

QUESTION 5 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK II

Andy, a second-year associate with Big Law, faces an annual billing requirement of 2100 hours. At mid-year, Andy is concerned whether he will be able to achieve the firm's expectation. He hears from Fred, a law school buddy, about "value" or "block" billing, a concept that Fred describes as billing for value, meaning billing in excess of the actual time expended. For example,

(1) for a two-minute client telephone call, bill a minimum of .4 hours (24 minutes) on the theory that the interruption distracts the associate from his other work for at least that long;

(2) for editing a motion previously filed in another case, bill the time spent on the original motion, i.e., if it took the associate 1.5 hours to draft the original motion, bill 1.5 hours for recycling it in another matter rather than the 10 minutes actually expended on editing;

(3) if, in court for three hours on a motion call that addresses multiple motions and different client matters, bill the entire three hours to each matter.

Fred did not say he actually used value billing, only that he had heard about it.

Hearing that most of Big Law's other associates are on track for 2100 hours, Andy assumes that Fred's value billing concept is the way to meet the firm's expectations. Andy incorporates value billing into his practice, even though Big Law's fee agreements allow billing only for actual time expended in one-tenth hour (six minute) increments.

At the end of Andy's first month of value billing, Andy approves his time entries and co-signs his client cover letters with Peter, his supervising partner, for forwarding to the clients.

Realizing that his hourly billings are soaring, Andy expands his value billing to include a minimum .5 hours per letter and .3 hours per email. Andy also ignores voice mails from several clients wanting to discuss time entries on the firm's most recent invoices. As the next month-end approaches, Peter receives an alarming call from Accounting that Andy has billed more than 24 hours a day at least twice in the past week. Peter confronts Andy, who denies billing anything other than actual time worked. However, when asked to explain his time entries, Andy reluctantly acknowledges his adoption of value billing. Andy does not reveal

to Peter his avoidance of client calls, even though Peter asks whether any clients have complained.

What, if any, ethical duties has Andy violated? What, if any, ethical duties has Fred violated? What responsibility does Peter have? Explain your answers.

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