

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 Billing 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 - it used an incremental scale higher than 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 most 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 a 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 *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

[D]ishonest billing is the perfect crime. . .

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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

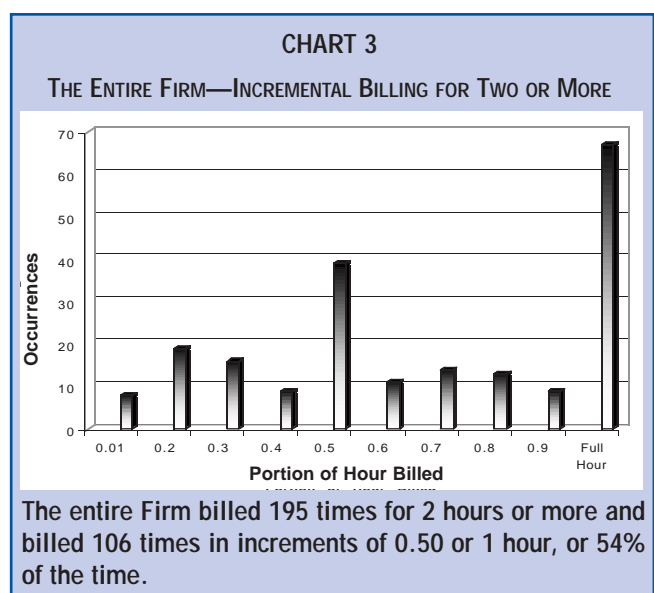
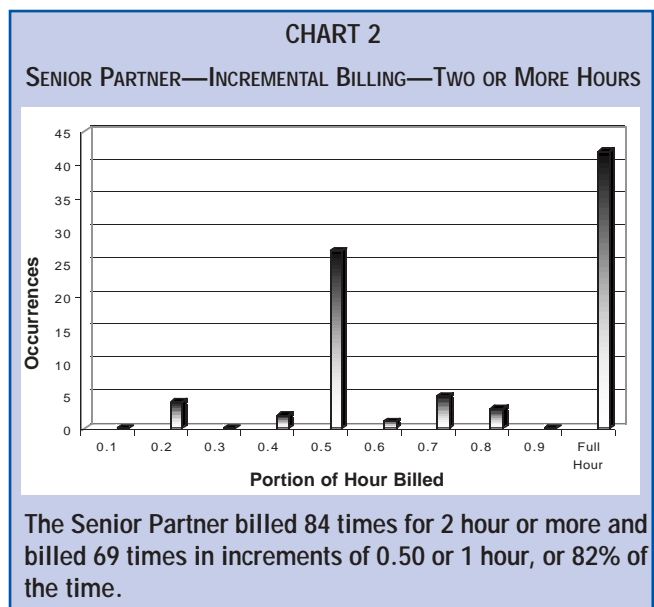
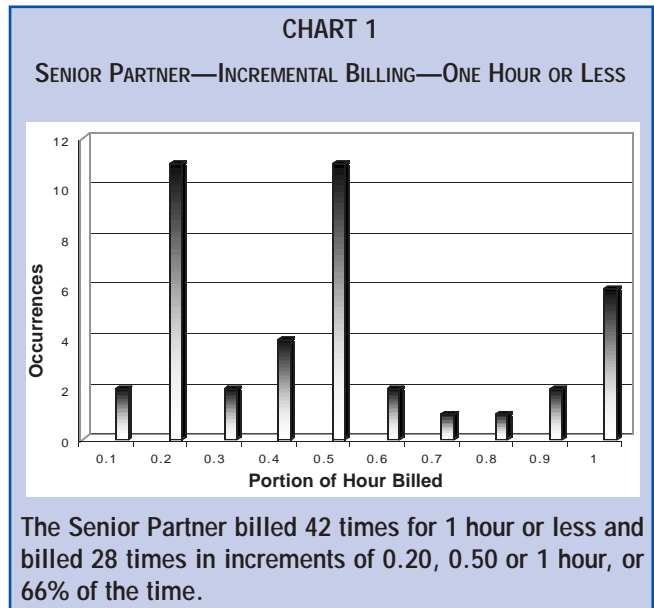


CHART 4

SENIOR PARTNER—INCREMENTAL BILLING—FIVE OR MORE HOURS

Date	Hours Billed	Date	Hours Billed
4\27	8.00	10\17	6.50
5\10	8.50	10\18	6.00
5\10	6.00	10\19	5.20
5\14	5.00	10\25	7.00
5\19	5.50	10\26	8.50
6\08	5.00	10\31	6.70
8\10	10.00	11\01	6.00
7\03	6.00	11\03	5.60
7\18	5.70	11\05	7.50
7\13	5.00	11\09	5.00
7\14	6.20	11\10	7.00
9\06	9.50	11\13	5.50
9\08	10.00	11\14	10.00
9\09	6.00	11\15	6.00
9\11	7.50	11\17	5.00
9\12	9.50	11\22	5.80
10\03	5.00	11\27	7.50
10\05	5.50		

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

CHART 5

Date	Hours Billed	Date	Hours Billed
6\19	10.00	11\06	7.50
7\3	6.00	11\10	7.00
10\18	6.00	4\27	8.00
10\25	7.00		

All but one of these entries by the Senior Partner were for a full hour and that one was for a half hour.

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 phone 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 ? 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).

