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I. INTRODUCTION

{1}“Professionalism is an attitude.” [1] This quote suggests the lawyer is not only bound to abide by

the Model Rules of Professional Conduct,^[2] but is also bound to operate within the reasonable expectations society has imposed on attorneys.^[3] Unfortunately, much of the public believes that lawyers are driven by greed through excessive billing practices^[4] and there is no doubt that greed, hunger or competition has driven some lawyers into using inappropriate practices.^[5] Traditionally, law firms have utilized an hourly billing practice when billing their clients.^[6] Hourly billing has proven to be a windfall of profitability for law firms,^[7] however, it has raised some concerns.

{2} Traditional billing systems^[8] distribute risk and reward between law firms and clients in an uneven manner, providing few incentives for efficient legal solutions.^[9] The sophisticated clients of today are becoming unwilling to defer complete control of their cases and legal expenses to their attorneys.^[10] Clients are now demanding more efficiency;^[11] but hourly billing actively discourages efficiency.^[12]

With the advent of advanced technology to speed up research and document production, hourly billing has become a less attractive way for clients to arrange their legal costs.^[13] Attorneys seeking to secure fair value for their services increasingly demand changes in the organization and compensation of law firms.^[14] As a result, many law firms are caught in a technological dilemma.^[15] New technologies including personal computers and online research^[16] provide heightened productivity to law firms and clients.^[17]

{3} This comment advocates that the American Bar Association (“ABA”) revise its stance on billing to account for technological advancements in the legal profession. Specifically, this comment argues that the ABA Opinion 93-379 is an inadequate attempt at controlling billing practices at a time when technology is shifting the way legal work is done. Part II provides a brief discussion of the Model Rules of Professional Conduct and a history of hourly billing, along with a brief discussion of the positives and negatives of hourly billings. Part III discusses some of the technological advancements in the legal profession and how these advancements create an efficient attorney, an analysis of ABA Opinion 93 □379, which was an attempt to control attorney billing practices, and how the Opinion penalizes attorneys for efficiency. In addition, Part III discusses some alternative forms of billing as a possible solution for the billing dilemma that attorneys face. It also offers a proposal for dealing with the technology dilemma and how to implement this proposal in the law office. Finally, Part IV concludes by admonishing the ABA to take swift action to address the problem.

II. BACKGROUND

A. MODEL RULES

{4} The Federal Rules of Civil Procedure (“FRCP”) are designed to help courts reach a “just, speedy, and inexpensive determination of every action.”^[18] In accordance with the FRCP, the Model Rules of Professional Conduct provide guidance by aiding attorneys in determining reasonable fees for services.^[19] The Model Rules ultimately guide attorneys to help them act ethically in their advocacy.

{5} In order to promote ethical conduct by an attorney, Model Rule 1.5(a) governs the way attorneys can bill clients.^[20] This rule states that the attorney’s fee must be reasonable, and it lists a number of

factors determining reasonableness. [21] Furthermore, Model Rule 1.5 states that if the attorney does not represent the client on a regular basis, the attorney is required to communicate the basis or rate of the fee. [22] In a new “client-lawyer” relationship, this communication should be promptly established. [23]

B. A LAW FIRM TRADITION: HOURLY BILLING

{6} The billable hour did not become popular until the mid-1960s, when the ABA released a study which claimed that those lawyers who formulated their legal bills by recording the time spent on each client, earned more money than lawyers that did not incorporate time records into their billing. [24] The billable hour had several advantages in addition to increased revenue. [25] These advantages include: determining the most profitable areas and making adjustments accordingly by increasing fees, abandoning unprofitable services, or concentrating on profitable areas. [26]

{7} An additional factor that promotes the use of the billable hour to set legal fees occurred when courts began “setting and approving awards for attorneys’ fees.” [27] Although easy to implement, the use of the hourly rate, however, does not encourage efficiency. [28] Through hourly billing, “law firms charge corporate clients by the hour for professional,” paraprofessional, and nonprofessional services. [29] Due to recent technology, such as online research services, attorneys now have the capacity for increased efficiency and productivity. [30]

{8} Hourly billing is also advantageous for attorneys because it enables the attorney to have complete control over the billing process. The client wants some control in the process; [31] he wants to know what is about to happen, and he certainly wants to know what has happened. [32] Therefore, as technology continues to increase the lawyer’s efficiency, and as the client continues to be left out of the loop as far as billing is concerned, many clients have increasingly become unsatisfied with hourly billing procedures. While hourly billing may not be the most appropriate billing method in most cases, the advantages of hourly billing that originally appealed to many clients are still pertinent today. [33]

III. ANALYSIS

{9} Due to the recent advancements of technology in the law office, lawyers are faced with the concern of how to properly bill clients. This section will review how technology has advanced in the law office, how this technology creates greater efficiency in the law office, and how this efficiency, coupled with current ethics billing rules, creates what is known as the technological paradox [34] or billing dilemma. This section will analyze the ABA’s Formal Opinion [35] and its impact on the billing dilemma faced by attorneys today. This section will then analyze the limitations of the Opinion and explore alternatives to hourly billing as possible solutions to this dilemma. A proposal for dealing with the current billing dilemma will be presented, followed by a plan for implementing this solution in the law office.

A. TECHNOLOGICAL ADVANCEMENTS AND THE BILLING DILEMMA

{10} As it becomes possible to work more efficiently, technology allows lawyers to bill for more time. [36] For instance, the “DuPont network” [37] exchanges public briefs and shares information among

38 law firms. [38] The purpose behind sharing work product is to save time, which translates into saving in-house counsel money. [39] In an attempt to save money, law firms are lining up in extraordinary numbers to convert to new accounting and billing systems. [40] These law firms realize that the current pricing they use, as well as their methodology for measuring success with technology, will not achieve the favored results. [41]

{11} Other firms are using a system called Groupware. [42] Generally speaking, “groupware” allows a group of users to collaborate electronically, sharing and updating a common database while allowing for intergroup communications. [43] Law firms use groupware for a variety of functions, which includes the following: “creating ‘knowledgebases’ or work product libraries, sharing information with clients, sharing case or project ‘notebooks’ with lawyers in other offices, collecting and distributing case management information, docketing, tracking client contacts, setting up electronic meetings, and creating Web sites.” [44]

{12} In the past, many firms built databases or brief banks to facilitate communication and share work product. [45] Unfortunately, many of those databases failed to be useful because they were difficult to maintain and access. [46] Groupware software was designed to solve these problems [47] because it makes such information easy to collect, share, and update. [48] Groupware has now extended onto the Internet. [49] “For law firms, the advantage of this technological breakthrough is that they can now build Web sites that are not only marketing tools but also effective means of communicating with clients.” [50]

{13} File transfer protocol (“FTP”) is another system being used in law firms. [51] FTP is a basic Internet software tool that allows one to transfer files across the Internet from one computer to another. [52] FTP allows attorneys in satellite offices to send documents to the main office via the Internet. [53]

{14} Another system firms have implemented that makes the firm more efficient is networking. [54] Networking is nothing more than computers sharing information. [55] In a network environment, documents can be created on one machine, saved to a common hard drive, revised on another machine, and eventually printed on a shared printer. [56] Networks allow attorneys to share resources, thus reducing the time spent on a project and increasing the amount of work completed. [57]

{15} The result of all these technological advancements in the law office is the creation of the technology paradox, or billing dilemma. [58] One of the goals of every attorney is to serve the client to the best of the attorney’s ability, and today the attorney cannot service the client effectively without technology. The efficiency created by speedy online research and convenient document databases appears to disable the attorney. Therefore, to have the efficiency at ones fingertips but to be seemingly penalized for its use encourages inefficiency.

B. ABA FORMAL OPINION 93-379

{16} In 1993, the ABA’s Standing Committee on Ethics and Professionalism issued a formal opinion

ning double-billing. [59] The Committee's goal was to help the legal profession adhere to its ethical obligations to its clients despite economic pressures. [60] The thought was that the opinion would force law firms to scrutinize billing methods and procedures. [61] There was very little agreement among lawyers prior to this opinion as to whether double-billing for recycled work was ethical. [62] However, double billing is only part of the larger problem of unethical billing practices that harm the legal profession. [63]

{17} Consistent with the Model Rules of Professional Conduct, a lawyer must disclose the basis on which a client is to be billed. [64] The legal profession has dedicated substantial time and energy to developing ethical guidelines for the client's benefit. [65] Unfortunately, however, the public does not generally regard lawyers as particularly ethical, [66] especially with respect to billing practices.

{18} Pressure on lawyers to bill a minimum number of hours, and pressure on law firms to maintain or improve profits, contribute to some lawyers engaging in problematic billing practices. [67] One set of practices involves billing more than one client for the same hours. [68] An example of this involves a lawyer researching a topic for one client that, later, turns out to be relevant to an inquiry from a second client. [69] May the firm bill the second client the same amount for the recycled work product that it charged the first client?

