

## Cost Recovery and Profit Making in Private Law Libraries

by

LaJean Humphries

Library Manager

Schwabe, Williamson & Wyatt

### Suggested outline for in-house cost recovery CLE

- ✚ Review the firm's history of online research billing
- ✚ Review ABA Formal Op. 93-379
- ✚ Present current status of billing procedure/policy
- ✚ Look at the bills
- ✚ Present scenarios
- ✚ Collect results
- ✚ Present findings to management

### Sample Scenarios for a Cost Recovery CLE

**Scenario A:** For XYZ Service, we pay \$150 per month in subscription fees. There is a charge for each research transaction (either hourly or per search). We bill the client for the research transactions. We do not allocate any portion of the subscription fee to the clients.

**Question:** Should clients be billed for a portion of the subscription fee? Why or why not?

**Scenario B:** Most of our ABC Service research is covered by a "flat-rate" pricing agreement. The pricing agreement is confidential and may not be disclosed. If it costs the firm \$25 for research, the client is billed \$25.

A portion of our monthly fee consists of the cost of retrieving documents with a citation. This comes to \$100,000 annually. The firm wants to allocate the cost of getting such documents to all clients for whom online research is performed. This can be done in the accounting department by running a software program on the monthly electronic invoice. For example, if the cost of the client's research was \$25 the final bill to the client might show a charge of \$30.

**Question:** Is it appropriate to allocate charges for retrieving documents with a citation to client research charges? Why or why not?

**Scenario C:** Much of the computer-assisted research that is performed is for pro bono clients, charitable and civic activities, speech writing and presentations, marketing and business development, and for clients who simply refuse to pay research charges. The firm would like to recover some of that expense by allocating some of the nonbillable research to paying clients. Thus, for example, the client above whose actual research cost was \$25 might be billed \$35.

**Question:** Is it appropriate to allocate charges for nonbillable research above to paying clients? Why or why not?

**Scenario D:** Clients want to know in advance how much research is going to cost. Therefore, after our best analysis the firm has decided to charge the following rates for online legal research:

\$5 per case pull

\$50 for a company or financial search

\$100 for a news search  
\$100 for a trademark search  
\$160 for a caselaw search  
\$200 for a public records search

**Question: Is it appropriate to use a rate adjustment or surcharge when the actual cost may vary slightly? Why or why not?**

**Scenario E:** The firm can use an automatic process (allocation or rebalancing) to optimize the pricing of online research libraries within preset parameters. This will drive increased recovery by boosting prices on databases that clients have demonstrated a high level of willingness to pay for in the past while decreasing prices on databases that historically have had lower recovery. Such rebalancing constrains price increases and decreases within user-defined ranges to minimize excessive price swings. It balances to the actual online research costs so as not to add a premium over the firm's actual cost. This model yields a 20% increase in chargeback realization and offers the potential for the firm to increase recovery even further through aggressive manipulation of the algorithm, if we so desire. (The rebalancing model forces some client bills to increase while causing others to decrease.)

**Question: Do you agree to implement the rebalancing model? Why or why not?**

**Note:** The above scenarios are examples only; numbers and percentages are illustrative, not actual. Present scenarios that are based on your own firm's billing history or actions that are under consideration.

## **Conclusion**

After completing the cost recovery CLE and debating the merits of different methods of billing for online research, attorneys will reach a consensus on the appropriate cost recovery methods for their firm. Attorneys and management must be in agreement for cost recovery to work. Once they are in agreement, a viable cost recovery plan can easily be developed and implemented.

## **Suggested Readings and Cases**

Cornell, Federic G. "Professionalism Rules Relating to Legal Fees Estate Planning and Administration." ALI-ABA COURSE OF STUDY MATERIALS, Sophisticated Estate Planning Techniques, Cosponsored by Massachusetts Continuing Legal Education, Volume I, September 1996, SB10.

"ETHICS OPINIONS: LSBA Ethics Advisory Service Committee Renders Non-binding Opinions." 46 Louisiana Bar Journal 235 (1998).

Gallacher, Ian. "Forty-Two: The Hitchhiker's Guide to Teaching Legal Research to the Google Generation." 39 Akron L. Rev. 151. (2006).

Hopkins, Kevin. "W.M. KECK ESSAY WINNER: Winners of the Third Annual W.M. Keck Foundation Essay Contest in Legal Ethics: Law Firms, Technology, and the Double-Billing Dilemma." 12 Georgetown J. Legal Ethics 93 (1998).

Humphries, LaJean. "Cost Recovery for Online Research." Llr.com, published on November 18, 2002, <http://www.llrx.com/features/costrecovery.htm>.

Karpman, Diane. "Not Using New Technology: Ethical and Liability Risks? Keep Up or Face Peril." 20 GPSolo 20 (June 2003).

"Low-cost, low-frills computer assisted legal research." Chicago Daily Law Bulletin, August 31, 1994.

Moran, Patrick. "Ethics Extra: Who's Paying the Westlaw Bill? If It's Not In The Contract, You Are." 17 Chicago Bar Association Record 45 (2003).

Norris, Robert W. "Opinions of the General Counsel." 55 Alabama Lawyer 190 (1994).

Pearlman, Lise. "Ten Ways to Risk Ethical Nightmares with your Computer." 20 GPSolo 16 (ABA) (June 2003).

