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Pro Bono is Profitable: A CFO'S View

By Glenn Graner

What is your law firm's definition of "pro bono?" Seems like a simple enough question, but ask any two lawyers or law firms what "pro bono" means to them, and you are likely to get two or even several different answers.

"Pro bono" derives from the Latin term *pro bono publico*, which means, literally, "for the public good." The American Bar Association Model Rule 6.1 defines a lawyer's pro bono commitment as follows:

> "Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least 50 hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should provide a substantial majority of the 50 hours of legal services without fee or expectation of fee to 1) persons of limited means, or 2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means."

Motivational Challenges

Administering a successful pro bono program for a large law firm can be challenging. What motivates a senior partner at a

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The Ethics of Double Billing

By William G. Ross

*[**Editor's note**: In this new article for* A&FP*, Professor Ross takes a fresh look at one of several vexing billing problems he explored in his 1996 book, "The Honest Hour: The Ethics of Time-Based Billing By Attorneys." For his columns on a variety of Constitutional law topics, including a timely, detailed critique of Justice Scalia's controversial recusal refusal, see http://jurist.law.pitt.edu.]*

Few practices have subjected lawyers to more public derision than so-called "double billing," by which attorneys bill two or more clients for different work performed at the same time. Double billing commonly occurs when an attorney riding on an airplane bills one client for his travel time and another client for drafting a motion during the flight. Another common type of double billing occurs when an attorney who represents multiple clients in the same lawsuit bills each client fully for overlapping time (*eg*, time spent in court) rather than apportioning the time among the clients. A third type occurs when an attorney performs work on several files for a client being sued by multiple parties, and the attorney bills each file fully for overlapping time rather than apportioning the time among the files. Such duplication of time has enabled attorneys to bill herculean numbers of hours, sometimes more than twenty-four in a day.

Disparate Views

Attorneys who engage in double billing try to justify the practice by arguing that they deserve compensation from both clients because they have provided full services to both during the time billed. Many clients and commentators strongly disagree. Growing criticism of this practice, particularly among clients, appears to have diminished the frequency of its occurrence during recent years, but it still persists, sometimes overtly and more often covertly.

Nationwide surveys of several hundred attorneys which I conducted in 1991, and again in 1995, indicate that most outside counsel, and even a greater proportion of inside counsel, disapprove of the practice. In my 1995 survey, two-thirds of the attorneys stated that the practice is never ethical. Only one-sixth of the

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Double Billing

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outside counsel, and less than 2% of the inside counsel, claimed that double billing is ethical even if the client is informed of the practice. Attorneys in the surveys appear to practice what they preached, since more than three-quarters of the outside counsel said that they had never billed two clients for work performed at the same time. Fifteen percent said that they had done this "rarely"; 7% "a moderate number of times"; and only 1% "often." Similarly, of the Texas law firm associates who responded to Texas Tech Law Professor Susan Saab Fortney's 1999 poll, 86% stated that they had not engaged in double billing during the past year. Her survey also found that double billing was less common among associates at large firms than those at smaller firms and less common among highly paid associates than lesser-paid ones.

Client objections to double billing may account for the widespread opprobrium with which so many attorneys regard this practice.

Case Law and Formal Ethics Opinions

There is little case law or other authority on double billing — probably because the practice is so difficult to detect, given that clients rarely have access to the billing records of other clients. Even in contests over fees, courts rarely permit discovery of the billing records of clients who are not parties to the litigation. In addition to questions about relevance, billing records may contain information that is protected by the attorney-client privilege.

As explained below, an ABA ethics opinion strongly condemns double billing, as have most commentators; but a California ethics opinion is more generous.

In an extensive discussion of double billing in 1993, the American Bar Association's Committee on Ethics and Professional Responsibility strongly condemned this practice. *Formal Op. 93-379.* In considering the hypothetical situations of an attorney who bills multiple clients for work performed during time spent traveling or in court, the opinion states that "it is helpful to consider these questions, not from the perspective of what a client could be forced to pay, but rather from the perspective of what the lawyer actually earned." The opinion concluded that "a lawyer who spends four hours of time on behalf of three clients has not earned twelve billable hours," and that "a lawyer who flies for six hours for one client, while working for five hours on behalf of another, has not earned eleven billable hours." The opinion explains that "rather than looking to profit from the fortuity of coincidental scheduling, [or] the desire to get work done rather than watch a movie … the lawyer who has agreed to bill solely on the basis of time spent is obligated to pass the benefits of these economies on to the client."