{19} Formal Opinion 93-379 prohibits the lawyer from billing new clients for the same time spent in conducting the initial research or creating the initial documents in a case. [70] The Opinion, however, does provide for a few exceptions. First, the Opinion is only applicable to situations where billing arrangements are based solely or partly on hourly fees. [71] Second, a lawyer that bills on an hourly basis may renegotiate the billing arrangement to compensate for an efficient or outstanding result or because the lawyer used previous work product on the client's behalf. [72]

1. Disclosure of Fees

{20} The biggest problem with over-billing is that deceit is required in order to engage in such practices. [73] Attorneys have an affirmative duty to inform clients about work and billing practices. [74] At the outset, the lawyer should disclose the basis for the fee and any additional charges to the client. [75]

{21} Scholars contend that misrepresentation is inherent in double-billing. [76] Frequently, as a lawyer doubles or pads bills, "he will not only be misrepresenting himself but also lying to her clients and colleagues." [77] On the other hand, many leading authorities on ethics suggest that double-billing is acceptable as long as there is full disclosure at the beginning of the representation. [78] Therefore, if attorneys disclose their double-billing at the beginning of the representation there might be less of an ethical question. [79]

2. Reasonableness of Fees

{22} The Model Rules imply that attorney-client relationships are not ones of equality, but that they are built on trust and the client is encouraged to be dependent on the lawyer. [80] The essence of the Model Rules' handling of billing is reasonableness. [81] Even though both the Model Rules and the Model

Code [82] require reasonableness, neither defines reasonableness. [83] Yet, if the attorney and client are to benefit from their relationship, their respective interests must be balanced. [84] The client has a substantial interest in knowing how “the fee is determined in order to make an informed decision regarding the representation.” [85]

{23} The lawyer’s conduct should foster the client’s trust in the lawyer as well as in the legal profession. [86] The lawyer, in an attempt to fulfill his obligations under Model Rule 1.1, should avoid unreasonable limitations on the amount of time a lawyer may devote to a client. [87] If a lawyer agrees to bill hourly, the lawyer does not fulfill his ethical duty if he bills for more time than he actually spent on the client’s matter. [88]

{24} It is helpful to look at the situation of recycled work product from the perspective of what the attorney actually earned and not what the client should have to pay. [89] ABA Formal Opinion 93-379 suggests an attorney who has reused old work product has not re-earned the hours that were previously billed and compensated when the work product was first generated. [90] However, subtle cases of double-billing may not necessarily be unreasonable if the only consideration in reasonableness is the fee. [91] Despite many commentators that consider all double-billing unethical, attorneys have long offered rationalizations and justifications for the incidents used as examples in Formal Opinion 93-379. [92] “If an attorney bills the client eleven hours for drafting interrogatories after spending one hour editing a previously drafted set of interrogatories that originally took ten hours to draft, the attorney has clearly charged an unreasonable fee.” [93] Conversely, if the client is billed only for an hour of work, the attorney’s compensation may not reflect the value of his work allowing the second client to benefit from the first client. [94]

B. ALTERNATIVE BILLING SOLUTIONS

{25} Formal Opinion 93-379 was an effort by the ABA Committee on Ethics and Professionalism to clear up billing practices. [95] Yet, the Committee did not go far enough in its effort. Formal Opinion 93-379 is insufficient, in that it severely limits how an attorney may bill. In the era of rapid technological advances in the law office, Formal Opinion 93-379 penalizes attorneys for attempting to be efficient.

{26} The search for increased revenues, while avoiding a conflict with the ethical rules, has spurred the move to alternative billing [96]—allowing attorneys to charge clients by the product and results delivered rather than by the hours spent on a matter [97]—however, new billing methods do not automatically mean increased revenue. [98] In order to benefit from alternative billing, the right foundation and strong framework need to be in place. [99]

{27} Alternative billing systems are on the rise for many factors, [100] including: economics, client demand, value, and technology. [101] All of these factors combine to accelerate the shift to alternative billing practices. [102] The following are just a few examples of alternative billing methods: incentive fee arrangement, [103] task-based fees, [104] flat fee billing, [105] and value billing. [106]

{28} In order to accommodate the broad spectrum of risk preferences, law firms may select from both

traditional and non-traditional billing practices. [107] Traditional billing practices inequitably distribute risk and reward among firms and clients providing few incentives for legal efficiency. [108] Attorney's used to be able to submit one-line bills stating: "[f]or services rendered," followed by a dollar amount. [109] But now clients, courts, legislatures and voters are taking aim at attorney billing practices, [110] and making many suggestions on dealing with the technology dilemma and unethical billing. [111]

{29} Among these proposed solutions is the notion of switching from hourly billing to fixed and value billing. [112] Hourly billing once promoted increased revenue, but it has now become an impediment to profits. [113] Client resistance to high bills is not the only obstacle to the hourly rate. [114] Technological advancements in online research and desktop computers create the potential for increased efficiency and productivity. [115] Under an hourly billing system, attorney revenues will gradually decline with advanced technology. [116] Disincentives to efficiency and abuses of hourly billing create an atmosphere ripe for a change in the way attorneys bill their clients, [117] and there are a variety of billing methods to be utilized.

1. Flat Fee Billing

{30} "Many clients prefer the fixed or flat fee." [118] A fixed or flat fee is a set amount that is agreed upon for handling a special matter or portion of a case, [119] and may also be structured in stages rather than a set amount for the case. [120] The flat fee eliminates client's uncertainty about the fee because, theoretically, he or she knows what the fee will be ahead of time. [121] Attorneys gain an incentive to be more efficient when there is a set fee, [122] yet flat fees raise some ethical questions. [123]

{31} In addition to the questioned ethics, there are more disadvantages to flat fee billing. For example, knowing there is a predetermined fee, the lawyer may spend inadequate time on a matter if it becomes unprofitable. [124] Lawyers are also pressured to regulate the way they handle cases so that they make sure they are operating at an economic premium. [125] Finally, if the fee is very high, even if fairly bargained for, a court may determine that the fee is unreasonable based on the factors stated in Model Rule 1.5. [126]

2. Task-Based Billing

{32} Task-based billing is a popular system for controlling costs. [127] Task-based billing follows the idea that attorney bills should break down expenses into categories instead of merely listing activities performed. [128] This way the client knows what is being spent on a specific task and can compare the expenses. [129]

{33} Although this system is a step in the right direction, problems still remain. Current task-based concepts are very general. [130] While most cases will fit within general concepts, the concepts are not designed specifically for the individual cases. [131]

3. Value Billing

{34} Value billing is another popular system. Value billing follows the idea that fees are determined

based on the worth of the work done. [132] Attorneys favor this form of billing, which may be a result of the attorney having more control to determine fees. [133]

{35} However, value billing also raises a number of ethical questions and is as much, if not more, problematic than hourly billing. [134] One of the major problems with value billing is that the attorney has a lot of discretion in determining legal fees. [135] This result □based billing method allows the attorney to fluff his or her performance to the client and contend it is worth more than it really is. [136] However, as attorneys realize they will benefit from efficiency, value billing might ultimately expedite litigation. [137]

4. *Non-Traditional Billing*

{36} Non-traditional billing systems offer improved allocation of risk and reward between firms and clients, while providing incentives for efficiency. [138] Some non □traditional billing systems include adjusted-hour, equity, and hybrid billing. Adjusted-hour billing enables firms and clients to share, to some extent, the financial responsibility of changes in resources. [139] Additionally, adjusted-hour billing reduces the incentive for law firms to overstaff assignments by imposing opportunity costs in displacing full rate work. [140] Under equity billing, law firms bear the burden of these changes while sharing the benefits of success with the clients. [141] Equity billing rewards intelligent deployment of skills, providing economic incentives to maintain low levels of support; [142] however, it is limited to transaction types. [143] Under hybrid billing, firms and clients blend traditional billing systems with non-traditional billing systems to achieve a more efficient and effective distribution of benefits. [144] Hybrid billing systems offer attractive combinations of benefits. [145]

{37} One hybrid system, “fixed profit billing,” offers firms strong group benefits. [146] Under fixed profit billing, clients and firms share the benefits of increased efficiency. [147] Like hourly billing, firms operate as general contractors, but they charge two fees. [148] The first fee is a variable fee in the form of hourly rates, which are sufficient to cover all costs. [149] The second fee is based on the “completion [of] incentives that represent target profits for the” project. [150] Fixed profit encourages firms to maximize the number of projects completed as opposed to the number of services provided. [151]

{38} Double-billing is not an issue when the fees are based on considerations other than the number of hours spent on a project. [152] Additionally, an attorney may request additional compensation under hourly fee arrangement when the attorney has attained an outstanding or particularly efficient result, or when the attorney was able to use earlier work product on behalf of the client. [153] Therefore, implicit in Formal Opinion 93-379 is one possible solution for escaping the technology paradox: modified hourly billing. [154] This is perhaps the most practical solution for the technology dilemma, because it incorporates the best of both hourly and alternative billing. [155] It also amends the Model Rules to allow for this system as a function of technological advancements. [156]

{39} Law firms seem unwilling to move away from an hourly billing arrangement and often adjust bills to reflect the value of the attorney’s service. [157] Therefore, a more practical and effective arrangement is to utilize an hourly billing rate that provides attorneys some freedom to modify their rate

when special circumstances dictate. [158] This is consistent with the current legal practice. [159] Furthermore, it is not equitable for later clients to receive a break just because a previous client needed similar work done. [160] In summary, the attorney owes the original client a duty to charge reasonably similar fees for identical products.

D. PROPOSAL

{40} The profession of truth and blind justice is often associated with dishonesty and greed. [161] In order to address the essence of the problem of unethical billing, honesty must be encouraged. [162] The main thing clients want is predictable billing. [163] Fully disclosing the fee scale and amount billed to clients at the beginning of representation will satisfy this desire. [164] Full disclosure of the fee scale will clarify many of the inherent problems that occur as a result of attorney fees and hourly billing. [165]

Therefore, flat or fixed fee billing is the most predictable billing system for the client. Like a patron in a restaurant viewing the menu, the client would have a list of prices for particular services before entering into any kind of relationship with the attorney. If the client thinks the prices are a bit high, the client may either seek the services of another firm—much like seeking lower prices at another restaurant—or the client may discuss an arrangement with the attorney to lower the prices.

{41} Clients want honesty and predictability when it comes to billing, and attorneys want to be able to adjust for any extenuating circumstances. Therefore, when a client walks into the attorney's office, the attorney should present the client with a menu consisting of prices for various procedures the attorney may utilize in handling a case along with a price for each procedure. [166] The "menu" should also contain a disclaimer—similar to a gratuity disclaimer at a restaurant—indicating the attorney may charge an hourly (or modified hourly) fee, in addition to the "menu" price, for any circumstance that prolongs the said task. However, this disclaimer will be slightly modified, in that it will also state that the attorney may reduce the "menu" prices based on any economies of scale that may result. This proviso will let the client know that the attorney is not just looking to adjust the bill for the attorney's benefit but will also adjust the bill to benefit the client whenever possible, giving the client a feeling of trust in the attorney.

