



The Lawyer's Stock In Trade

By Daniel P. Bestul

One of Abraham Lincoln's more frequently quoted saying- among lawyers, anyway- is , "A lawyer's time and advice are his stock in trade." What held true when Lincoln practiced in central Illinois still holds true in southern Wisconsin, today. Lawyers are retained to apply their knowledge, advice, and efforts to help solve clients' problems. Today, lawyers bill most legal work on an hourly rate.

However, the delivery method for the stock in trade has changed dramatically, especially over the last decade. Computers are the order of the day, instead of typewriters. In-house libraries, with statutes, court opinions, and treatises have been replaced by legal research data bases, accessible via the internet. A problem that once took hours to research can now be sorted out in minutes. Forms and standard documents stored on computer disc are instantly accessible. Complex legal documents, once taking hours or day to assemble, edit, and type can now be assembled and custom tailored in a fraction of the time.

Modernization affects how attorneys bill clients, too. Automation is expensive, and the attorney who responds to a clients' demands for greater efficiency must cover the cost. However, there are still only 24 hours in a day. The amount of time to be billed in a day, week and year is limited. And it is a buyer's market. An increased hourly rate, though reflective of the attorney's increased costs and efficiency, may result in the attorney losing, rather than gaining ground economically.

More and more, experts in the field of law office management and economics recommend that attorneys bill on something other than an hourly basis. In the future, more work is likely to be billed on a flat fee basis. This will happen in areas such as estate planning, real estate, and business organizations, where attorneys can accurately predict the time and effort the project will involve.

A great deal of legal work involves preparation of standard documents, and seeing that they are properly filed and recorded with the correct government office. Attorneys delegate much of this work to trained staff and paralegals. The attorney supervises and retains responsibility for the end product. This staff work is also an attorney's stock on trade. He must pay to train his staff, and pay them to do the work. Some firms elect to bill the client for staff work, at a rate far below the attorney's hourly rate. The client benefits because he'd billed less than if the attorney did the routine work at a higher rate.

Attorneys also recoup some increased costs by billing pertinent expenses directly to clients. Long-distance telephone charges, photo copies, faxes, computer data base research, and even computer forms may show up as charges. For example, an attorney hired to setup a corporation may charge a fee for the computer forms he uses for preparing articles of incorporation, bylaws, and even minutes of shareholder meetings.

Many of these "add ons" have been criticized as billing abuses. In some cases, they clearly are. For example, if an attorney calls up a computer form, dictates changes to the form, gives the dictation to his staff to prepare- it's not fair to charge for dictation time, transcription time, as well as the modified form. It's also abusive if the attorney





quotes a high hourly rate (which he justifies by increased automation and a trained staff), but then spends as much billed time on the work as an attorney working at a lower hourly rate.

When conscientiously applied though, the billing practices discussed above should result in high quality work, at lower cost to the client. This will happen only if the "add ons" truly reflect less attorney time, with as much or more legal knowledge, expertise and advice incorporated into the final product.

Of course, an attorney may have exceptional skill or knowledge in a particular area, meriting an hourly rate well above practices in the same community. This too reflects the attorney's increased efficiency, and a client might be better off paying the higher rate, to gain the benefits of that talent and expertise.

There is a bottom line for the consumer, implicit in everything discussed. The client expects, and must receive, the attorney's time and advice, regardless of how the charge is calculated.