Other authorities are less categorical in expressing disapproval of double billing. In particular, California's ethics committee, in a 1996 opinion, concluded that double billing is ethically permissible if an attorney satisfies her fiduciary duty to a client by disclosing "this billing practice in clear, unambiguous terms, to each client" and by obtaining "each client's consent in advance." The opinion further cautions that even under these circumstances, "the attorney must take care not to charge the clients an unconscionable fee." *California State Bar Standing Committee on Professional Responsibility and Conduct, Formal Op. 1996-147.*

According to the California Opinion on double billing, "an attorney who works on two matters simultaneously is not required to divide that time equally. However,

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Legal Business and Employment Outlook: Recruiter Views

***[Editor's Note:** The following remarks are excerpted from "The Outlook for 2004: A Recruiter Roundtable," published in* The Recorder *(03-22-2004). Lawyers, firms and corporate legal departments can all find reasons for optimism in over a dozen interrelated trends identified by this thoughtful panel.]*

Chris Braun (publisher of *The Recorder*): Tell me what you think we're likely to see in the next year or so in terms of changes in the profession.

Avis Caravello (of Avis Caravello Attorney Search Consultants): I'm looking in my crystal ball and I see three trends that will definitely continue. There'll be further consolidation of the Am Law 30. The big firms are continuing their quest to be global players, coming into regional markets and acquiring smaller firms, and gaining more critical mass by continuing to expand overseas. In doing so, they are gaining more of a foothold in large institutional client bases and thereby continuing to raise their rates, which hopefully will result in more work for associates and more associate hiring.

The other result of that will be that as rates rise in certain practices that are more regionalized, we're going to see more opportunities for the smaller and the midsize firms to pick up those practice groups that are struggling to keep the rate structure in the larger global firms. That's really good news for the smaller and midsize firms.

The last thing I see, which also goes to long-term employment opportunities, is in 2 or 3 years there's going to be a massive shortage of mid-level to senior corporate associates, the likes we've yet to see. They have all been decimated from this market in the past 2 or 3 years. As things pick up, firms are going to be looking for those people. So three or four years from now, we will have that big shortage and we'll be running around trying to find those folks.

Stacy Miller (of Miller, Sabino & Lee): I'm seeing the continuation of trends. Law firms are reflecting their clients and their business models, whether that be having business people running and managing the firm, hiring a CEO or COO or what have you. I'm seeing a lot of firms streamline processes and making partners and people accountable for their practices and profitability. That's good news for us as recruiters. In the last couple years I've seen a great increase in retained searches, which goes hand-in-hand with very focused efforts on recruiting.

On the in-house side, a lot of my corporate clients are realizing that it is time to bring legal work in-house. It's much more cost-effective for them to hire somebody, pay the salary, and bring them on as an employee of the company, as opposed to paying outside law firm fees. So I'm seeing in-house legal departments grow. And that's in the very traditional sectors as well as in the new economy-type businesses. So I think it'll be an interesting couple of years.

Hopefully with the hiring of all the junior corporate associates that's going on right now, maybe all those people will grow up and become mid- to senior-level associates so that people aren't left in a glitch.

David Lacob (of Pacific Search International): I see five or six big trends. We will continue to see a dominance and further consolidation of the Am Law 100 and 200. The national firms that have the resources and scale are still in the sweet spot. At the same time, a couple caveats apply. I don't think, as has been written in some press articles, that the Magic Circle firms will necessarily dominate the U.S. landscape. They may make inroads, but I don't think they will dominate. They will still have a great role to play in world markets.

Another thing we're seeing is that the nature of how law firms get business from their in-house clients is changing. We've recently seen more fee-based bid work. I think that's a trend that's going to continue. Some people call it an auction model. I don't know if I'd go quite that far.