{42} By implementing a flat fee billing program in combination with a hourly billing program, the law firm has the opportunity to not only determine the fees that will be represented in the fixed fee "menu," but also to adjust for any additional time spent on a particular matter by inserting some sort of hourly fee arrangement into the mix. Additional time should not be allowed in the bill unless the client is aware that the attorney has discretion in the arrangement. However, if the fixed fee billing system is properly instituted there should not be a need to adjust the bill.

B. IMPLEMENTING A NEW BILLING SYSTEM FOR THE FIRM

{43} The new technology means that attorneys have a greater amount of information at their disposal, and the research time is greatly reduced. [167] Unfortunately, the reduction of research time translates into a reduction in billable hours. [168] From the law firm's point of view, its expenses have risen while income based on billable hours has decreased because the attorneys are spending less time completing a project. [169] The goal is to determine how the client and attorney can mutually benefit

n modern legal technology. [170]

{44} Many of the problems addressed in Formal Opinion 93-379 arise out of miscommunications and the presumption that legal services are provided strictly on a hourly billing basis. [171] The key to a successful transition to alternative billing is to have the full commitment of management. [172] The shift to alternative billing could mean less emphasis on billing hours and more on learning the art of being an advocate. [173]

{45} From there it is important to calculate the cost to provide specific services. [174] First, know how much the firm earns. [175] A firm needs to prepare full accrual financial statements. [176] In addition to accrual financial statements, a full analysis of costs is needed. [177] All of this information will inform the firm of how much it costs to render a particular service and how much it costs just to open the doors each month. [178]

{46} Equally as important is placing the billing arrangements with clients in writing. This writing should outline the normal practice of billing, whether hourly billing or not, and state that under certain circumstances and upon obtaining certain results, an adjusted fee may be charged. [179] If the attorney communicates in an honest, open and frequent manner with the client, the attorney will implement a fee structure that is beneficial to all. [180]

{47} Finally, law firms should utilize technological tools that are on the market because these tools help to deliver better and more timely legal service to their clients. [181] Therefore, it is reasonable for law firms to be adequately compensated for these investments. [182] If the law firm is not able to increase its rates to reflect its new acquisitions, the law firm must then devise alternative billing methods to recoup some of this cost. [183] If law firms offered a modified hourly billing system, the firms would perhaps enjoy a greater profit margin. [184]

{48} Successfully implementing alternative billing procedures may be difficult; [185] yet, if firm leaders are to better measure whether their technology investments improve efficiency, enhance productivity and increase net income, it must be done. [186] Alternative fee arrangements will not solve all the billing problems, but they can be a valuable tool for managing legal work. [187] Furthermore, because clients generally choose attorneys who are experienced in a particular area, [188] they understand the firm has handled similar matters before and will draw on prior knowledge. [189] The attorney, therefore, should be able to create a fixed fee scale that will predict the amount of time needed to complete a task and a fee that will compensate him for his expertise. Attorneys and clients alike should become comfortable with the fact that documents can and should be reused. [190]

IV. CONCLUSION

{49} Unethical billing is an ugly blemish on the legal profession. But until the technology dilemma is addressed and solved, it will continue to be a problem long into the 21st Century. The pressing issue that continues to plague the ABA is, how to compensate attorneys for becoming technologically advanced while at the same time not penalizing attorneys by aggressively regulating their billing practices. If the past decade is any indication of what to expect in the future, the technology available to

attorneys will continue to make them more efficient. Unfortunately, however, the current ethics rules continue to penalize attorneys for being technologically proficient.

{50} The ABA has two choices. It can ignore this problem, in which case it will only continue to grow and haunt its members. Or, the ABA can deal with the technology dilemma now and face it head-on before it gets too large. Clearly, this problem must be addressed. By implementing the modified hourly billing system of the “menu,” attorneys and clients can share in the benefits of technology. The client will have the honesty and predictable billing the client seeks, and the attorney will be able to set the fee while, at the same time, having the opportunity to adjust the bill for extenuating circumstances. The “menu” allows the attorney to become a more efficient advocate by taking the focus away from the billable hour, and the client will know exactly how much the bill will be for the attorney’s work because the client has previewed and consented to the “menu” arrangement.

[1]. See E. Norman Veasey, *Rambo Be Gone!*, BUS. L. TODAY, Feb. 4, 1995, at 12.

[2]. MODEL RULES OF PROFESSIONAL CONDUCT (1983).

[3]. See Veasey, *supra* note 1, at 12; see also Nancy Byerly Jones, *Programs to Help Attorneys Improve Professionalism*, 23 Law Prac. Mgmt. 7 at 28 (1997) (discussing the legal profession’s perceived lack of professionalism, the ABA’s definition of professionalism, and programs to help lawyers increase their level of professionalism).

[4]. See Sonia S. Chan, Note, *ABA Formal Op. 93-379: Double Billing, Padding and Other Forms of Overbilling*, 9 GEO. J. LEGAL ETHICS 611, 612 (1995). “Excessive billing practices” refers to double-billing, padding, and overbilling. *Id.* “Double billing is only part of the larger problem of unethical billing practices, which include padding and overbilling. All these unethical practices harm the legal profession by causing negative public opinion of the profession.” *Id.*; see also Myron Levin, *Trial to Stare In ‘Alliance’ Lawyer Scam*, L.A. TIMES, Apr. 14, 1991, at B3 (noting that attorneys at a California firm face criminal prosecution as a result of unethical billing practices). “Jurors at times will be required to decide what is improper and what is more or less accepted legal practice, however unusual it may seem to non-lawyers. For example, the lawyers have been accused, among other things, of overcharging or billing for work they didn’t do.” *Id.*

[5]. See *id.*; see also Lee A. Watson, *Communication Honesty, and Contract: Three Buzzwords for Maintaining Ethical Hourly Billing*, 11 GEO. J. LEGAL ETHICS 189 (1998). “Unethical billing manifests itself most commonly in two forms: 1) overbilling, the act of billing a client for time not spent working on the case; and 2) double billing, the act of billing two or more clients separately for the same work product.” *Id.*; see also Wayne J. Lovett, *Services and Software Help Manage Legal Billings: An Entire Industry Is Devoted To Making Sense Of Mind-Numbing Bills And Spotting Irregularities*, THE NAT’L L.J., Dec. 14, 1998, at B8. Experts estimate that “15 percent to 20 percent

of all legal bills are in violation of generally accepted standards in the form of overbilling, double-billing and recycled work product.” *Id.*

[6]. See Sarah McAdams, *Law Firms Still Hanging On To Hourly Billing Method*, 35 CORP. LEGAL TIMES 38, at 19 (1995). Hourly billing is the most common billing method. See *id.* It accounts for roughly three quarters of the large firm revenues. See *id.*

[7]. See Chan, *supra* note 4, at 617. “As the push for profit maximization intensifies, and the minimum billable hours standard increases at law firms, both partners and associates feel pressured to enter as many hours as possible on time sheets.” *Id.* Generally, the lack of incentive for efficiency and the shortage of practical mechanisms . . . verify[ing] time records in the hourly system create rich opportunities for the padding of bills. *Id.*; see also Lovett, *supra* note 5, at B3. Law firms, generally, are not too concerned that their bills reflect how much time was actually spent on a case. See *id.* “A recent survey of attorney billing practices by California Lawyer magazine failed to find a single law firm that even requires its lawyers to use a clock in figuring how many hours to bill.” *Id.*

[8]. See Wendy R. Leibowitz, *Nor Snow, Nor Sleet, Not Gadget Boom Will Kill The Billable Hour*, THE NAT’L L.J., Aug. 31, 1998, at B13. “Traditional billing systems” refers to time-based billing, also known as hourly-billing. *Id.*; see also Edward Felsenthal and Paul M. Barrett, *Clients And Changing Times Rein In Runaway Legal Fees*, S.D. UNION-TRIB., June 13, 1998, at A22. Clients had hoped that a switch to hourly billing would help regulate legal fees “by making them ‘more quantifiable.’” *Id.* The practice led to ‘excess,’ however, “as firms generated huge profits by having associates bill extraordinary hours at ever-increasing rates.” *Id.*

[9]. See William Kummel, Note, *A Market Approach to Law Firm Economics: A New Model for Pricing, Billing, Compensation and Ownership in Corporate Legal Services*, 1996 COLUM. BUS. L. REV. 379, 380. “The predominant mechanism of . . . hourly billing . . . imposes unattractive intrinsic costs on corporate clients, law firms, and attorneys.” *Id.*

[10]. See Stephen W. Jones & Melissa Beard Glover, *The Attack on Traditional Billing Practices*, 20 U. ARK. LITTLE ROCK L.J. 293 (1998); see also Felsenthal and Barrett, *supra* note 8, at A22. “After years of soaring fees that helped make lawyers the butt of jokes and a target of politicians, the total amount consumers shell out for matters like wills and divorces has barely budged in a decade.” *Id.* The growth in law firm revenue has leveled out after double-digit growth in the 1980s. See *id.* “The shift is attributable to new technology that reduces paperwork and research needs as well as closer scrutiny of billing practices. An explosion in the number of attorneys has also created a glut that allows clients to play law firms off one another in search of the best deal.” *Id.*; Editorial, *Bad Billing Practices*, 152 N.J.L.J. at 622 (1998) (discussing how excessive billing practices are one of the major sources of attorney-client friction).

[11]. See Jones & Glover, *supra* note 10, at 295; see also, Leibowitz, *supra* note 8, at B13. “The key thing that clients want is predictable billing, and value.” *Id.*

[12]. See Jones & Glover, *supra* note 10, at 296 (noting that in an hourly billing system it is to the

lawyer's advantage to prolong the representation); *see also* Felsenthal & Barrett, *supra* note 8, at A22; Theda C. Synder, *Incentive Legal Billing In Litigated Cases*, 24 NO. 3 LAW PRAC. MGMT. at 24 (1998); Jake Krocheski & Gerry Malone, *No More Billable Hour?*, 20 NO. 3 LAW PRAC. MGMT. at 22 (1994).

