

Article from TEdec Times, Summer 2007

THE BILLABLE HOUR MUST DIE

By: Scott Turow

The following (along with the title to this article) is an abstract of an article by Scott Turow which appeared in the ABA Journal August 2007 edition, starting at page 32. We have inserted various comments in brackets, where appropriate. We recommend the entire article for your leisure reading. Although Scott Turow is a litigator, much of his article is equally applicable to trust and estate administration.

CONTEMPORARY WOES

"For too many litigators [practitioners], our life increasingly is a highly paid serfdom – a cage of relentless hours, ruthless opponents, constant deadlines and merciless inefficiencies."

"But I still believe lawyers in general, and litigators in particular, are yet to confront the realistic limits of our competitive environment. And in this regard there is no more vicious culprit than the practice of basing our fees solely [or primarily] on the time spent on a matter."

HOURS AMOK

"I believe in the free markets to know that if what we ask our clients to pay us wasn't worth it to them, they wouldn't continue to do it. My concern is with the external effects of the system we are now following." (*emphasis added*)

"Dollars time hours sounds like a formula for fairness. What could be more equitable than basing a fee on how long and hard a litigator [practitioner] worked to solve a matter? But as a system, it's a prison. When you are selling your time, there are only three ways to make more money – higher rates, longer hours and more leverage [the latter is TEdec]. As the years have gone by, the push has continued on all three fronts."

"Let me be clear: I don't think there is anything wrong with lawyers making money. There is a unique satisfaction in representing somebody well and being rewarded for it in a manner commensurate with the effort and skill required."

A SORRY SYSTEM

"But at the end of the day, my greatest concern is not only that dollars times hours is bad for the lives of lawyers – even though it demonstrably is – but that it's worse for clients, bad for the attorney-client relationship, and bad for the image of our profession. Simply put, I have never been at ease with the ethical dilemmas that the dollars - times - hours regime poses, especially for litigators."

"Whoever says to a client that my billing system on its face rewards me at your expense for slow problem solving, duplication of effort, feather bedding the work force and compulsiveness - not to mention fuzzy math. Does anybody ever tell a client what the rule seemingly requires?"

FEE FIASCO

"As a result of hourly billing, the fee collecting process has grown far more fractious. What does it do to the environment of our profession, to our perception of ourselves and our clients perception of us, that we are locked into a system in which clients are saying from the start of the relationship, I can't really trust you to be fair with me."

"America is ambivalent about lawyers. People are impressed with our knowledge and the power that knowledge gives us, and jealous of it as well. They see us a too often self seeking, manipulative and greedy. We all know that this is not a balanced picture."

"But recognizing how far behind the eight ball we remain in the eyes of the public, should we really continue to engage in billing practices that even our clients, who know us best, have been telling us inspires distrust?"

Mark Robertson, Partner of the law firm of Robertson Son & Williams in Oklahoma City and former chair of the ABA Law Section Management Section, reminds us: "Remember that keeping track of hours is a measure of your *cost* – not your *value* to your client." Mr. Robertson has co-authored an ABA book *Winning Alternatives to the Billing Hour: Strategies that Work, Second Edition*.

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