Conflicts for large law firms have become a massive problem. I don't want to say that there'll be a revenge of the boutique, but I do concur that we will see more boutiques; however they will be a different kind of boutique than we've seen in the past. One example of that is the midsize powerhouse litigation firm. There are a number of examples that I could cite in that area. I think that's a trend we're going to see, sort of a muscular, midsize litigation boutique. Another trend that's certainly going to continue is international work, particularly in Asia.

The demand for people who have engineering and hard science backgrounds will continue, and the demand for language — Mandarin, Taiwanese, Cantonese, Japanese. There's massive competition for people with that kind of background and skill set, and that's going to continue. Some advice for very young lawyers or people planning to go to law school is think engineering, think science, think languages, and think China. Certainly I think these are areas where we're going to see a lot of excitement in the coming years.

Stephen Van Liere (of Cushing Bicksler Van Liere): I agree that this trend towards the largest firms focusing on premium billing will continue. It's almost reshaping the notion of what a full-service law firm is. Those are the firms that built broad practices to handle all the legal needs of their clients, but that sort of runs right in the face of trying to focus only on premium billing-rate practices. As Avis pointed out, it's going to create opportunities for firms that have a rate structure that's one notch below a premium billing rate structure. They will be able to pick up practices like employment, real estate, wealth management and other kinds of practices that still draw a nice rate, but maybe not the premium rate.

I see a continuation of this trend toward creating more levels of involvement and/or ownership in a law firm, which began as a way for some firms to de-equitize partners in order to increase their per-partner profit numbers to make them more attractive merger candidates.

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Recruiter Views

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A collateral effect (and I think a benefit) is that firms are starting to look a little more creatively at what a partner in a law firm is, what an associate is, what an of counsel might be. You see a plethora of titles now, whereas before it was simply either equity partner or associate. I hope that trend continues, because it allows for more flexibility in work arrangements for people who want to be lawyers but don't necessarily want to be an associate on an equity-partner track. That's important given the demographics of law students and lawyers who are trying to balance family and everything else.

The third element I'm curious about — I don't know if it will actually develop into a trend — is related to the in-house side. There was an excellent article in your publication about what was called the Dupont Method, this idea that corporations will start to outsource the more commoditized aspects of legal work. I'm very curious whether that will take hold, because it would have a significant effect on recruiting and hiring practices. It would have a significant effect on my business, because we also do contract attorneys and legal professionals. So it'll be interesting to see whether that is just sort of the latest "in vogue" management technique or whether it'll actually happen.

Chuck Fanning (of Major Hagen & Africa): On the staffing side, I think we're in a pretty interesting spot right now. We've gone through a period where associate hiring, particularly through recruiting firms, was almost zero for a period of time. Now it appears to be picking up quite dramatically. I predict that we will see the continuation and extension of a trend that has already started in the partner recruitment area: law firms being much more strategic about how they approach lateral hiring and the use of recruitment firms. When it comes to making important hires, whether it be in the partner or the associate realm, I just don't think the old model of tossing those needs out to a bunch of search firms on a contingent basis has worked very well. Corporations long ago discovered the benefits of partnering more closely with a recruitment firm to execute on important hires; in fact, contingent search is the exception rather than the rule with respect to our firm's in-house search practice. In the last couple of years, law firms have increasingly dipped their toe into the water of retained search at the partner level. I think we'll continue to see that, and also the extension of more exclusive or at least semi-exclusive relationships in the associate hiring realm.

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prestigious, large law firm to oversee 400 different AIDS victims cases? What motivates the general counsel of a Fortune 100 company to appear in court monthly in a protection-from-abuse action? Will every lawyer have the same level of commitment? Will every law firm permit that level of commitment?

In its July 2003 Am Law 100 article, *The American Lawyer* published pro bono statistics for the 100 largest law firms in the country. The results are strikingly uneven. While many law firms contribute mightily to the pro bono cause, 70% of the top-100 law firms average less than the 50 hours per lawyer proposed by ABA Model Rule 6.1.