[13]. *See* Jones & Glover, *supra* note 10, at 296. "The billable hour is not as efficient as it was in the 1960's and 1970's." *Id.*; *see also* John Iezzi, *To Profit From Your Technology, Change the Way You Bill*, LAW OFF. MGMT. & ADMIN. REP., Jan. 1999, at 3. "The emphasis on billable-hour production at all levels—and the translation of production to contribution and compensation—continues unabated. And firm leaders are reluctant to change to billing alternatives which, in their minds, seem to reduce their perceived value and, thus, their compensation." *Id.*; *see also* Leibowitz, *supra* note 8, at B13. As technology spreads analysts predict that technology will allow attorneys to work more efficiently, and that alternative billing will replace hourly billing. *See id.*

[14]. *See* Kummel, *supra* note 9, at 380; *see also* M. Thomas Collins, *Upgrading: He Who Hesitates Will Be Lost*, LAW TECH. PROD. NEWS, Jan. 1999, at 13. Law firms are lining up, in extraordinary numbers, to convert to new accounting and billing systems. *See id.* Making the change to a new system requires a significant financial investment and it almost always takes a toll on law firm productivity until the firm staff adjusts to the change." *Id.*; *see also* Iezzi, *supra* note 13, at 3. "Billing methods must change so that the value of [a] firm's services can be priced the same regardless of the amount of time it took to produce the result." *Id.*

[15]. *See* Kummel, *supra* note 9, at 392; *see infra* note 36 and accompanying text.

[16]. *See* Lowell Wilson, *Online Legal Research Tools*, 1 TECH. & PRAC. GUIDE 46 (1997). "Legal research is one of the more promising uses of the Internet for lawyers." *Id.* The Internet contains a number of sites that aid attorneys in locating court decisions, law reviews and journals, factual research and government agencies. *See id.* at 47-49; *see also* George Relles & Richard Solomon, *Electronic Research Poses Billing Dilemma*, The Nat'l L.J., July 13, 1998, at B7. Firms debating whether to charge clients for online research face two problems. *See id.* Whether firms can charge clients for the research if they have purchased the services under a fixed-cost arrangement, and if so, what types of charges may the clients have to bear. *See id.*

[17]. *See* Kummel, *supra* note 9, at 392.

[18]. Fed. R. Civ. P. 1. The 1993 Amendments to Rule 1 state: "[a]s officers of the court, attorneys share this responsibility with the judge to whom the case is assigned." *Id.*

[19]. MODEL RULES of Professional Conduct (1983). Rule 1.4(b) requires the attorney to explain a matter to the extent reasonably necessary so the client may make an informed decision regarding representation. *See id.* Rule 1.5(a) and (b) require the attorney's fees to be reasonable and require the attorney to communicate to the first-time client, the basis of the fee. *See id.* Finally, Rule 7.1 states that an attorney must not make a "false or misleading communication" concerning a fee." *Id.*

[20]. Model Rules of Professional Conduct Rule 1.5(a).

[21]. *See id.* The factors determining reasonableness are as follows:

the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; the fee customarily charged in the locality for similar legal services; the amount involved and the results obtained; the time limitations imposed by the client or by the circumstances; the nature and length of the professional relationship with the client; the experience, reputation, and ability of the lawyer or lawyers performing the services; and whether the fee is fixed or contingent.

Id.; Compare with Model Code of Professional Responsibility DR 2-106(B) (1980) (providing that a fee is clearly excessive when a lawyer of ordinary prudence would be left with a definite belief that the fee is in excess of a reasonable fee).

[22]. MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.5(b). It is preferable that the fee be communicated in writing before the representation begins. *Id.*

[23]. *See* MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.5 cmt. 1. The attorney need only recite the factors that directly involve the computation of the fee. *Id.* It is sufficient to state a flat fee or an estimated amount. *Id.* If developments occur making the estimate inaccurate, a revised estimate should be submitted to the client as soon as possible. *Id.*

[24]. *See* Jones and Glover, *supra* note, 10, at 294; *see also* Robert L. Haig and Steven P. Caley, *What's A Fair Fee For Winning A Big Case?*, WEST'S LEGAL NEWS, Oct. 25, 1996, at 11393. "One of the reasons hourly billing became prevalent was the favorable reaction to this billing method by clients who were not entirely satisfied with the more subjective value-based billing methods that had previously predominated." *Id.*

[25]. *See* Jones and Glover, *supra* note 10, at 294.

[26]. *See id.*

[27]. *Id.* at 295. "Hourly billing provided an administratively simple method that appeared fair to all participants." *Id.*

[28]. *See id.* "Clients are rebelling and demanding more efficiency; the technology now available makes such efficiency possible." *Id.*; *see also* John W. Toothman, *Real Reform: Speedy and inexpensive justice will come about by reining in hourly fees and overly zealous advocacy, not by writing more rules, the winner of this year's writing contest argues*, 81 A.B.A. J. 80 (1995). Hourly billing encourages law firms to procrastinate, mark up expenses, complicate, etc. *Id.*; *see also* *Bad Billing Practices*, *supra* note

10, at 622. Experience teaches that hourly billing is susceptible to many abuses, from fictitious line items in bill statements to overuse of the category “review of file” when preparatory review is not needed. *Id.*

[29]. See Kummel, *supra* note 9, at 384. Professional services include those rendered by partners and associates. *Id.* Paraprofessional services include those rendered by paralegals. *Id.* Nonprofessional services are things such as the production, management, and delivery of documents. *Id.* “In addition, law firms bill corporate clients for actual out-of-pocket expenses such as travel, materials and services.” *Id.*

[30]. See Jones and Glover, *supra* note 10, at 296.

[31]. See Jonathan P. Bellis (moderator), *Alternative Billing Making A Comeback*, 2 NO. 5 CORP. LEGAL TIMES 16 (1992).

[32]. See *id.*

[33]. See Haig and Caley, *supra* note 24, at 11393. First, hourly billing is a standardized, objective way to bill. *Id.* “There is no mystery to the basis for or computation of the attorney fees.” *Id.* Additionally, while the bill may bear “little relationship to the actual benefit conferred to the client by the attorney’s representation, such discrepancies do not always favor the attorney.” *Id.* Finally, if the client is not satisfied with the results received for the amount billed, the client may terminate the relationship. *Id.*

[34]. See Kevin Hopkins, *Law Firms, Technology and the Double-Billing Dilemma*, 12 GEO. J. LEGAL ETHICS 93 (1999). Prof. Hopkins proposes that Model Rule 1.5 should be amended to specifically recognize “modified hourly billing.” *Id.* If an attorney bills at an hourly rate, technology that increases the attorney’s ability to quickly resolve a legal matter may also mean the attorney operates at a loss in profit, and ultimately, the over-billing of time for work not performed in order to turn the loss into a profit. *Id.* at 106; see also Wendy R. Leibowitz, *Clients Force Tech on Firms*, The Nat’l L.J., Apr. 14, 1997, at A1.

[35]. See ABA Comm. On Professional Responsibility, Formal Op. 379 (1993). The Committee hoped to achieve this goal by addressing three practices that have been the subject of frequent inquiry. *Id.* The practice involves billing multiple clients for the same hours spent. *Id.* This is illustrated by an attorney scheduling court appearances for three clients on the same day, spending a total of two hours at court, and billing each client two hours when the attorney would have been in court for two hours even if he were only there for one client. *Id.* The second practice involves an attorney flying across the country to attend to a legal matter on behalf of one client, and while in the air does some work for another client. *Id.* The third practice involves researching a particular topic for one client and that research ends up being relevant to a second client. *Id.* The Opinion prohibits work done on travel time, simultaneous court appearances, and the double-billing for recycled work products. *Id.* This comment only addresses the issue of recycled work product.

[36]. See Leibowitz, *supra* note 8, at B13. A system developed by lawyers in southern Illinois called

Attorney TOM, or Total Office Management, has many components: calendars, file and document management, and even an automatic telephone dialer. *Id.*

[37]. See Wendy R. Leibowitz, *New Tech Helps Curb Legal Fees*, THE NAT'L L.J., July 14, 1997, at B11. The "DuPont network" is "a private database shared by approximately 38 law firms serving" E.I. du Pont de Nemours & Co. *Id.*

[38]. See *Legal Technology: Slayer Of The Billable Hour?*, Mass. Law. Wkly., Apr. 20, 1992, at S9. Many law firms have created "intranets" or "extranets," which are electronic databases accessible when using an internet browser (i.e. Netscape Navigator), to facilitate the sharing of documents with other attorneys, along with clients. *Id.* These firms also use these electronic databases to customize billing to electronic document exchanges. *Id.*; see also Hopkins, *supra* note 34. Many firms create "brief banks" as a way of sharing information and preventing duplication of efforts and work. *Id.* at n.6; Wendy R. Leibowitz, *Technology and Billing Dilemmas: How Do You Bill For Extranets?*, The Nat'l L.J., June 22, 1998 at B8.

[39]. See *Legal Technology*, *supra* note 38, at S9. A program called DefenseNet was designed with attorney fees in mind. *Id.* This program "allows—or compels—in-house and outside counsel to capture the costs of a matter as it proceeds, analyze how much certain stages of the matter have cost in the past, and predict, within a reasonable range, how much should be expended at each stage of a litigation." *Id.*

[40]. See M. Thomas Collins, *Upgrading: "He Who Hesitates Will Be Lost,"* 6 NO. 1 LAW TECH. PROD. NEWS, at 13 (1999). "Making the change to a new system requires a significant financial investment and it almost always takes a toll on law firm productivity until the firm staff adjusts to the change." *Id.*; see also David Beckman and David Hirsch, *How Suite It Is*, 83 A.B.A. J., 86 (1997) (discussing many of the different software packages (suites) available to improve technology in the law firm); Kevin L. Shepherd, *Computers Chip Away at Hourly Billing In Real Estate Matters*, 82 A.B.A. J., 49 (1996) (discussing how advances in computer software have led to a movement towards alternative billing in real estate law).

