

Two Lawyers Disbarred for Padding the Bill Young Lawyers Take Heed

By Dolores Dorsainvil

In this age of capitalism and consumerism, many are likely familiar with the adage, “time is money.” This saying rings especially true for many lawyers across the nation. The more hours attorneys can bill for their work the greater the economic benefit to them and their firm. Clients know this, and, in the current economic climate, they are more carefully scrutinizing how attorneys account for their time. (For more information on this, read “Billable-Hour System under Scrutiny from Clients” by Jesse Greenspan, www.law360.com/articles/73440.) With such client scrutiny, attorneys need to be honest and accurate in their billing or they risk disciplinary measures for attorney misconduct for fraudulent billing.

There are many forms of attorney misconduct that involve billing. There is double-billing a client for a matter (for more information on this, read “The Double Billing Dilemma” by Daniel L. Cevallos, www.abanet.org/yld/tyl/may08/cevallos.html); directly billing a client and stiffing the employer (law firm); and the “padding” of bills (the increasing of billed hours without disclosure to and consent of the client). All of these attorney misdeeds often result in severe disciplinary action and may even lead to civil liability and criminal penalties against attorneys.

“Padding” may be of particular concern for attorneys who are starting out in a new law firm. Some law firms have quota systems and require that attorneys bill a minimum number of hours per year. Such billing minimums, which may have been easier to fulfill in better economic times, can be difficult to meet. In those instances, associates may feel pressured to make misrepresentations in their records and “pad” their time.

An egregious example of “padding” is the *Berg* case, in which an attorney was disbarred for fraudulent billing practices. *In Matter of Berg*, 3 Cal. State Bar Ct. Rptr. 725 (Rev. Dep’t 1997). Berg overbilled TDIC, an insurance company for whom he acted as *cumis* counsel (an attorney employed by a defendant in a lawsuit when there is an insurance policy supposedly covering the claim but there is a conflict of interest between the insurance company and the insured defendant) in forty-one malpractice cases. He billed the insurance company for work he had not performed, and records showed he charged the company for more than twenty-four hours on some days and for more than one hundred hours per day “on a substantial number of days.” 3 Cal. State Bar Ct. Rptr. at 738. It was not until after the insurance company paid Berg for the bills he submitted that it audited the invoices and discovered the overbilling. The State Bar Court of California found Berg’s conduct egregious. In addition, Berg refused to acknowledge the wrongdoing, which constituted aggravating circumstances justifying the sanction of disbarment.

Billing abuses are *not* limited to work performed for a law firm. A recent District of Columbia case, *In Re Cleaver-Bascombe*, No. 06-BG-858 (2010), involved an attorney appointed by the Superior Court of the District of Columbia to represent an indigent criminal defendant under the District of Columbia Criminal Justice Act (CJA), D.C. Code §§ 11-2601 *et seq.* (2001). Specifically, the attorney submitted a fraudulent voucher to the superior court in support of her application for payment under the CJA for representing the indigent criminal defendant. In the voucher, she stated that she made several visits to her client in jail when she knew that such visits did not occur. During the disciplinary proceeding, Cleaver-Bascombe defended her voucher and insisted that it accurately reflected the services she rendered (perjuring herself). The false voucher and the false testimony that she gave to support it resulted in the District of Columbia Court of Appeals ordering Cleaver-Bascombe disbarred.

The courts in attorney fraudulent billing cases have made it clear that attorneys must always exercise the highest standard of care in billing. Young lawyers should be mindful of this and refrain from any dishonest conduct in billing as it may result in severe sanctions.

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