Glenn H. Graner, CPA, is the CFO of Kirkpatrick & Lockhart LLP (www.kl.com), resident in its Pittsburgh office. K&L's strong commitment to pro bono work is all the more impressive given the firm's no-debt philosophy requiring that growth be funded exclusively with partner capital contributions.

Adding to the challenge is the negative financial connotation that is sometimes associated with a pro bono commitment. Ask many law firm managers what "pro bono" means to them, and all too often you get the wrong answer. Many will take the short-term perspective that a pro bono commitment will cost too much time and money. *We have to have xxxx billable hours first! How can we motivate a lawyer to perform non-paying work? How can we reward lawyers financially for non-paying pro bono work?* This short-term perspective is counterproductive, even financially, for a number of reasons.

Taking the Long View

Yes, in the short term there will be a cash investment cost to a pro bono commitment, because a law firm will have to fund certain costs of the pro bono engagement. And, yes, there will be a short term opportunity cost in the lost billable hours you otherwise would have collected, provided there is paying work at the ready. But one must look to pro bono work as a long-term commitment to understand the positive effect a pro bono program can have on a law firm's profitability.

Clients care. First, and perhaps foremost from a financial perspective, a firm's long-term commitment to pro bono work matters to clients. Just as diversity is becoming increasingly important to the client community, so is a law firm's pro bono commitment. Clients will take notice whether or not a law firm is meeting its professional obligation, and any law firm leader would agree that losing an esteemed client would be a lot more harmful to the bottom line than the short-term investment in pro bono activities. Further, pro bono activities can provide an excellent opportunity to strengthen an existing client relationship by partnering with clients on pro bono initiatives. Such partnering activities can also serve as a great training device for young lawyers at both the law firm and the client, thus strengthening not only the client relationship at the highest levels, but also building relationships at the youngest levels.

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As further evidence that pro bono activities matter to the client community, there has recently been an increasing trend for prospective clients to seek information about a law firm's commitment to pro bono activities in "requests for proposals" for legal work. A law firm can certainly explain its commitment to pro bono in proposals; however, what really helps to win new clients is listing the awards that a firm has received for its outstanding work in the pro bono field.

Lawyers care. Second, in the long term, pro bono matters to lawyers, because many lawyers take their professional obligation very seriously. To be financially successful, any law firm must be able to attract and retain the best and brightest attorneys possible. You do not want to lose a star lawyer or a potential rainmaker because of a lack of commitment to a pro bono program.

From an associate-retention perspective, one must understand that the single largest hidden cost to any law firm is attorney attrition. It is not unusual for a large law firm to lose money on every first-, second- and third-year associate. And, while a fourth-year associate may become profitable, the law firm doesn't instantly recoup the losses from the earlier years. On a cumulative basis, the firm doesn't really profit until an associate reaches his or her fifth year. So if the firm's pro bono program helps retain even a single associate into and past the fifth year, the long-term profitability impact will be substantial. Similarly, landing that premier lateral associate or law review editor who noticed your firm has won distinguished awards for its pro bono activities will reap long-term rewards.

Development benefits. Third, in the long-term, pro bono also matters because of the training and professional development opportunities it provides to junior lawyers. A well-managed pro bono program can provide a wide variety of high-quality skills training at a relatively low cost; at the same time, it affords junior lawyers greater autonomy while still being supervised by senior attorneys. This is crucial because the economic demands of the current legal environment don't provide the same "second chair" training grounds of the past. What junior lawyer doesn't want to get into a courtroom? What junior lawyer wants to toil in document privilege review sessions for long periods without looking forward to some different, challenging and "fun" project? Sprinkling in the occasional pro bono experience will keep your junior lawyers happy, engaged and looking forward to a brighter future. Associate morale will be enhanced. And, again, retention of just one junior lawyer will reap long-term financial rewards.

Morals and morale. Fourth, again in the long term, pro bono matters because it's right and because it feels good. This may sound trite, but there is no warmer feeling a lawyer can experience, particularly a junior lawyer, than when a victory is secured in a protection-from-abuse case, a landlord-tenant dispute, or any other important legal matter where the victim otherwise wouldn't even have been in court due to financial limitations. The "feel good" work that pro bono opportunities present for junior lawyers can occur much more frequently than victories in the client community and therefore will result in higher morale for all involved; and that is always good in the long term.