[41]. See Iezzi, *supra* note 13, at 3. These firms have recognized that a better approach takes into account issues such as: whether the client will receive a better product (e.g. it may look better, but that does not mean the quality of work is improved by technology) and the type of practice (e.g. the contingency fee based firms are the most successful with respect to using technology as a revenue-enhancer because the fees are relatively fixed regardless of how much time is spent on a file). *Id.*; see also John C. Tredennick, *Lawyers At The Crossroads: Making The Change To New Technology (Law Practice Management Technology Roundtable)*, 20 NO. 3 LAW PRAC. MGMT. 30 (1994) (noting that at a time when lawyers are being judged by their use of technology many firms are debating what kind of technology will produce the best effects for the firm).

[42]. See Jim Feuerstein, *Groupware Boosts Firms's Ability to Share and Update Information*, N.Y.L.J., July 15, 1997, at 5. "The term 'groupware' is among the most ill defined and abused terms in the technology world today. No one seems to agree on what it is." *Id.* Groupware products include:

Exchange, Collabra Share and GroupWise. *Id.*

[43]. *See id.*

To understand groupware more precisely, one should look at the specific functionalities: direct communication through e-mail; document sharing; group scheduling and calendar; workflow (meaning users can automatically move a piece of information around the firm, from person to person, gathering comments and/or approvals); replication (a database can exist in any number of copies, but all those copies talk to one another, exchanging updates and keeping themselves synchronized); multilevel security (different participants shared databases can be given different levels of access); full-text searches; structured and unstructured data (that is, say both free text and fixed fielded data); practice-specific applications (such as management applications, brief banks, etc.); special data types, such as images, graphics, video and sound; [and] access both from Notes and from Web browsers.

Id.

[44]. *Id.* Electronic databases can be used for a variety of purposes and eliminate the physical work, floor space and paper necessary for maintaining the traditional “file cabinet.” *Id.* “Groupware’s primary use is in pulling together a team of people who are not located in the same office.” *Id.* This approach has gained in popularity in the litigation arena. *Id.* “Groupware speeds up the process and ensures that everyone is in the loop and contributing.” *Id.*; see also Howard A. Nunes, *Databases 101: Efficiency In The Law Office*, Mass. Law. Wkly., May 16, 1994, at S1 (discussing how attorneys are finding computer databases equally as important as the traditional tools of legal practice). Many law firms are using computer software packages often referred to as “groupware” that permit users to collaborate electronically, as well as to share and update common databases while allowing for intergroup communication. *Id.*

[45]. *See* Feuerstein, *supra* note 42, at 5.

[46]. *See* Feuerstein, *supra* note 42, at 5.

[47]. *See* Feuerstein, *supra* note 42, at 5; see also David J. Kalmick, *A Time-and-Billing Checklist*, LAW TECH. PROD. NEWS, May 1996, at 18 (discussing a list of features one should look for in time-and-billing software).

[48]. *See* Feuerstein, *supra* note 42, at 5. Anyone with access to the database can add information to the knowledgebase—whether that information is a word processing document, a spreadsheet, an image, a graphic or other kind of data. *Id.* “Replicas of the information can exist in multiple offices. If lawyers want, they also can share certain information with clients.” *Id.*

[49]. *See* Feuerstein, *supra* note 42, at 5.

[50]. See Feuerstein, *supra* note 42, at 5. "By building levels of access into a site a firm can selectively share its knowledge and expertise with the outside world." *Id.* A firm's Web site might now have the following different levels of access: public (anyone surfing the Web can view); semi-private (only available to registered clients who have access to this area); and secure (only available to those who have valid encryption keys will be able to enter secured litigation databases). *Id.*

[51]. See Arlin P. Nesor, *Understanding File Transfer Protocol*, 1 TECH & PRAC. GUIDE 42, 43 (1998).

[52]. See *id.*

[53]. See *id.* "Files can be downloaded and uploaded using FTP." *Id.* The transferred files can consist of software, text, compressed files and graphics. *Id.*

[54]. See Matthew A. Jure, *Networking Solutions: The Best Setup For Your Firm*, 1 TECH. & PRAC. GUIDE 16 (1997) (discussing what a network is and many of the network systems on the market for solo and small firms, including: Novell NetWare, Windows NT, and Apple Talk).

[55]. See *id.*; see also Frederic S. Baum, *Networking: The Basics Of Local Area Networks*, TECH. & PRAC. GUIDE, Winter 1998, at 14 (discussing the benefits of networking and briefly explains some different kinds of networking systems available in small and solo practices). "If you want to save time and money and communicate better by sending and receiving electronic messages to and from office colleagues, networking provides the solution." *Id.*

[56]. See Jure, *supra* note 54, at 16.

[57]. See *id.* Network users can share hard drives, files, and printers without ever leaving their individual computer. *Id.* For further information on new products, see also Daniel B. Evans and Storm M. Evans, *New Products*, LAW PRAC. MGMT., July/Aug. 1996, at 8; Daniel B. Evans and Storm M. Evans, *New Products*, LAW PRAC. MGMT., July/Aug. 1997, at 6; Daniel B. Evans and Storm M. Evans, *New Products*, LAW PRAC. MGMT., May/June 1998, at 8; Bill Porter, *It's Not Your Father's Telephone!*, TECH. & PRAC. GUIDE, Summer 1998, at 22; Steven S. Stern, *Automating The Paper Pyramid And The Document Assembly Revolution*, TECH. & PRAC. GUIDE, Winter 1998, at 24.

[58]. See Hopkins, *supra* note 34 at 93-95.

[59]. See Formal Op., *supra* note 35. The Committee addressed controversial billing practices in the form of recycled work products, work done on travel time, and simultaneous court appearances. *Id.*; see also Chan, *supra* note 4, at 611. ABA Op. 93-379 also banned charges of overhead and surcharges on costs or disbursements. *Id.* This paper will only address the billing issue with respect to double-billing and recycled work.

[60]. See Formal Op., *supra* note 35.

[61]. See Chan, *supra* note 4, at 612. Commentators also believed that this opinion would inspire clients to review their bills and the billing practices of the attorneys more carefully. *Id.*

[62]. See William G. Ross, *The Ethics of Hourly Billing By Attorneys*, 44 RUTGERS L. REV. 1, at 93, 98. Of the 272 private lawyers and 80 corporate lawyers surveyed in 1991, by Prof. Ross, 87.6 percent of the private and 86.8 percent of the corporate lawyers thought double-billing for recycled research or drafting was ethical in some situations. *Id.* Roughly twenty percent of the corporate lawyers surveyed and 8 percent of the private lawyers, thought double-billing for recycled work was ethical if the second client was informed that the work was recycled. *Id.* Twenty percent of the private lawyers surveyed and 2.6 percent of the corporate lawyers thought the practice was ethical even if the client was not informed that the work was recycled. *Id.*

[63]. See Chan, *supra* note 4, at 612.

[64]. MODEL RULES of Professional Conduct Rule 1.5(a); see also Formal Op., *supra* note 35. “Any invoice for professional services should fairly reflect the basis on which the client’s charges have been determined.” *Id.*

[65]. See Formal Op., *supra* note 35. (Stating that the profession has also spent extraordinary resources on interpreting, teaching, and enforcing these ethical rules). *Id.*

[66]. See Formal Op., *supra* note 35. “One major contributing factor to the discouraging public opinion of the legal profession appears to be the billing practices of some of its members.” *Id.*

[67]. See Formal Op., *supra* note 35. “These include charges to more than one client for the same work or the same hours, surcharges on services contracted with outside vendors, and charges beyond reasonable costs for in-house services like photocopying and computer searches.” *Id.*

[68]. See Formal Op., *supra* note 35.

[69]. See Formal Op., *supra* note 35.

[70]. See Formal Op., *supra* note 35; see also Hopkins, *supra* note 34.

[71]. See Formal Op., *supra* note 35.

[72]. See Formal Op., *supra* note 35.

[73]. See Chan, *supra* note 4, at 619.

[74]. See *id.*; see also Formal Op., *supra* note 35. “Authority for the obligation to make disclosure at the beginning of a representation is found in the interplay among a number of rules.” *Id.*; see also MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.5. “When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing”

Id. The Comment to Rule 1.5 gives guidance on executing this duty. *Id.*; MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.4(b). Rule 1.4(b) reinforces this obligation stating: “[a] lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” *Id.*; MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.7. Rule 1.7 further supports the obligation for disclosure by addressing communications about lawyer’s services, such as fee basis. *Id.* This rule states: “[a] lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s services.” *Id.* The rule further defines what it means by false or misleading communication. *Id.*

[75]. Model Rules of Professional Conduct Rule 1.5(a); *see also* Formal Op., *supra* note 35. This is a two-fold duty, including not only explaining the basis on which fees will be billed, but also sufficiently explaining in the statement so that the client may reasonably be expected to understand what fees and other charges the client is actually being billed. *Id.*

[76]. *See* Chan, *supra* note 4, at 620. “Without proper disclosure, when an attorney doubles or pads bills after agreeing to be compensated solely on the basis of an hourly system, the lawyer has engaged in misrepresentation by billing the client more time than was actually spent on the client’s matters.” *Id.*

[77]. *See* Chan, *supra* note 4 at 620. There are several ways this deception is harmful. *Id.* First, it fosters a negative public opinion of the legal profession. *Id.* Second, it damages the lawyer’s internal standards of integrity. *Id.* The acceptance of deception creates a slippery slope making it easier to deceive in other settings. *Id.* Finally, it harms the attorney-client relationship. *Id.*

[78]. *See* Chan, *supra* note 4, at 620; *see also*, Formal Op., *supra* note 35.

