

Hourly Billing v. Work from Previous Client

I have been having an ethics debate with another attorney. Our discussion revolves around this:

1. I assert that it would be unethical for an attorney billing hourly to bill (for example) three hours instead of one (when the time spent was one hour), on a project, when the time spent re-using (for example) a motion which was previously drafted for another client was one actual hour.
2. Other attorney asserts that it is ethical to bill three hours for that one hour of actual work because an earlier client paid for three hours to create the original motion, and it would be unethical to charge a later client less because an earlier client paid more.
 - a. My response is that this is essentially double-billing, and that we have an ethical obligation to use any usual means to reduce client billable hours, including using earlier motions, pleadings, and parts of briefs (appropriately reviewed and updated, of course) when possible.

I distinguish this from flat or "value" based fees and contingency fees, and look only at the case where the client is contracted on an hourly basis. I have been reading the ABA opinion 93-379, but any other thoughts and resources would be appreciated. Thank you!

Let me pass these examples by you:

If, in 1980, I drafted a motion by hand, with edits, etcetera and then typed it up on my typewriter in three hours and now I wish to use the same motion today (yes, it's that good a motion) and it will only take me one hour to make edits (e.g., names of the parties, dates) and type it into my word processor, can I bill the original three hours?

What if last week it took me an hour on a typewriter to fill in the blanks of a form; but I bought a computer last weekend and now it takes me only twelve minutes. Can I charge the client for an hours' worth of time?

Automation has increased productivity; if automation allows one person to complete the work previously done by four people in the same eight hour workday then can the one person bill clients 24 hours of time for the eight hours of work performed?

Very truly yours,
Bill
William M. Driscoll, Massachusetts

SoloSez Popular Threads, August 2013

In an ideal world, we all get better at what we do over time. We develop a body of work we can refer to. We learn shortcuts and efficiencies. We learn nuance. Our work, and the time spent doing it, increases in value, and that is typically reflected in increasing fees.

Ultimately, your dispute is not one of ethics so much as a question of contract law.

If your colleague agreed to bill the client hourly for work performed, he may only bill for actual time spent. In the former case, it was three hours. In this case, it was one. You cannot bill an hourly client for time you did not spend.

That is the incentive behind value billing. If you come to learn that a client will gladly pay [$\$3x$, where x is your normal hourly rate] for a document, you set the price of that document at $\$3x$.

However, if your agreement is to bill hourly, you must be able to document the time actually spent for which you are billing. If he submits a bill stating that he spent three hours preparing that document for that client, it is not merely an ethical gray area, it is fraud.

-Rick

Richard J. Rutledge, Jr., North Carolina

Nos. 1 and 2 are fraudulent billing. Billing three hours when it only took one at most.

Craig McLaughlin, California

Easy. You're right. Later clients get the benefit of the experience you gained, and work you performed, for previous clients. The trade-off is that your hourly rate should increase with said experience. And no, this is not a retroactive injustice to the previous client.

Tony LaCroix, Missouri

SoloSez Popular Threads, August 2013

I agree that it depends on what the fee agreement states, and to some extent what your state bar allows. Many of us bill hourly but disclose and have the client agree in the fee agreement to certain "standard minimum" times for certain tasks (phone calls, for example, or in one of my practice areas, Final Accountings). I may only spend 1/2 an hour reviewing something that literally took my assistant an entire day to put together, and this is one way to recoup that (another way is to bill the assistant's time, if allowable). But this practice is in our hourly fee agreement.

Cynthia V. Hall, Florida

Which is why we should raise our rates as we become more experienced.

Assume you charged X/hr as a new lawyer and it took you 3 hours to do a project for Client A.

Now you charge 2x and it takes you 1 hour to do the same project for client B.

Client A paid you 3x and Client B pays you 2x.

Even though you doubled your hourly rate, your current client gets a better deal!

Nanci Bockelie, Urah
