

## **Inflating 'billable hours' on contingent fee cases**

**by**

**Craig D. Klausning, Senior Assistant Director  
Minnesota Office of Lawyers Professional Responsibility**

Reprinted from *Minnesota Lawyer* (March 7, 2005)

In numerous attorney discipline cases the Minnesota Supreme Court has discussed the importance of honest conduct in the practice of law and of the severity of the sanction to be imposed for dishonest conduct. Few, if any, lawyers would claim not to understand the importance of this precept.

Nonetheless, the practice of law can be a pressure-filled environment that may, on occasion, give rise to the temptation to cut corners, to make what the lawyer might view as an insignificant or harmless misrepresentation. However, a recent attorney discipline case out of Louisiana illustrates the error of such a view.

### **Padding time sheets**

The lawyer in *In re Lawrence*, 884 So.2d 561 (La. 2004), had been admitted for seven years and was an associate at a law firm in Greta, La. The firm had agreed to undertake the representation of the plaintiff in a personal injury case on a contingent fee basis. The firm assigned the associate to work on the case. In April the associate filed suit on behalf of the client, but in July left his firm to work for the firm that represented the defendant. After the associate's departure, his former firm brought a motion to disqualify the associate's new firm.

In support of its motion to disqualify, the former firm noted that the associate had worked on the case for approximately 15 hours, performing such tasks as interviewing the client, writing correspondence to the client, medical providers and others, reviewing correspondence, drafting pleadings and making telephone calls.

The new firm opposed the disqualification motion and submitted the associate's affidavit asserting that he did not possess privileged information requiring the disqualification of his new firm. In addition, and more important for these purposes, the associate stated that regardless of what his time sheets reflected, he only worked on the case for one hour during the time he was employed at his former firm.

According to the associate, he "padded" his time sheets with hours not actually worked and he did so because he frequently had too little work to do. The associate claimed when he brought this concern to the partners he was encouraged to "pad" his bills. The associate justified or rationalized this solution because personal injury contingency fees were calculated on a percentage basis and therefore no real damage was done to the client. Further, the associate claimed the additional hours were necessary to keep his job.

On the day the disqualification motion was to be heard, the new firm withdrew its opposition and the trial judge granted the motion. That same day, the judge forwarded a copy of the associate's affidavit to the Louisiana lawyer discipline office.

Ultimately, the Louisiana Supreme Court publicly reprimanded the associate and suspended him from the practice of law for three months. The fact that the associate's time sheets were not used for client billing did not affect the court's determination that the associate's conduct was unethical.

Several observations in the court's opinion illustrate how the allegedly harmless misrepresentations were in fact problematic and unprofessional.

- Documents are an attorney's stock in trade and should be tendered and accepted at face value in the course of professional activity. If an attorney knowingly proffers altered documents in a context where the lawyer knows or should know that the documents may be acted upon, the lawyer has engaged in conduct evidencing deceit. This is true regardless of the lawyer's motivation in making the alterations.
- Padding time sheets caused harm to the associate's former firm by compromising the integrity of its billing system.
- Falsely recording time caused harm to the associate's former client whose case was unnecessarily delayed while the law firms subsequently battled over the disqualification motion.

Few lawyers fail to understand the importance of honest conduct in the practice of law. Despite this understanding the pressures of practicing law may tempt lawyers to cut ethical corners with conduct they view as insignificant or harmless.

The *Lawrence* case illustrates that dishonest conduct, even "harmless" dishonesty, is unethical and can lead to significant discipline. Lawyers who are true professionals recognize that honesty is a principle never to be compromised.