[79]. *See* Chan, *supra* note 4, at 620. Most of the time, however, clients will not accept these practices. *Id.* Misrepresentations are, therefore, required in order to incorporate overbilling into the client’s charges. *Id.*; *see also* Watson, *supra* note 5, at 189. Despite the perception that the legal profession is crooked, there are a significant number of attorneys who are dishonest in their billing practices. *Id.*

[80]. *See* Formal Op., *supra* note 35.

[81]. *See* Watson, *supra* note 5, at 194.

[82]. *See* MODEL CODE OF PROFESSIONAL RESPONSIBILITY (1969).

[83]. *See* Watson, *supra* note 5, at 197. Watson offers three insights for attorneys in determining reasonableness in ethical billing. *Id.* First, treat the billing relationship as a contractual relationship. *Id.* Second, require the attorney to fully disclose the factors involved in calculating the bill, thereby strengthening the contractual relationship. *Id.* Finally, it is recommended that attorneys maintain reasonable fees. *Id.*; *see also* Chan, *supra* note 4, at 617, 618.

The only rules in the ABA Model Code of Professional Responsibility (Model Code) and the ABA Model Rules of Professional Conduct (Model Rules) that directly regulate

attorney's fees are the Model Code DR 2-106 and Model Rule 1.5. The rules state that a lawyer's fee should be reasonable. To determine reasonableness of a fee, the following factors are to be considered:

the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

the fee customarily charged in the locality for similar legal services;

the amount involved and the results obtained;

the time limitations imposed by the client or by the circumstances;

the nature and length of the professional relationship with the client;

the experience, reputation, and ability of the lawyer or lawyers performing the services;
and

whether the fee is fixed or contingent.

Id.

[84]. See Watson, *supra* note 5, at 198. "Every attorney should keep in mind how each particular billing decision affects not only his current client's trust, but his current and future clients' perceptions of, and reliance on, the legal profession as a whole." *Id.*; see also Formal Op., *supra* note 35. Ethical Consideration 2-17 of the Model Code provides a framework for balancing both the attorney's and client's interests in determining the reasonableness of a fee arrangement. *Id.* "The determination of a proper fee requires consideration of the interests of both client and lawyer. A lawyer should not charge more than a reasonable fee, for excessive cost of legal service would deter laymen from utilizing the legal system in protection of their rights." *Id.* Conversely, the attorney must be adequately compensated in order to "serve his client effectively and to preserve the integrity and independence of the profession." *Id.*

[85]. See Watson, *supra* note 5, at 198.

[86]. See Formal Op., *supra* note 35. This means acting as the advocate for the client to the extent necessary to complete a project thoroughly. *Id.*

[87]. See Formal Op., *supra* note 35. "Competent representation requires the legal knowledge, skill, thoroughness and preparation necessary for the representation." *Id.*

[88]. See Formal Op., *supra* note 35.

[89]. See Formal Op., *supra* note 35.

[90]. See Formal Op., *supra* note 35. “Rather than looking to profit from the . . . luck of being asked the identical question twice, the lawyer who has agreed to bill solely on the basis of time spent is obliged to pass the benefits of these economies on to the client.” *Id.*

[91]. See Chan, *supra* note 4 at 618. “For example, an attorney may be able to argue that charging surcharges on costs and disbursements is reasonable, as it is the custom to do so in the locality.” *Id.*

[92]. See Chan, *supra* note 4 at 618. (claiming attorneys claim they should not be penalized for being diligent or efficient). *Id.*

[93]. See Chan, *supra* note 4 at 618.

[94]. See Chan, *supra* note 4 at 618.

[95]. See *Formal Op. supra note 35.*; see also *Cornelia Honchar Tuite*, ABA Ethics Opinion Refines Standards On Fees, Billing, *Chi. Daily L. Bull.*, Feb. 4, 1994, at 6 (discussing how ABA Opinion 93-379 “outlines fee-setting disclosure duties, limits billing practices and limits the pass-through of certain overhead costs”).

[96]. See Ted R. Roth, *How to Effectively Move to Alternative Billing*, 10 NO. 1 ACCT. for L. FIRMS, Jan. 1997, at 1. “Alternative billing refers to any billing method not directly tied to the number of hours spent and encompasses a variety of options.” *Id.*

[97]. See *id.* “Innovative billing methods can create enhanced value for both the client and the attorney.” *Id.*

[98]. See *id.*

[99]. See *id.*; see also Jones and Glover, *supra* note 10, at 304. “[A] hybrid method of the billable hour and value billing for documents and research already in the attorney’s data banks would promote efficiency of legal resources and allow the attorney to pass along those efficiencies to the client in the form of a reduced monthly statement.” *Id.*

[100]. See Roth, *supra* note 96, at 1.

[101]. See Roth, *supra* note 96, at 1. “Law firms look for nontraditional ways to increase revenue while providing additional value to their clients.” *Id.* “Clients want highly skilled professionals representing them while maintaining a reasonable level of control over the costs of representation.” *Id.* “Lawyers want to generate income comparable with their expertise and experience. Time alone does not adequately measure these values.” *Id.* “Technology has altered billing practices.” *Id.* “Technology has also reduced the time needed to perform legal tasks.” *Id.*

[102]. See Roth, *supra* note 96, at 1.

[103]. See Jones and Glover, *supra* note 10, at 304. Under an incentive fee arrangement “[t]he attorney is given an incentive to resolve the lawsuit for the lowest possible cost to the client. The client benefits either from low fees and/or settlement costs due to a favorable resolution of the case or from reduced fees if the settlement or judgment is not favorable.” *Id.* at 305.

[104]. See Jones and Glover, *supra* note 10 at 305. Task-based billing can operate in a number of ways. “For example, fixed fees for specific tasks might be negotiated, creating an incentive for the attorney to perform efficiently and including an amount calculated to cover the costs associated with the task in addition to attorneys’ fees.” *Id.* at 305-06. Another approach is to use task-based estimates to create a working budget. *Id.* This approach does not offer the attorney the incentive for efficiency nor the client the cost guarantee of the former approach; it does permit the client to control the decisions that drive the cost of legal services.” *Id.* at 306.

[105]. See Jones and Glover, *supra* note 10 at 305. “Flat fee billing is similar to task-based billing, but the fee is charged for handling a matter from the beginning to end. This option works well where there is a high volume of similar matters with approximately the same time and costs involved.” *Id.*; see also Chan, *supra* note 4, at 626 (discussing fixed or flat fee billing). *Id.*

[106]. See Chan, *supra* note 4, at 627. “In the value billing system, fees are determined retrospectively based on the worth of the work done.” *Id.* Value billing is mostly favored by attorneys, “probably because it gives lawyers more control over the determination of fees. Consequently, it also raises a host of ethical issues and is probably more problematic than the hourly system.” *Id.* at 627; see also Krocheski and Malone, *supra* note 12, at 22 (for a list of and brief discussion of other alternative billing procedures not discussed in this paper, including split-fee billing and unit billing).

[107]. See Kummel, *supra* note 9, at 405. “Law firms and corporate clients may select a billing method to effectively allocate risk between themselves.” *Id.*; see also *Win-Win Billing Strategies: Alternatives That Satisfy Your Clients and You*, 1992 A.B.A. SEC. L. PRAC. MGMT. 8 (Richard C. Reed ed. & chair), (defining fourteen different billing strategies and discussing their advantages and disadvantages).

[108]. See Kummel, *supra* note 9, at 406. Under hourly billing, the clients bear the financial burden of changes in resources while the firms manage costs. *Id.* Law firms act as “general contractors,” earning profit for each service provided regardless of the benefit granted. *Id.*

[109]. See Gail Diane Cox, *Excessive Fees are Attacked Across the Board*, THE NAT’L L.J., Nov. 4, 1996, at A1. “Clients would either dutifully pay or try to renegotiate, discreetly.” *Id.*

[110]. See Cox, *supra* note 109, at A1. In September 1996, the Tennessee Supreme Court held that a sole practitioner from Memphis who charged “a clearly excessive” contingency fee for a routine probate matter was entitled to nothing. *Id.*; see also Harry J. Maue, 1994: *A Bad Year For Legal Ethics*, CORP. LEGAL TIMES, May 1995, at 1 (discussing a few of the cases in 1994 that dealt with attorneys unethical billing of clients). Among these cases are the Webster Hubbel’s fraudulent billing, Illinois’

lawyer discipline agency accusing a partner at a major Chicago firm of billing misrepresentation of at least \$214,063, and a partner at another Chicago firm of billing 6,022 hours of work in 1993—“[t]hat’s 16.5 hours a day, seven days a week, every week of the year.” *Id.*; Lionel Van Deerlin, *Hillary Is Just A Congenital Lawyer: A Candid Look At How Barristers Do Business These Days*, THE S.D. UNION-TRIB., Jan. 117, 1996, at B7 (discussing Hillary Clinton’s questionable billing practices while at her Arkansas law firm). Attorney billing practices “have begun to operate like small town ‘speed traps’” in that attorneys are required to meet a quota of billable hours. *Id.*; David Segal, *D.C. Law Firm Wins Payment; Akin, Gump Fight With Client Reveals Tensions Over Attorney Billing*, THE WASH. POST, June 19, 1997, at EO2 (discussing a case where a Washington firm settled a case for its client for \$700,000, but submitted a bill in excess of \$800,000); *see also* Howard Fischer, *Retainer Fees For Lawyers Are ‘Gray Area’ For Courts*, ARIZ. BUS. GAZ., Aug. 6, 1998, at 1 (discussing a case where Arizona Supreme Court disbarred an attorney for charging clients non-refundable retainers and keeping the retainer money after he was fired). The court concluded that non-refundable retainers do not necessarily violate ethical rules. *Id.*; Greg Miller, *Judge Slashes Lawyer Fees In Shareholder Lawsuit; Courts: Calling Request For 30% of \$10-Million Settlement Unjustified, He Grants 10%, And Disallows Some Expenses*, L.A. TIMES, Mar. 6, 1997, at D1 (discussing a case in which the judge severely decreased the amount attorneys could collect as compensation for expenses, and rejected other compensation requests outright); Janet Kaye, *Big-Business Lawyers, Out For Injustice*, THE BUFF. NEWS, Nov. 24, 1996, at 7F (discussing NO CONTEST, a book by Ralph Nader and Wesley J. Smith, suggesting that abuses by attorneys and their clients—including billing practices, and confidential legal settlements—have led to the diminished opinion of the American legal system); Barbara A. Serrano, *Lawyers Who Flouted Ethics Rules Escape Reprimand—Bar Association Inundated With Complaints; Some Of Them Languish For Years*, THE SEATTLE TIMES, Mar. 31, 1996, at A1 (discussing case where a partner at a Seattle firm was accused by associates at the firm of unethical billing practices, including double-billing and changing attorney names on billing records so the firm could bill more).