Platt, Nina. "Cost Recovery: Putting a Value on Online Research." Strategic Librarian, <http://nlplatt.wordpress.com/2007/08/30/cost-recovery-putting-a-value-on-online-research/>.

\_\_\_\_\_. "The Growth of Electronic Resource Management (ERM)." Strategic Librarian, <http://nlplatt.wordpress.com/2007/10/04/the-growth-of-electronic-resource-management-erm/>.

Richmond, Douglas R. "The Business and Ethics of Liability Insurers' Efforts to Manage Legal Care." 28 University of Memphis L. Rev. 57 (1997).

\_\_\_\_\_. "Professional Responsibility and the Bottom Line: The Ethics of Billing." 20 S. Ill. U. L. J. 261 (1996).

Schwartz, Mark. "Keys to Effective Cost Recovery." Llr.com, published January 15, 2003, <http://www.llrx.com/features/costrecovery2.htm>.

Simon, Roy. "CONFERENCE ON GROSS PROFITS: Gross Profits? An Introduction to a Program on Legal Fees." 22 Hofstra L. Rev. 625 (1994).

"Statements of Principles, The Task Force on Lawyer Business Ethics." 51 Business Lawyer 1303 (ABA) (August 1996).

"Statements of Principles, The Task Force on Lawyer Business Ethics." 51 Business Lawyer 745 (ABA) (May 1996).

Tuite, Cornelia Honchar. "ABA ethics opinion refines standards on fees, billing." Chicago Daily Law Bulletin, February 4, 1994.

Wilkinson, Thomas G. "Ethics Digest." 28 Pennsylvania Lawyer 47 (2006).

### **Cases – Canadian and United States**

1. *Inter-Church Uranium Committee Educational Co-Operative v. Canada*, 2006 F.C.J. No. 1204; 2006 FCA 274; 2006 Fed.C.C. LEXIS 998, August 2, 2006.

2. *Englander v. Telus Communications Inc.*, 2004 F.C.J. No. 440; 2004 Fed.C.C. LEXIS 376; 2004 F.C. 276, February 5, 2004.

3. *Bank of Montreal v. Binder*, 2005 N.S.J. No. 378; 2005 NS.C. LEXIS 472, September 30, 2005.

4. *Pineau v. Kretschmar Inc.*, 2004 O.J. No. 3239; 2004 ON.C. LEXIS 3690, July 29, 2004.
5. *Sorbo v. UPS*, 432 F.3d 1169; 2005 U.S. App. LEXIS 28792; 97 Fair Empl. Prac. Cas. (BNA) 100; 87 Empl. Prac. Dec. (CCH) P42,224, December 28, 2005.
6. *In re Media Vision Technology Securities Litigation*, 913 F. Supp. 1362; 1995 U.S. Dist. LEXIS 20724, January 23, 1996.
7. *In re Madison Guar. Sav. & Loan*, 366 F.3d 922; 361 U.S.App.D.C. 249, 2004.
8. *Bristol-Myers Squibb Co. v. Rhone-Poulenc Rorer, Inc.*, 2002 U.S. Dist. LEXIS 13706, July 25, 2002.
9. *Bleecker Charles Co. v. 350 Bleecker St. Apt. Corp.*, 212 F. Supp. 2d 226; 2002 U.S. Dist. LEXIS 6211, April 10, 2002.
10. *Frevach v. Multnomah County*, 2001 U.S. Dist. LEXIS 22255, December 18, 2001.
11. *Apple Corps. v. International Collectors Soc'y*, 25 F. Supp. 2d 480; 1998 U.S. Dist. LEXIS 18292, November 18, 1998.
12. *In re Bausch & Lomb Sec. Litig.*, 183 F.R.D. 78; 1998 U.S. Dist. LEXIS 17139, October 28, 1998.
13. *Wallace ex rel. Northeast Utils. v. Fox*, 7 F. Supp. 2d 132; 1998 U.S. Dist. LEXIS 8364, May 11, 1998.
14. *In re Metropolitan Life Derivative Litig.*, 935 F. Supp. 286; 1996 U.S. Dist. LEXIS 9918, July 16, 1996.
15. *Rosecliff, Inc. v. C3, Inc.*, 1995 U.S. Dist. LEXIS 20867, December 11, 1995.
16. *In re Fibermark, Inc.*, 349 B.R. 385; 2006 Bankr. LEXIS 2083; 47 Bankr. Ct. Dec. 8, September 6, 2006.
17. *In re Quiat*, 979 P.2d 1029; 1999 Colo. LEXIS 426; 1999 Colo. J. C.A.R. 2192, April 26, 1999.
18. *DFS Group L.P. v. Paiea Props.*, 110 Haw. 217; 131 P.3d 500; 2006 Haw. LEXIS 185, April 3, 2006.
19. *In re Disciplinary Action Against Stanbury*, 561 N.W.2d 507; 1997 Minn. LEXIS 192, April 3, 1997.
20. *N.C. State Bar v. Gilbert*, 151 N.C. App. 299; 566 S.E.2d 685; 2002 N.C. App. LEXIS 782, April 18, 2002.
21. *Guerrant v. Roth*, 777 N.E.2d 499, 334 Ill. App. 3d 259, September 13, 2002.
22. *In re Cendant Corp.*, 232 F.Supp. 2d 327, 2002 U.S. Dist. LEXIS 22265, November 19, 2002.