

Hourly Billing Question

Good afternoon everyone, I have a question that relates to ethical billing.

I am looking at somebody else's invoice, so whatever you answer will not offend me.

I don't know what the retainer agreement states.

Two attorneys each billing the same amount of time discussing strategy or whatever else is there to talk about when two people work on one project.

Two attorneys each billing a certain amount of time reviewing the same draft agreement.

I've always thought this type of billing is only allowed if you specifically agree to it in the retainer agreement, as in "two attorneys may work on your matter as a team and as a result you may be billed twice for similar work" Of course, nobody would put that into a retainer agreement.

Nonetheless, I've seen this type of billing over and over from bigger firms. What are your thoughts?

I am not aware of anywhere that requires this to be specified in an engagement agreement. Most sets of ethics rules require billings to be reasonable and accurate though.

Shell Bleiweiss, Illinois

I don't think it is unethical, nor do I think one needs to specifically make some sort of statement (of the type you describe) in the engagement letter.

Having said that, I know that some clients (insurance companies and some other large corporate clients) refuse to pay for this type of thing, and even use software programs to ferret it out in bills. If that is the agreement with the client, then that is what must be done, but that does not imply that the contrary is somehow unethical.

Brian H. Cole, California

It was my understanding that for a fee to be reasonable there cannot be a duplication of effort. If two attorneys are reviewing the same agreement, there is a duplication of effort. Also, in office conferencing between attorneys can be unreasonable if it is a function of overstaffing. I think I am going to research this ones and for all and find out.

Imke Ratschko, New York

Multiple attorneys on same matter can be necessary. Sometimes it can be overkill.

A seasoned lawyer schooling a young associate may be a training session rather than billable. However, lines blur quickly, as the young associate may be doing the work at a lower rate with light supervision.

Some projects require discussion and cooperative work, whether in the same firm or with lawyers in different firms. Without knowing the type of matter and other circumstances, one cannot say.

Some legal projects require a large number of practitioners all working together due to the scale of the project. In such cases you may have periodic conferences to stay coordinated with 10 or more attorneys in the room and billing.

Fees overall must be reasonable given the nature and type of matter. The attorney is well advised to ensure client awareness of scope and expectations.

Darrell G. Stewart, Texas

Eisenhower couldn't meet with his generals to discuss strategy in prosecuting WWII?

Roger Rosen

I don't agree at all. Each brings a different perspective and experience and skill set to the table. Wouldn't you rather have two or three surgeons looking at your scans in order to decide whether or how to perform open heart surgery? Almost every profession from auto mechanics to landscapers to computer programmers look over the project before deciding the best course of action.

Rick Bryan, New York

Indeed, depending on the nature of the agreement, it may be appropriate standard operating procedure to have different attorneys review it.

For example, a merger agreement will likely need tax, labor and possibility IP, securities, environmental, antitrust and other expertise. It is a rare attorney who has all that knowledge. The quarterback attorney sends the draft out to the specialists to vet from their respective perspectives, consults as needed on the feedback, and then goes back to the client and the other side to negotiate from the overall perspective.

Regards,

‘Yee Wah Chin

I just filed a Reply to the losing plaintiffs' opposition to my fee request. It was 850 hours (over 5 years) and, as a solo, not one of those hours was duplicated by another lawyer. (I did have Supreme Court co-counsel, but we worked on discrete tasks.) I took great pleasure in attaching a copy of the opposing party's own fee request back when they were winning these cases. They certainly had lawyers talking about the case, their entries were much more cryptic, and in spite of now criticism me for "block billing," every single day was block billed by them. I hope the judge finds it as offensive as I did.

John T. Mitchell, District of Columbia

Speaking of cryptic. :) What was the case about, why did you prevail and what was your fee request based on?

Craig McLaughlin, California

Sorry. I'm operating on fumes, should be asleep, but this whiskey keeps calling -- I needed it after filing. (Whatever happened to those "normal business hours"?) This case is getting to be ridiculous. I represent a feisty Chinese woman in Texas, Ganghua Liu, who was sued for re-selling textbooks that the textbook publishers had already sold -- except that they sold them to students in China with ostensibly less money than U.S. students who tend to have well-to-do parents or loans/financial aid. She was sued in 2008. Early this year, the Supreme Court held that her interpretation of the Copyright Act was correct, and that the textbook publishers had no right, under the Copyright Act, to interfere with her sales. (By now, though, most of her 2008 books are old editions worth little). As the prevailing party, she has a right to seek fees under 17

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U.S.C. Â§ 505 (and it is up to the discretion of the court). I had held off on the fee request because there are other claims and counterclaims pending, and I thought it might be more efficient to wrap everything up in one neat little settlement package. As it turns out, the two major textbook publishers are still out to get her. They now argue that even though she has a right, under the Copyright Act, to sell the books, the copies they printed in China are "materially different" (cheaper paper and ink, sometimes a Chinese cover, but the same copyrighted work), so they can thumb their corporate noses at her Supreme Court victory and continue to keep her on welfare (and out of business) by suing for trademark infringement and NY state unfair trade practices. I figure that since it is insane for them to spend so much on legal fees, it must be because they are making truck-loads on cash off of price discrimination against U.S. students, and are desperate to protect this cash cow of charging pennies on the dollar to students in India and China, while extracting supra-competitive prices from U.S. college students (whose cost of textbooks has increased faster than the rate of inflation). They seem confident that this new judge (Katherine B. Forrest, SDNY), who used to represent copyright holders, will continue to think like a corporate lawyer representing big media. I am expecting her to rule like a smart judge who owes no bias toward her former clients' preferences.

OK, Craig. Have I been less-cryptic enough? Oh, and they object to my fees for "block billing" in spite of the fact that they got attorney fees when they prevailed, and their lawyer block billed 100% of the time); they object that my client (on food stamps) got a third party payment for Supreme Court co-counsel, and (the worst), they argue that they should not have to pay my bills for serviced that their lawsuit prevented her from paying -- they even argue that she no longer has an obligation to pay my old bills, so why should they? Enough. Another shot, and I go to bed. Tomorrow, I begin to ... wait.

John T. Mitchell

Ah, very good fill in of context. If she is merely re-selling the textbooks, I do wonder about the reprinting in China. Interesting angle by publishing house. Unless they have rights in China or the books made their way to the US, seems they have some hurdles. Carry on. J

Craig McLaughlin