[111]. *See* Jones and Glover, *supra* note 10, at 308; Chan, *supra* note 4, at 634 (by increasing the clients involvement in the case there is less room for unethical practices); Hopkins, *supra* note 34, at 105 (amending the Model Rules to specifically allow for modified billing); Kummel, *supra* note 9, at 405 (proposing external billing practices, including a description of a few non-traditional billing systems); Watson, *supra* note 5, at 200 (advising that the key to ethical billing is honesty).

[112]. *See* Jones and Glover, *supra* note 10, at 296. With the advancements in technology creating quicker research and document production, hourly billing has become a less attractive billing structure for attorneys to retain profits. *See id.* Similarly, hourly billing has become a less attractive way for clients to maintain their legal costs. *See id.*

[113]. *See id.*; *see also* Kummel, *supra* note 9, at 384. Law firms predominately use hourly billing, which offers the firms a means to “rationally and repeatedly raise legal prices as needed.” *Id.* Through hourly billing, law firms bill clients for professional, as well as, nonprofessional services. *See id.*

[114]. *See* Peter D. Zeughauser, *Using Alternative Fee Arrangements To Improve Client Relationships, Law Firm Profitability And Results*, 23 NO. 3 LAW PRAC. MGMT., at 22, 24 (1994). New technology

including document assembly software and instant access to a firm's library of prior work enables attorneys to generate work in a fraction of the time it used to take. *See id.* This increased efficiency makes "it impossible to capture the value of their work at traditional hourly rates." *Id.*

[115]. *See* Jones and Glover, *supra* note 10, at 296. Unfortunately, hourly billing discourages these efficiencies because implementing this technology would increase attorney costs while simultaneously reducing attorney revenues. *Id.*; *see e.g.*, Kummel, *supra* note 9, at 392; Darlene Ricker, *The Vanishing Hourly Fee*, A.B.A. J., Mar. 1994, at 66 (discussing one attorney's "a la carte" billing system). "In a changing marketplace, more clients now want to know costs upfront. Shifts toward alternative billing are fueled by an eye on profitability and aided by computer billing." *Id.* at 67. Clients like flexible billing because of the cost savings, while lawyers like "its impact on the practice of law." *Id.* at 67.

[116]. *See* Jones and Glover, *supra* note 10, at 296-297; Kummel, *supra* note 9, at 392. This decline will occur unless one or more of the following events occur. *See id.* First, increased productivity attracts additional business. *See id.* Second, law firms downsize to eliminate unprofitable or low margin services. *See id.* Finally, corporate clients agree to increased hourly rates. *See id.* "Consequently, hourly billing deters the implementation of new technology in law firms." *Id.*

[117]. *See* Jones and Glover, *supra* note 10, at 297.

[118]. *See* Chan, *supra* note 4, at 626; *see also* Haig and Caley, *supra* note 24, at 11393 (for further discussion of flat fee billing); Ricker, *supra* note 115, at 72 (providing an example of how fixed fee billing works).

[119]. *See* Chan, *supra* note 4, at 626. "The flat fee may be used alone or combined with an hourly fee or a contingent fee." *Id.*; *see e.g.*, Zeughauser, *supra* note 114, at 29.

[120]. *See* Chan, *supra* note 4, at 626. "This billing method is most commonly used for routine services and volume work done on a repetitive basis." *Id.*

[121]. *See* Chan, *supra* note 4, at 626. "Flat fees provide more freedom for attorneys in case management." *Id.* "Apart from increasing efficiency and expediting litigation, it allows clients to play a major role in the determination of the overall cost." *Id.*

[122]. *See* Chan, *supra* note 4, at 626. If attorneys put too much time into a case the flat fee will end up becoming unprofitable for the attorney. *See id.*

[123]. *See* Chan, *supra* note 4, at 626. Flat fees raise attorney-client interest issues different from that encountered in an hourly billing system. *See id.*

[124]. *See* Chan, *supra* note 4, at 626. "Furthermore, because the key benefit of flat fees is 'the institution of standardized, pre-packaged groupings of cases and controversies,' the grouping of case and homogeneity of treatment will diminish the frequency of individualized and nuanced presentations of fine legal points." *Id.* at 627. *But see* Ricker, *supra* note 115, at 68. By structuring a flat fee in stages,

instead of setting one price for the entire case, the attorney can compensate for any extra time spent on a project. *See id.*

[125]. *See* Chan, *supra* note 4, at 627.

[126]. *See* Chan, *supra* note 4, at 627.

[127]. *See* Todd H. Flamming, *Adapting Task-Based Billing to the Case*, 86 ILL. B.J. 565 (1988).

[128]. *See id.* An example of such categories would be “dispositive motions” or “oral arguments.” *Id.*

[129]. *See id.*

[130]. *See id.* These concepts try to impose a set list of categories for each case. *See id.*

[131]. *See id.* A better system would focus on the individual case and reduce the number of general categories. *See id.* Instead of the general categories the bill should break down expenses by particular task. *See id.*

[132]. *See* Chan, *supra* note 4, at 627. The fees are determined in a retrospective manner with the attorney deciding the worth of the work he has already completed. *See id.* “The representation agreement can state the factors that are to be considered in setting the final fee.” *Id.*; *see e.g.*, Haig and Caley, *supra* note 24, at 11393 (discussing value billing).

[133]. *See* Chan, *supra* note 4, at 627.

[134]. *See* Chan, *supra* note 4, at 627.

[135]. *See* Chan, *supra* note 4, at 627. Because clients do not know what a lawyer does to obtain a particular result in a matter, the clients are dependant upon their attorney to inform them how much the result and effort put into that result are worth. *See id.* *But see*, Ricker, *supra* note 115, at 70. “To keep tabs on exactly how the costs are breaking down under value billing, [Carl] Leonard (former chairman of Morrison & Foerster in San Francisco) sees a potential need for an entire new class of law firm employees he refers to as ‘estimators.’” *Id.* Although determining a reasonable price in advance of legal services may be difficult it is an important step if a firm is going to have success with alternative billing. *See id.*

[136]. *See* Chan, *supra* note 4, at 627. There are greater temptations for lawyers to deceive in value billing systems, as opposed to hourly billing systems. *See id.* at 628.

[137]. *See* Chan, *supra* note 4, at 627.

[138]. *See* Kummel, *supra* note 9, at 408. (examining three non-traditional billing practices: adjusted-hour, equity, and hybrid). *Id.* *See e.g.*, Synder, *supra* note 12, at 24. “Creative billing is limited only

by the imagination of the client and counsel.” *Id.* at 26.

[139]. *See* Kummel, *supra* note 9, at 408 (discussing discounted and blended rates). Discounted and blended rates are two popular forms of adjusted-hour billing. *See id.*

[140]. *See* Kummel, *supra* note 9, at 408. Unfortunately, “the economic incentives of [adjusted-]hour billing are limited to situations where workers operate without excess labor.” *Id.*

[141]. *See* Kummel, *supra* note 9, at 409. “[F]irms operate as limited partners, charging clients a share of the value” for the project. *Id.* “Profit is correlated to the volume, value, and productivity of the transactions.” *Id.*

[142]. *See* Kummel, *supra* note 9, at 409.

[143]. *See* Kummel, *supra* note 9, at 409. Equity billing requires extraordinary value adding services such as mergers and acquisitions. *See id.*

[144]. *See* Kummel, *supra* note 9, at 410. “Hybrid billing [systems] incorporate two or more pure billing systems.” *Id.*

[145]. *See* Kummel, *supra* note 9, at 410. This is accomplished by incorporating different billing systems. *See id.*

[146]. *See* Kummel, *supra* note 9, at 411. The law firm’s profit remains steady, however, regardless of changes in complexity. *See id.*; *see also*, Zeughhauser, *supra* note 114, at 30-31.

[147]. *See* Kummel, *supra* note 9, at 411.

[148]. *See* Kummel, *supra* note 9, at 411.

[149]. *See* Kummel, *supra* note 9, at 411. Costs may include “internal labor, facilities and materials.” *Id.*

[150]. *See* Kummel, *supra* note 9, at 411.

[151]. *See* Kummel, *supra* note 9, at 411.

[152]. *See* Hopkins, *supra* note 34, at 104.

[153]. *See* Hopkins, *supra* note 34 at 104-05.

[154]. *See* Hopkins, *supra* note 34. Professor Hopkins proposes an amendment to Model Rule 1.5 that would expressly allow for the consideration of special circumstances in modifying the client’s bill. *See id.* His proposal reads as follows:

When the lawyer and client have agreed upon an hourly billing arrangement for services, the lawyer, in considering those factors enumerated in subsection (a) of this Rule and after full disclosure to the client, may modify the final fee to conform more accurately with the quality of the service performed and other special circumstances that have contributed significantly to the representation of the client. MODEL RULES OF PROFESSIONAL CONDUCT RULE 1.5(f) (proposed amendment).

Id. at 105 n. 57.

[155]. *See* Hopkins, *supra* note 34 at 105.

[156]. *See id.* at 105 n. 58.

[157]. *See* Ross, *supra* note 62, at 93; *see also* Hopkins, *supra* note 34 at 105..

[158]. *See* Hopkins, *supra* note 34 at 105.