Boosting Pro Bono: A Coordinated Approach

In today's increasingly competitive legal environment, how can we as law firm leaders make junior lawyers feel good about performing pro bono work? How can we make them feel that their non-billable time is not wasted? How can we make them feel that they will get the same level of support and training on a pro bono matter as a client billable matter?

There has to be a clear, top-down strategic mission statement from the law firm indicating that pro bono matters. This mission statement must have the following characteristics if it is going to be taken seriously:

- Associates have to know that their pro bono time counts, that they will get rewarded for it, and they will not be penalized in any way for it. This is particularly important given the billable hour environment all lawyers live with today. Meeting this goal is easy enough, though: pro bono hours should count the same as billable hours, within reason.
- Associates have to know that their pro bono activities will be supervised, reviewed and evaluated by senior associates and partners, just as any client billable work would be.
- Not every junior lawyer can find a pro bono matter on his or her own. The firm must set up an organizational structure that seeks out pro bono opportunities, matches those opportunities with the appropriate lawyers, and mentors and supervises the junior lawyer to the conclusion of the matter.
- Partners have to buy into the mission statement. Beyond committing to fulfilling their own pro bono obligation, partners should also be called upon to supervise junior lawyers. Partners must understand that mentoring a junior lawyer on a pro bono matter is every bit as important as mentoring a junior lawyer on a client matter. How can a law firm get general buy-in and acceptance from the

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Double Billing

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the attorney who fails to do so must fully and timely disclose the nature of her billing practices to her client." The Opinion also explains that a fee agreement that is silent on the subject of double billing should be interpreted in the client's favor.

The California Opinion strikes the proper balance between protecting clients and permitting attorneys to recover full value for efficient use of time. If, as the ABA opinion states, the touchstone of ethical billing is compensation for what the lawyer earned, one may argue that a lawyer earns a fee from both clients when he performs a productive service for both, even if those services are rendered at the same time.

Efficiency and Windfalls

Prohibiting double billing can be viewed as encouraging inefficiency. Faced with the painful choice between wasting his time or losing a fee, an attorney might opt to perform tasks on two separate occasions that could have been performed all at once. An attorney, however, has an ethical duty to work in an expeditious manner that spares the client from unnecessary fees.

Conversely, double billing can be viewed as ethical insofar as it does not increase the amount of the bill that either client would have paid if the work had been separately performed. If, for example, the attorney who is traveling for Client A had read a magazine rather than drafting a motion for Client B during an airline flight, he would have charged Client A the same amount of money. Similarly, Client B is going to receive the same bill regardless of whether the attorney drafted the motion on the airplane or in his office. This reasoning is subject to two qualifications, however, both derivable from the above-mentioned rule that the lawyer must spare the client unnecessary fees (or, with somewhat less force, from the California Opinion's own caution that such fees must not be unconscionable).

First, an attorney must reduce or discount her billable time to account for any distraction or diminution in efficiency created by work for another client. If, for example, the writing for Client B takes the lawyer longer while on the plane for Client A than it would have taken in the lawyer's usual workplace for Client B, then the lawyer should correspondingly discount her charges to Client B.

Second, this proposed justification for double billing assumes that two different clients are being billed. If, during a plane trip for a client, the lawyer does an hour of writing for that client, then the lawyer may charge for that hour only once. Moreover, suppose a lawyer traveling for Client A has two hours of writing work to do, one for Client A and one for Client B. Suppose further that there will be only one hour of good writing time on the plane flight, so that the other hour of writing will have be done that evening in the hotel. The lawyer should devote the hour of writing time on the plane to Client A rather than Client B, so as to spare Client A from an avoidable second hour of billing.

Although the ABA opinion suggests that the ability to bill two clients at once constitutes a windfall, the ABA's standard would permit the client to reap a windfall. Since the attorney has indeed earned two fees, an attorney might argue that it is fairer to allow him to reap the windfall than for the client to receive what amounts to free legal services. Of course, clients typically will argue that they ought to receive the benefit of any savings because an agent has a duty to pass economies along to his or her principal.

