. We practice law to support ourselves and our families and because, in firms, it is important that all lawyers contribute to the common good, hourly billing and minimum hourly requirements are probably here to stay. In fact as you peruse the rest of this issue you will see an article which discusses how to best maximize your income when employing the billable hour as the basis for billing your clients. The suggestions made by Mr. Cole in his article are good ones so long as they are implemented in the context of fair and accurate billing practices. The fact of the matter is, however, that, while we practicing lawyers may not see any benefit in moving away from the billable hour and its use to determine compensation, we should be aware that our clients are possibly becoming sensitized to the conflict created by the use of the billable hour to determine compensation and position within the firm. Therefore the impetus to address this conflict may come from our clients who may begin insisting that we do away with the minimum hour requirement for our lawyers in order to cure the conflict.

I write about this issue, not to solve it, but rather to raise your level of sensitivity to the issue so that as you begin your new year you are conscious of the conflict created in firms that bill by the hour and then use billable hour requirements to determine compensation and position in the firm. If we are sensitive to the issue we can, as a profession, begin addressing the problem and the impact it could well be having on how we are viewed by our clients and the public.

I hope you had a Happy Thanksgiving, a Merry Christmas or Happy Hanukah, and a Happy New Year. I also hope you will have a prosperous and rewarding 2008.

Wayne J. Mark, President
Telephone: (402) 978-5223
Fax: (402) 341-8290
E-Mail: wmark@frasertreykrr.com

STARTING JANUARY 1, 2008

UPDATES ON LEGISLATION OF INTEREST TO NSBA MEMBERS WILL BE AVAILABLE ON THE NEBRASKA STATE BAR ASSOCIATION WEBSITE AT HTTP://WWW.NEBAR.COM AND THROUGH THE E-COUNSEL. IF YOU WOULD LIKE TO SUBSCRIBE TO THE E-COUNSEL, PLEASE EMAIL SAM CLINCH AT SCLINCH@NEBAR.COM
This article is written as an open letter to the clients of a hypothetical law firm. It explains how a law firm bills or perhaps should bill. It is something that can be used as a guide tool for new firms, a policy in a firm handbook or perhaps in marketing materials for a law firm. This is Part One of a Two Part series.

DEAR CLIENTS:

Law firms that do not use the proper billing practices discussed herein should advise their clients that they bill differently than many other firms.

In today's economy it is critically important that clients know that the bills that they receive from their counsel are honest, not padded, and properly describe in detail the services rendered. This law firm bills on an hourly basis when representing clients in litigation as do most other firms. Unfortunately many attorneys, whether because of ignorance or insensitivity about ethical issues, bill improperly to add hours. We, therefore, believe that it is prudent to advise you how we bill and inform you that this firm will not be guilty of bill padding. We are committed to billing fairly. Our retainer agreements state categorically that we will not bill in the manner in which some less ethical attorneys bill because we believe such billing to be improper. We believe that you should know how we differ from many firms in how we bill.

BLOCK BILLING - THIS FIRM DOES NOT PERMIT THIS PRACTICE

One of the most infamous billing practices is "block billing," which is very widely used by all size firms. This practice consists of the billing of a one-time charge for multiple tasks. This enables attorneys to conceal the actual time spent on specific tasks and prevents the determination of whether individual tasks were performed within a reasonable period of time. The very purpose of hourly billing is to advise the client of the actual time expended to perform the tasks billed. Block billing defeats this purpose. The California Committee on Mandatory Fee arbitration, in its Arbitration Advisory 03-01, January 29, 2003, "Detecting Attorney Bill Padding" stated that block billing "is not a favored practice... and many courts specifically prohibit block billing." It further stated, "[t]his is almost never allowed by federal courts. This practice hides accountability and may increase time by 10%-30%." Some courts have disallowed as much as sixty percent of blocked entries.

One word of caution so that you fully understand what is proper and what is improper with respect to block billing - the U.S. Supreme Court in Hensley v. Eckerhart stated that attorneys are "not required to record in great detail how each minute of time was expended, but at least counsel should identify the general subject matter of his time expenditures" (461 U.S. 424 (1983)) An unnecessary detail would be to require a breakdown of the tasks involved in taking or defending a deposition. Therefore, an entry such as taking deposition of defendant John Smith 7 hours 9:00-4:00 PM would not be improper even though there was no breakdown such as direct examination and redirect. On the other hand an entry such as "legal research- five hours" would be improper.