CHART 6

Date	Hours Billed	Date	Hours Billed
5\8	4.00	10\05	5.50
5\10	8.50	10\10	4.70
5\19	4.50	10\11	4.50
5\23	3.00	10\17	6.50
5\25	4.00	10\25	7.00
5\25	3.50	10\26	8.50
6\5	4.00	11\01	6.00
6\8	3.00	11\06	7.50
6\9	4.00	11\08	3.50
6\19	10.00	11\09	5.00
7\5	4.50	11\10	7.00
7\10	4.00	11\13	5.00
7\12	5.70	11\14	10.00
8\31	3.00	11\15	6.00
9\10	4.50	11\16	3.00
9\11	7.50	11\27	7.50
10\03	5.00		

Examples of block-billing, which permitted the rounding-up of the bills to a half-hour or to a full hour.

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

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

CHART 7

MOTION TO SUPPRESS

DATE	ATTY	ACTIVITY	HOURS
1. 9\19	AC	"Legal research re motion to suppress"	.8
2. 10\13	JP	"Legal research re motion to suppress"	2.3
3. 10\14	JP	"Legal research re motion to suppress - Prepare motion to suppress"	2.2
4. 10\15	JP	"Legal research re motion to suppress - Prepare motion to suppress"	3.7
5. 10\16	SP	".... revise motion to suppress" (Block-billed **)	2.6
6. 10\16	JP	"Legal research re motion to suppress...." (Block-billed)	2.1
7. 10\17	SP	"Research and revise suppression motion Prepare motion to suppress..." (Block-billed)	6.5
8. 10\17	AC	"Revise motion to suppress..." (Block-billed)	5.6
9. 10\18	SP	"...Review\revise motions." (Block-billed)	6.6
10. 10\18	JP	"Legal research re motion to suppress;...." (Block-billed)	1.6
11. 10\18	AC	" Revise motion to suppress;...." (Block-billed)	9.9
12. 10\19	SP	"Revise motions...." (Block-billed)	5.2
13. 10\19	JP	Review revised motion to suppress	.3
14. 10\31	AC	" Attend hearing on motion to suppress..." (Block-billed)	8.7

* 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.

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 99 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 practice 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 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.”

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

CHART 8 VAGUENESS MOTION				
DATE	ATTY	ACTIVITY	HOURS	
1. 5\11	YL	"Research vagueness issue..." research confidentiality (Block-billed*)	8.8	
2. 5\12	YL	"Research vagueness issue"* *	1.6	
3. 5\12	YL	"Review material; research vagueness issue"	2.0	
4. 5\23	YL	"Outline constitutional challenge"	.5	
5. 5\24	YL	"Review articles"	2.3	
6. 5\25	YL	"Meeting with SP, AC; - review articles"	2.0	
7. 5\28	YL	" Void for vagueness research"	2.0	
8. 5\29	YL	"Void for vagueness research "	2.3	
9. 5\30	YL	"Review articles re vagueness"	1.0	
10. 6\29	YL	" Prepare vagueness motion"	3.3	
11. 6\30	YL	"Research"	1.0	
12. 7\12	YL	" Research re vagueness,,,"	3.0	
13. 7\13	YL	"Draft, research vagueness motion"	7.0	
14. 7\14	YL	"Motion for vagueness"	2.0	
15. 7\20	YL	"Prepare motion re vagueness"	3.0	
16. 7\24	YL	"Prepare motion"	3.1	
17. 10\3	YL	"...research motion" (Block billed)	2.2	
18. 10\5	YL	"Meeting with SP re motion"	1.3	
19. 10\6	YL	"Research re vagueness, meeting with SP"	4.5	
20. 10\12	YL	"Prepare constitutional motion"	5.0	
21. 10\13	YL	"Meeting with SP and AC - outline constitutional motion"	4.0	
22. 10\17	YL	"Meeting with SP. work on vagueness motion"	.4	
23. 10\17	YL	Prepare motion re vagueness	5.5	
24. 10\18	YL	"Work on Constitutional motion, meeting with SP"	4.0	
25. 10\19	YL	Meeting with SP research for vagueness motion	6.0	
26. 10\20	YL	Research for vagueness motion (First amendment; Claim of right: contract law)	3.4	
27. 10\24	YL	Research; vagueness motion edits	7.0	
28. 10\30	SP	"...Review\revise vagueness motion...." (Block-billed)	2.0	
29. 10\31	YL	"Research and prepare constitutional motion."	5.0	
30. 11\01	YL	"Prepare constitutional motion, meeting with AC"	6.5	
31. 11\01	AC	"...Review void for vagueness motion" (Block billed)	7.0	
32. 11\02	YL	"Meeting with AC; research and revise motion"	7.0	
33. 11\02	AC	"Revise constitutional motion; conference with YL re same...." (Block-billed)	8.2	
34. 11\3	YL	Research and prepare motion; cite- check	4.0	
35. 11\3	AC	"Revise constitutional motion, Conference with YL,,," (Block-billed)	6.2	
36. 11\5	SP	"Revise motions...." (Block-billed)	2.0	
37. 1\6	YL	"Research and edit motion"	3.0	
38. 11\7	AC	"Revise and prepare for filing..."	5.2	

* Indicates that the item was only part of the listed services, block-billed. Notice the large number of times that the statements were rounded to a full hour, 21 times, (55%).

** Where there is no notation, "block-billed", the statement is the full billing statement.

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.

the 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 unsealing 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	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"	3.8
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"	3.8
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 thing, 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 8\3 and 8\9 the mileage was 28.60. Why the difference? When he went to court on 9\6, 9\8 and 9\12 the mileage was 23.40.

CHART 10

MOTION FOR RECONSIDERATION

ATTY	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	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	6\28	"Revise motion..."	3.0
6. SP	6\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	

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
REPETITION OF ENTRIES

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	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.

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