Client Perspectives

Of course, as a practical matter, many clients will not consent to double billing, agreeing with the ABA opinion that the attorney should pass his economy along to the client. It is quite understandable, for example, why a client whose attorney represents it in several related lawsuits would not permit the lawyer to bill for time spent in a status conference in each of the four cases. In each case, the attorney has performed essentially the same work even though he arguably has rendered a distinct service to the client in each separate case.

A client has less reason to object to an attorney who bills separate clients for court appearances scheduled at the same time or who performs work for one client while traveling for another client. In these instances, the attorney has provided full value to the first client, who should not object if the attorney is able to use the same time on behalf of another client.

Conclusion

Like most clients, most attorneys regard double billing as unethical; and even most attorneys who wish to engage in double billing probably will not dare to seek client consent. Even if the client consented, the

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Stephen M. (Pete) Peterson Joins *A&FP* Board of Editors

As Managing Director of the Law Firm Business Institute (www.lawfirmbiz.com), Pete Peterson draws on his experience until 2000 as a law firm CFO in Denver (for Davis, Graham & Stubbs, LLP) and previously in Minneapolis (for Oppenheimer Wolff & Donnelly). He has also consulted and served as COO for Hildebrandt International, Inc.

Since 1998, Pete has taught as a Guest lecturer in the Master of Science in Legal Administration (MSLA) Program of the University of Denver, College of Law. In May of this year, Pete becomes an Adjunct Professor for MSLA's Law Office Management course. In addition, Pete will be presenting, in cooperation with the ALA, a management course for administrators in the U.S. Attorney's Office, Department of Justice.

A versatile writer and speaker on a wide variety of legal business topics, Pete coauthored last year's three-part *A&FP* article on law firm surveys. Next month's edition will feature an article Pete is coauthoring on advanced education for law firm administrators.

Attractive Prospects for Suburban Law Firms

By Michael C. Hodes

*[**Editor's note:** Two panelists in the Recruiter Views article on page 3 note current economic trends that favor midsize firms. In this article, the managing director of a suburban midsize firm describes how to position such a firm for profitability.]*

Over the last 10 years, I attended a number of leadership, management and other seminars on the direction law firms must take to be successful in the 21st century. Exasperatingly, our Towson-based firm, just outside Baltimore, never seemed to fit any of the categories of firms that were expected to prosper. We weren't a national, regional or international law firm. We weren't a boutique. Yet each year, our firm grew both in size and financially. In 2003 our profits-per-equity-member reached $425,000. We are competitive economically with the large law firms — and we are having more fun.

Having decided these seminar consultants were missing something, I began to define a new species of prosperous law firm I now call "suburban." This type of firm differs from traditionally urban-based regional, national and international firms. Moreover, it is precisely because there are inefficiencies in the urban legal market that talented, well-designed suburban firms can prosper.

Efficiencies of the Suburban Firm

The suburban firm has the advantage of being convenient for its client base: our firm has five offices that are easy to access and where parking is a breeze. Parking is also free to our employees and to the firm, whereas the monthly cost of parking in the urban location can range from $150 to $300 per person.

Our offices are more accessible to employees as well. It's convenient for our attorneys to go to a child's afternoon lacrosse game and then return to the office to work for a few hours. By not having to commute into the city, our lawyers and paralegals gain 4 to 8 hours per week — time they can spend in the office billing clients, marketing, and maintaining client relationships. On weekends, it is easy to stop by the office and spend a few hours cleaning up one's desk.

[I]t is precisely because there are inefficiencies in the urban legal market that talented, well-designed suburban firms can prosper.

The rent we pay for suburban office space is 20-40% less than city rents in Baltimore and Washington. Overhead for our suburban business operations is also substantially lower than for urban firms.