This firm does not block bill. Thus our fees may be substantially less than other firms that do.

THIS FIRM DOES NOT PERMIT INCREMENTAL BILLING GREATER THAN TENTH'S OF AN HOUR.

The normal manner of billing for a firm is to bill in increments of tenths (0.10) of an hour, which means that a minimum of six minutes would be charged even if the time expended was actually two minutes. This is an acceptable exception to the basic rule of hourly billing that attorneys must bill only the "actual time." There are a growing number of firms that are charging in increments of a quarter of an hour. This we deem unconscionable.

Billing in an increment of a quarter of an hour not only means that a minimum of 15 minutes will be charged for each task even if only 2 minutes were expended but also that the time will be rounded up to the nearest quarter hour rather than to the next 10th of an hour, Professor William Ross, the eminent writer on hourly billing, wrote: "liberal rounding of small units of time can add up to large rip offs for clients."

In a recent case the district court imposed a 20% across-the-board reduction on the number of hours counsel billed in quarter-hours increments. The Ninth Circuit affirmed and concluded; "...the hours billed were inflated because counsel billed a..."
minimum of 15 minutes for numerous phone calls and e-mails that likely took a fraction of the time. Our own review of the time sheets confirms that it is replete with quarter-hour or half hour charges for drafting of letters, telephone calls and intra-office conferences,” (Welch v. Metropolitan life 480 F. 942 2007)

Billing in increments of an hour is often improperly manipulated. Some attorneys bill the minimum for telephone calls not completed. The attorney also billed the minimum when the call was again made. This is impermissible. Another improper use of the minimum billing increment is to bill the minimum for receiving an e-mail and then billing the minimum for replying. The billing should be the total actual time spent receiving and responding to the e-mail. The minimum should be billed only once.

This firm does not bill in increments of more than the acceptable 0.10 of an hour. Thus our fees, billed with no block billing, may be substantially less than what another firm may bill where they bill on a quarter of an hour basis. Additionally, we do not manipulate incremental billing to add hours to our billing.

About The Author: GERALD F. PHILLIPS is a full time mediator and arbitrator in large complex litigation and specializes in conflicts in the entertainment industry. He serves as a consultant to corporations as to how to reduce litigation expenses. He has served as a mediator and arbitrator and as an expert witness in fee disputes. He has written extensively on disputes arising between counsel and the client. He is an adjunct professor at the Straus Institute, Pepperdine Law School and is on the Board of CDRC and the Los Angeles County Bar Association Dispute Resolution Services. He is a member of APRL, Association of Professional Responsibility for Lawyers. He is a member and one of the founders of the College of Commercial Arbitrators. He and his family created the Phillips Family Fund at the Dartmouth Ethics Institute.

SECTION REPORTS

Multi-Office Section

A Multi-Office Section Roundtable was held on Thursday, June 11, 2009 at the offices of Milbank, Tweed, Hadley & McCloy Downtown LA. In attendance were Janet Krause of Goodwin Procter, Virginia Banker of Buchalter Nemer, John Purins of Reed Smith, Betty Archer and Marcellina Hawthorne of White & Case, Michelle Luffman of O'Melveny & Myers, and Helen Youngblood.

We discussed several pertinent issues, including business continuity plans in the event of an emergency, administering evaluations and managing the influx of resumes, being the most discussed topics.

The topic of having videoconferenced meetings so that everyone on both sides of the city could easily attend was discussed and Michelle Luffman of O'Melveny & Myers and John Purins of Reed Smith both offered their offices.

Lunch was catered by The Village Kitchen and was enjoyed by all.

Bonita J. Paul
Human Resources Manager

NEW MEMBERS & MEMBER UPDATES

NEW MEMBERS

Barvel Koplow
Administrator
The Cochran Firm – Los Angeles
4929 Wilshire Boulevard, Suite 1010
Los Angeles, CA 90010
Telephone: (323) 931-6200 Ext. 405
Fax: (323) 931-9521
Email: bkoplow@cochranfirm.com

Rony Daniell Rosebaum
Director of Human Resources
Jeffer Mangels Butler & Marmaro, LLP
1900 Avenue of the Stars, 7th Floor
Los Angeles, CA 90067
Telephone: (310) 203-8080
Fax: (310) 785-3317
Email: rdr@jmbm.com

July 2009