

**ALASKA BAR ASSOCIATION
ETHICS OPINION NO. 96-4**

**Billing Practices -- Propriety Of Billing
More Than One Client For The Same Hours**

The Committee has been asked whether it is appropriate to bill more than one client for the same hours¹ when the lawyer has agreed to work on an hourly fee basis. In the Committee's opinion, it is not appropriate to bill more than one client for the same hours.²

Several billing practices involving more than one client and the same hours spent may be criticized. First, a traveling lawyer bills one client for travel time and another for work performed while traveling. Second, a lawyer appears for multiple clients during a single trip to the courthouse, but charges each client for the total time spent at court. Third, a lawyer recycles work product, and charges the client for the same time it took to originally prepare the brief.

The model rules provide that a lawyer's fee shall be reasonable.³ ARPC 1.5(a). In determining the reasonableness of a fee, the following factors are considered:

- (1) The **time and labor required**, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services properly;
- (2) The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) The fee customarily charged in the locality for similar legal services;
- (4) The amount involved and the results obtained;
- (5) The time limitations imposed by the client or by the circumstances;
- (6) The nature and length of the professional relationship with the client;
- (7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) Whether the fee is fixed or contingent.

Id.(emphasis added). As the rule suggests, what constitutes a reasonable fee will vary with the particular circumstances. See Fourchon Docks, Inc. v. Milchem, Inc., 849 F.2d 1561 (5th Cir. 1988) ("language of [Rule 1.5(a)] as well as state court decisions have held that the guidelines are permissive and that consideration of them all is not mandatory."). Rule 1.5 recognizes there are many different types of fee arrangements. The Committee does not mean to suggest that the

¹ This opinion is limited to hourly fee billing arrangements.

² In reaching this conclusion, the Committee has considered and agrees with that portion of the American Bar Association Formal Opinion 93-379 which addresses this subject.

³ The focus of the predecessor Model Code of Professional Conduct was somewhat different in prohibiting fees that were "clearly excessive." DR 2-106.

practices identified in this opinion would never be permissible.⁴ Nonetheless, in the case of an hourly fee arrangement, the time and labor spent on the project must be a paramount factor.

Further, Rule 7.1 prohibits a lawyer from making false or misleading statements about the lawyer's services. ARPC 7.1. As noted in the comment, "[t]his rule governs all communications about a lawyer's services" ARPC 7.1 cmt. While this rule does not specifically address a lawyer's bill for services, it applies to all communications. Thus, a lawyer's bill for services may not be misleading.

The lawyer who has agreed to bill a client on the basis of hours expended cannot ethically bill the client for more than the actual time spent. In each of the scenarios posed above, the lawyer is charging the client for more time than the lawyer actually spent on the specific project. When viewed from the client's perspective, or the perspective of what fee the lawyer has actually earned, the ethical obligation seems clear.

For example, a lawyer spends 3 hours traveling to attend a deposition in Seattle. If the lawyer decides to spend the time on the airplane drafting a motion for a different client, he or she may not charge both clients, each of whom agreed to hourly billing, for the time during which he was traveling on behalf of one client, but drafting a document on behalf of another. The lawyer has not earned 6 billable hours. Similarly, the client who agrees to pay a lawyer on the basis of hours spent, would not expect to pay the lawyer when he or she was not actually working for that client.

In another example, a lawyer schedules court appearances for three different clients on the same day. The lawyer spends 3 hours at the courthouse, the amount of time he or she would have spent for each client if it had not been for the fortuitous scheduling. The lawyer may not bill each client 3 hours. The lawyer has not earned 9 hours of billable time. The lawyer has earned no more than a single fee for the morning's work. While it might be reasonable for the client to pay for 3 hours for each hearing if each one was conducted separately, the efficiency and benefits of arguing all three motions on the same day should inure to the benefit of the clients.

In a final example, a lawyer performs research on a topic for one client which later turns out to be relevant to a question raised by a second client. The lawyer may not charge the second client the same number of hours for the recycled work product that he or she charged the first client. The lawyer may only charge the second client for the actual time spent updating or modifying the brief, unless the fee agreement provides otherwise. Similarly, a lawyer who spends 1 hour recycling a set of discovery for use in a personal injury case has not earned more than 1 billable hour in fees. In addition, the client likely expects that the lawyer's hourly rates

⁴ This opinion is limited to those circumstances where the lawyer and client have agreed that the fee will be based upon the hours worked.

will reflect the efficiencies which may be gained because the lawyer has significant experience in a particular area of the law.

In summary, where the client has agreed to pay the lawyer on an hourly basis, the economies associated with a lawyer's efficient use of time must benefit the client rather than giving the lawyer an opportunity to charge a client for phantom hours.

Approved by the Alaska Bar Association Ethics Committee on April 4, 1996.

Adopted by the Board of Governors on May 13, 1996.

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