Suburban Recruiting Successes

Lower costs have helped our firm avoid getting caught up in associate wage inflation. Offering a compensation level 25-40% less than at larger urban firms, we can nevertheless attract talented young associates from local law schools, who are ranked in the top 15% of their law school class. We sell them on quality of life issues such as lower billable hour requirements (1800 hours) and more emphasis on spending time with their families. They are also given more client contact and responsibility at an earlier stage of their career. We also inculcate our young attorneys with an entrepreneurial and marketing spirit. We have found that lifestyle issues and client interaction are attractive to this new generation of attorney.

At the same time, our firm has been able to attract experienced attorneys with practices at the $150,000-$400,000 level. We look for highly trained and talented attorneys with 8-15 years of experience. Since the practices of the attorneys we seek are generally too small for big urban law firms, those recruits are less attractive to the larger regional and national law firms; moreover, their clients don't mesh well with the big firms as the latter move up the food chain.

For example, we recruited two attorneys from a large regional firm of 400-plus attorneys. One was a corporate attorney with a cadre of health industry clients, and the other was a top-flight healthcare attorney. When they joined our firm, they were able to tell their clients that their billable rates had dropped from the $375-$400 an hour range to $290-$310. At the same time, they were located in a firm that was only a 5-minute car ride from the client's main facility.

In a little over 1 year, both attorneys substantially increased their practices. Marketing became easier in the suburban setting, and former clients who couldn't afford their fees at the larger urban firm returned in droves.

Finding a Niche

With corporate counsel now compelled to watch the bottom line, the lower prices a suburban law firm can offer give it a competitive advantage. At the same time, the level of talent is very competitive when compared to the largest law firms in the land. In fact, most attorneys in our suburban prototype have trained and practiced in urban firms.

A suburban law firm does well to seek certain types of clients — wealthy individuals, small businesses, and local work for public sector representation and publicly traded companies. Similarly, the suburban firm should give priority to such practice areas as wealth preservation, elder law, healthcare, land use, construction, commercial litigation, environmental, employment, education law, tax and business law. These areas are where the low-hanging fruit can be found.

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partnership at large? Measure the partners' commitment to pro bono, report it, and compensate for it (or at least make it be known that there may be compensation implications for those partners that don't perform).

- Lastly, as evidence of the firm's commitment to pro bono, the firm must continually monitor and report on its pro bono efforts to ensure the firm's goals are being achieved.

CONCLUSION

In the long run, a successfully administered pro bono program will have positive financial benefits for any law firm. Those financial benefits may not be easily quantifiable — *eg*, how can one gauge the "newfound" profits generated by a great young lawyer who decides to stay at your firm — but for those firms committing to a long-term program, rewards will become fully evident over time.

*[**Editor's Note:** I'm pleased to report that the author has already begun preparation of a follow-up article on some advanced pro bono topics.]*

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attorney would risk the diminution of good will. Since an attorney normally cannot use billing methods of which a client disapproves, an attorney who has not sought and obtained a client's consent may not bill a client for time spent for another client or for more than a single matter on behalf of the same client, regardless of how efficiently the attorney spent his or her time.

As in the case of billing for "recycled" work (see the August 2003 edition of *A&FP*), the optimal solution to double-billing questions may be to carefully formulate a value-based alternative billing method in the letter of engagement. Alternative billing methods have their own challenges, but a fair and candid engagement agreement is the best way to ensure both conformity with ethical strictures and a profitable long-term client relationship.

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Suburban Law Firms

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As a regional, national or international firm grows, so does the size of the client it desires to represent. Now it is marketing to automobile makers, large hospital chains and insurance companies. No longer does the big firm want to represent the local auto dealership group or community hospital. The suburban law firm with 50-150 attorneys can therefore now compete for those midsize clients, which still require firms with enough depth of talent to do the job, including top-flight attorneys who have handled sophisticated matters.

On the other hand, sophisticated intellectual property matters, complex securities work, or matters involving the FCC and FDA should generally be left to the regional, national and international urban law firms. It may also be best for bet-the-company litigation to be handled by big firms with extremely deep talent pools.

CONCLUSION

Large urban-based and boutique law firms are not the only species that have the potential to prosper. The well-designed and astutely positioned suburban law firm is a firm model that can profitably provide high value to clients while also offering an attractive lifestyle to its own professional and administrative staff.

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