[159]. *See* Hopkins, *supra* note 34 at 105; *see also* Ross, *supra* note 62, at 87. “[M]any if not most attorneys already adjust their hours upward or downward to reflect quality and result” *Id.*

[160]. *See* Jones and Glover, *supra* note 10, at 300. The value received is too great. *See id.*

[161]. *See* Watson, *supra* note 5, at 201. There are a number of reasons the average American does not trust lawyers, but unethical billing ranks high on the list. *See id.*

[162]. *See id.* at 202. The marketplace polices itself to a certain degree, but the marketplace has failed to completely deter unethical billing practices. *See id.*; *see also* Serrano, *supra* note 110, at A1. “Most firms have written guidelines on billing methods, stipulating that time should be meticulously recorded, what minimal fraction of an hour can be used and how an attorney’s work time will be checked and verified.” *Id.*; *Bad Billing Practices*, *supra* note 10, at 622 (encouraging courses on ethical billing practices be taught in school and by the bar associations).

[163]. *See* Leibowitz, *supra* note 8, at B13.

[164]. *See* Watson, *supra* note 5, at 202. Attorneys should treat fee determination as they do any other contract. *See id.*; *see also* Jonathan P. Bellis (Moderator), *Alternative Billing Making A Comeback*, CORP. LEGAL TIMES, Apr. 1992, at 16. “[The client] wants some control over what’s going to happen. He wants some participation in what’s about to happen, and he certainly wants very good communication of what has happened. The billable hour just doesn’t work very well to solve any of these problems.” *Id.*

[165]. *See* Watson, *supra* note 5, at 202. No solution is without its flaws. *See id.* But open and clear communication addresses some of the principle flaws that exist in the various billing systems. *See id.*

[166]. An example of the “menu” proposal could look as follows:

<u>Service</u>	<u>Price</u>
Initial Client Conference	\$300
Pleadings—Drafting	
Complaint & Summons	\$300
Answer	\$150
Affirmative Defense	\$150
Reply	\$150
Settlement Agreement	
Single	\$150
Complex	\$450-750
Motion—Drafting	
Default	\$150
Routine	\$150
Dispositive Motions	\$750
Responses/Replies	\$450-600
Written Discovery	
Proposal ^{1/4}	\$450
Response	\$750
Deposition Preparation	\$450-750
Deposition	\$450
Research	\$50/hr.
Trial Preparation	\$200/hr.

Court Appearances

Status Call. \$150

Motion Call. \$150

Pre-Trial Conference. \$300

Case Management Conference..\$300

*The attorney [or law firm] reserves the right to add an hourly fee [or modified hourly fee] for any service where the attorney encounters extraordinary circumstances, whereby prolonging the completion of said service. The attorney further reserves the right to reduce the menu prices based on any economies of scale that may result.

[167]. See Jones and Glover, *supra* note 10, at 298. Arguably, attorneys have an ethical obligation to use these more efficient services in representing their clients. See *id*; see also Jon Newberry, *Capturing Those Billable Hours*, A.B.A. J., Jan. 1996, at 66. Lawyers benefit from easier to use computer systems by having more free time to “spend on revenue-generating activities.” *Id*. The PC’s and billing software allow attorneys “to eliminate much of the paperwork needed to capture time.” *Id*. But cf. Robert James Henderson, *The “Good Old Days” Without The Advantages Of Modern Technology*, LAW PRAC. MGMT., Aug. 1990, at 48 (stating that not all of the technological advancements in the office are improvements upon the less complicated “good old days”).

[168]. See Jones and Glover, *supra* note 10, at 299. “These expenses have been viewed as overhead rather than as costs that can be billed to clients, because the services essentially replace traditional book libraries.” *Id*; see also Bradford W. Hildebrandt, *Increasing Productivity With Computers*, N.Y.L.J., Oct. 8, 1991, at 4. “Unless implementation is handled properly, a firm risks having its enhanced lawyer productivity translated into reduced revenue” *Id*.

[169]. See Jones and Glover, *supra* note 10, at 299. The problem then becomes how do attorneys represent their clients effectively using the best tools available, while at the same time protecting profit margins. See *id*; see also Joel A. Rose, *Strategies For Improvement Of Profitability*, N.Y.L.J., Jan. 3, 1995, at 5 (describing several strategies that should be considered by managing partners and administrators so firms may improve profitability).

[170]. See Jones and Glover, *supra* note 10, at 299; see also Betty-Lynn White and William F. Askinazi, *Special Twist Shares Risk Of Cappel Fee Retainer*, CORP. LEGAL TIMES, Aug. 1994, at 13 (discussing the benefits of alternative billing (retainer arrangements) to both the firm and the client); Klamick, *supra* note 40, 18; Alan J. Rothman, *Time Is Out: Creating Alternative Billing Is No Easy Task*, N.Y.L.J., Mar. 7, 1995, at 5 (discussing ways a couple of firms have made the switch to alternative

billing); David Beckman and David Hirsch, *Steering Clear Of Conflicts*, A.B.A. J., July 1997, at 83 (discussing how attorneys can use time-and-billing software as a safeguard to make sure the attorneys do not find themselves in a conflict situation).

[171]. See Richard B. Turnbow, *Be Proactive—Explain Your Law Firm’s Billing Practices To Clients*, 14 No. 4 LEGAL MGMT. 29, at 30.

[172]. See Hildebrandt, *supra* note 168, at 4. “Lawyers must be assured they will get the support they need and that they will be rewarded for sharing information and know-how.” *Id.* The use of computers should tie into the firm’s business plan, “by compensating for the reduced billable hours achieved through enhanced productivity with alternate billing methods and by marketing the investment in technology directly to existing and potential clients.” *Id.*; see also Alan J. Rothman, *Time Is Out: Alternate Billing Requires Patience And Practice*, N.Y.L.J., Mar. 14, 1995, at 5; Rose, *supra* note 168, at 5. The managing partner, or a planning committee, should “survey all or a representative number of lawyers for their perceptions about developments that may influence the firm.” *Id.*

[173]. See Ricker, *supra* note 115, at 70. Traditionally, associates have been viewed as “profit centers.” *Id.* Alternative billing will make the associates look more like interns by creating less of an emphasis on billing, and more of an emphasis on learning the profession. See *id.*

[174]. See Ricker, *supra* note 115, at 70; see also Hildebrandt, *supra* note 168, at 4. “Lawyer productivity and profitability should be quantified before automation, so some baseline exists against which to measure success six months to a year later.” *Id.*

[175]. See Roth, *supra* note 96, at 1.

[176]. See Roth, *supra* note 96, at 1. “If [the firm is] not preparing full accrual financial statements in which accounts receivable, work-in-process and unpaid obligations are included, [the firm does not] really know how much [it] is spending and earning.” *Id.*

[177]. See Roth, *supra* note 96, at 1. This includes compensation of both attorneys and support staff, employee benefits and allocable overhead. See *id.*

[178]. See Roth, *supra* note 96, at 1-2.

[179]. See Turnbow, *supra* note 171, at 32. This may help in alleviating the uncertainty that a lot of clients have. See *id.*

[180]. See Turnbow, *supra* note 171, at 32.

[181]. See Turnbow, *supra* note 171, at 32. Acquiring such technology is an expensive task that will require a lot of energy and investment. See *id.*; see also Hildebrandt, *supra* note 168, at 4. “Once lawyers use practice-specific computer applications, the needs of litigators should be addressed separately.” *Id.* “Effective use of automated litigation systems requires complex yet flexible computers

and good paralegal programs.” *Id.*; Hope Viner Samborn, *It’s About Time*, A.B.A. J., Dec. 1998, at 70 (discussing necessary features attorneys should look for when purchasing time-and-billing software, including: “client’s name, address and phone number;” different types of billing strategies—tailored to the client’s need; and easily adaptable to the attorneys practice).

[182]. *See* Turnbow, *supra* note 171, at 32. This technology makes it possible for greater efficiency than would occur without these tools. *See id.*

[183]. *See* Turnbow, *supra* note 171, at 32. The other option is for law firms to accept these investments as overhead in which case they could not bill the client for them. *See id.* This is not preferable because the purpose for purchasing technology is to aid in servicing the client. *See id.*

[184]. *See* Turnbow, *supra* note 171, at 32; *see also* Kummel, *supra* note 9, at 380. “Attorneys, seeking to secure fair value for their services, increasingly demand changes in the organization and compensation of law firms. Consequently, profit margins have eroded.” *Id.*

[185]. *See* Iezzi, *supra* note 13, at 3. This may be in part because firms would be required to adopt certain cost accounting methods that have the potential of producing detrimental information. *See id.* Additionally, changes in firm reward systems, budgeting systems, and client education provide further challenges to a revised billing system. *See id.*

[186]. *See* Iezzi, *supra* note 13, at 3; *see also* Zeughauser, *supra* note 114, at 24. Clients benefit from alternative billing arrangements for four reasons. *See id.* First, for certain matters, properly structured alternative fees can align the client’s and outside lawyer’s interests better than can hourly fees. *See id.* “Second, clients can use alternative fee arrangements to allocate two of their principal risks in purchasing legal work: a bad result and a cost overrun. Thus, alternative fee arrangements can help the outside lawyer share risks with the client.” *Id.* “Third, alternative fee arrangements can be structured to give incentive to superior results.” *Id.* at 25. “Finally, clients want predictability.” *Id.*

[187]. *See* Zeughauser, *supra* note 114, at 22. The use of alternative billing will likely increase in today’s competitive marketplace. *See id.* Market-driven competition among law firms and global pressure on American companies to cut costs and improve quality have driven clients to force alternative fee arrangements on their lawyers. *See id.*

[188]. *See* Wendy R. Leibowitz, *Dealing With the Human Factor: Tech May Challenge Work Habits*, THE NAT’L L.J., Apr. 20, 1998, at B8.

[189]. *See id.*

[190]. *See id.* “A serious obstacle to lawyers using software that retrieves prior work product is the unwillingness to acknowledge the extent to which documents are recycled. No one wants to feel like a robot, cutting from boilerplate.” *Id.*

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